

**ASTERIA BAUTISTA, MAXIMA LOMIBAO, FRANCISCO LOMIBAO,
JOSE LOMIBAO, FELISA LOMIBAO AND PAULINA LOMIBAO,
PLAINTIFFS AND APPELLEES, VS. EPIFANIO SABINIANO, IN HIS
CAPACITY AS GUARD...**

G.R. No. L-4236. November 20, 1952

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from a judgment rendered by the Court of First Instance of Pangasinan in civil case No. 0516, holding that the donations made by Alberto G. Bautista in favor of Marcelina and Candida surnamed Sabiniano and Alfredo de Guzman are invalid for lack of acceptance on the part of said donees who were minors but valid in favor of Atanacio Lomibao who was of age at the time he accepted the donation in his favor, ordering the defendants Marcelina Sabiniano, Candida Sabiniano and Alfredo de Guzman to surrender to the plaintiffs, who are the lawful heirs of the deceased Alberto G. Bautista, the parcels of land in their possession by virtue of the deed of conditional donation, without special pronouncement as to costs. The other two defendants, Epifanio Sabiniano and Leonora Cansino, were joined, because the first is the father of the minor defendants Marcelina and Candida Sabiniano, who accepted the donation in their behalf, and the second is the mother of the minor Alfredo de Guzman who accepted the donation in his behalf. The appeal was filed by Epifanio Sabiniano in behalf of his minor children Marcelina and Candida Sabiniano. Leonora Cansino did not appeal and the plaintiffs also did not appeal from that part of the judgment which held valid the donation in favor of Atanacio Lomibao who was of age at the time he accepted the donation.

The deed of donation reads as follows:

DEED OF CONDITIONAL DONATION

KNOW ALL PERSONS BY THESE PRESENTS:

That I, ALBERTO G. BAUTISTA, Filipino, of legal age, widower and a resident of the barrio of Buenlag, Binmaley, Pangasinan, Philippines, for and in consideration of my love and affection, and services rendered by Marcelina Sabiniano, 18 years old, and Candida Sabiniano, 13 years old, both single, daughters of Epifanio Sabiniano and Maxima Sabiniano (deceased), said Marcelina Sabiniano and Candida Sabiniano are represented for and in their behalf by their stated father, Epifanio Sabiniano in this regard, who is also a Filipino, of legal age, married for the second nuptial to Andrada Sabiniano, all residents of the barrio of Buenlag, Binmaley, Pangasinan, Philippines; Atanacio Lomibao, Filipino, of legal age, married to Corazon Decena and a resident of the same place; and Alfredo de Guzman, Filipino, 2 1/2 years old, single and a resident of the barrio of Nagpalangan, Binmaley, Pangasinan, Philippines, represented for and in his behalf by his mother Leonora Cansino, wife of Andres de Guzman (deceased) Filipina, of legal age, widow and a resident of the same place, of the ward, with sound mind and without any influence, force, threat, surprise or intimidation, hereby voluntarily convey, cede, give, donate and transfer by way of conditional donation in favor of the said abovementioned donees the following properties to wit:

1. To Marcelina Sabiniano and Candida Sabiniano, the following properties are donated to them to be divided by each equally share and share alike:

(Here follows the description of the properties donated to Marcelina Sabiniano and Candida Sabiniano.)

2. To Atanacio Lomibao, married to Corazon Decena, the following property is donated to him:

(Here follows the description of the property donated to Atanacio Lomibao.)

3. To Alfredo de Guzman, minor and represented by his mother Leonora Cansino, the following property is donated:

(Here follows the description of the property donated to Alfredo de Guzman.)

That I am making this donation in favor of the herein stated donees with the following conditions:

1. That meantime I am still living, these properties donated are all yet at my disposal as well as the products therein derived, and whatever properties or property left undisposed by me during my lifetime will be the ones to be received by the donees if any;

2. That in case of my illness, I have still the perfect right to dispose said properties if necessary to finance all the expenses to be incurred for my sustenance and medical treatment, and whatever left, if any, of these properties will be the one to be received by the herein donees;

3. That in case of my unexpected death, the herein donees will execute the disposal or if they are still minors by their respective representatives or administrators to pay all the debts incurred by me during my lifetime or illness, if any, and to finance my funeral services or ceremonies in the Roman Catholic Church decently, and whatever properties or property in my favor will be the ones to be received by the herein donees.

IN WITNESS WHEREOF, I hereunto set my hand this 7th day of September, 1948, in Binmaley, Pangasinan, Philippines.

(Sgd.) ALBERTO G. BAUTISTA SIGNED

IN THE PRESENCE OF:

(Sgd.) Illegible (JUAN GUERRERO)

(Sgd.) MODESTO BAUTISTA

ACCEPTANCE

That we, Epifanio Sabiniano, acting for and in behalf of my daughters, Marcelina Sabiniano and Candida Sabiniano, who are minors, Atanacio Lomibao for and in my behalf, and Leonora Cansino, acting for and in behalf of ray son Alfredo de Guzman who is minor, do hereby by these presents accept the donations given by the donor, and hereby further extend our gratitude due to the generosity of the donor.

IN WITNESS WHEREOF, we hereto set our hands this 7th day of September, 1948, in Binmaley, Pangasinan, Philippines.

(Sgd.) EMFANIO SABINIANO

(Sgd,) ATANACIO LOMIBAO

(Sgd.) LEONORA CANSINO

(Here follows the acknowledgment before the Notary Public.)

