

PATERNO BELCIÑA, PLAINTIFF-APPELLANT, VS. PHILIPPINE TOURISM AUTHORITY, REPRESENTED BY ITS SECRETARY