The trial court found that the donation is conditional and onerous, because the donor "continued to be the owner of the properties donated in spite of the donation" and "because the donees were made to pay under their personal responsibility all the debts of the donor incurred by him during his lifetime or illness, and to finance his funeral services upon his death," and held that it is null and void as to Marcelina and Candida surnamed Sabiniano and Alfredo de Guzman, who were minors and were not duly represented by their legal representatives upon the acceptance of the donation.

It is contended that the donation is pure and even if it be onerous or conditional the same is valid because the acceptance was made by their parents.

The view we take of the terms of the deed entitled "Conditional Donation" under consideration and analysis renders it unnecessary to dissert on the nature, character and effects of a pure act of generosity or a simple donation, of remuneratory or compensatory and of conditional or onerous donations—a charge, gravamen or obligation imposed upon the donee less in value than that of the property donated—as well as of those with a term or subject to suspensive or resolutive condition—there being a clear distinction between disposition and execution. The conveyance to the donees by way of donation of the properties described in the deed did not actually take effect on the date of the execution of the deed and of the acceptance thereof for the reason hereafter to be stated. It is also unnecessary to express opinion on whether the acceptance made in the deed is lawful and valid, for the reason that the owner reserved during his lifetime the right to dispose of the properties purportedly donated and to benefit from the products thereof. Except in the instances expressly provided by law, such as the subsequent birth of children of the donor, failure by the donee to comply with the conditions imposed, ingratitude of the donee and reduction of the donation in the event of inofficiousness thereof, a donation is irrevocable. If the donor reserves the right to revoke it or if he reserves the right to dispose of all the properties purportedly donated, there is no donation. If the disposition or conveyance or transfer takes effect upon the donor's death and becomes irrevocable only upon his death, it is not an inter vivos but a mortis causa donation. The disposition of the properties in favor of the appellants not having been done in accord with the provisions of section 618 of the Code of Civil Procedure, as amended, there was no lawful and valid transmission thereof to them.

There is no merit in the contention that when the plaintiffs moved for the dismissal of their complaint the trial court should have dismissed it, because the motion to dismiss was made upon certain technical grounds which need not be restated and because after answer the dismissal of the complaint lies within the discretion of the trial court.

Upon the foregoing grounds the judgment appealed from rendered against the appellants Marcelina and Candida surnamed Sabiniano, represented by Epifanio Sabiniano, their guardian ad litem, is affirmed. No costs shall be taxed.

Paras, C. J., Pablo, Bengzon, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.

RESOLUTION ON MOTION FOR RECONSIDERATION

28 January 1953

PADILLA, J.:

This case is again before us on motion for reconsideration.

Appellants draw our attention to article 639 of the Civil Code which provides that "The donor may reserve to himself the right to dispose of some of the property bestowed as a gift or to encumber it with a charge for the

payment of money;" and to article 634 of the same code which provides that "A donation may include all the present property of the donor or part thereof, provided he reserves, in full ownership, or in usufruct, an amount sufficient to support him in a manner appropriate to his station;" and contend that the consideration of the donation was the love and affection and services rendered by the donees, the appellants, and not the death of the donor; that the right to dispose of the property donated is authorized by article 639 referred to; and that the right of usufruct which may be reserved pursuant to article 634 is more extensive than the reservation to receive products of the lands donated.

All the reasons advanced in the motion for reconsideration were considered and taken into account when the case was decided on the merits.

In the case of *Balaqui et al. vs. Dongso et al.*, 53 Phil. 673, invoked by the appellants, this Court held that the donation was inter vivos, despite the fact that the title to the property donated did not pass to the donee during the donor's lifetime, because of the undertaking made by the latter to answer to the donee, his heirs and successors for the title to the property donated. In the opinion of this Court the latter clause annulled the former. And the case decided by the Supreme Court of Spain on 28 January 1898 cited to support the Court's rule involved or dealt with a donation or dowry of 80,000 reales made in a marriage settlement, given out of the donor's pure generosity and to recipient's deserts and not in consideration of death or peril, though the delivery of the amount donated was deferred after the donor's death.

If the donor reserves the right to dispose of all and not some of the property purportedly donated he in effect reserves the right to revoke it, because if it be held to be a donation and therefore title thereto passed to the donee, the donor could no longer dispose of it. To enable him to dispose of it he must reacquire the title to the property by conveyance to him by the donee. If the donor can dispose of it without need of reacquiring from the donee title thereto because title did not pass to the latter the reservation of the right to dispose of all the properties donated is in effect a reservation of a right to revoke the purported donation totally or partially.

Manresa's comment quoted by the appellants in the printed motion does not bolster up their contention, for it says:

Aunque el que se reserva el derecho de disponer de una cosa sin subordinar la reserva a condicion alguna, en realidad se reserva el dominio sobre ella, * * * la donacion produce efectos en vida del donante, transmitiendose, al menos, un derecho de usufructo o un dominio revocable; * * * (Italics supplied; p. 15, appellants' motion for reconsideration.)

In the instant case the donor not only reserved in two paragraphs the dominio sobre ella but the derecho de usufructo as well.[1]

Motion for reconsideration is denied.

Paras, C.J., Pablo, Bengzon, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.

[1]*Cariño vs. Abaya*, 40 Off. Gaz., No. 12, 8th Supp., 20 September 1941, p. 19; *David vs. Sison*, 42 Off. Gaz., 3153.

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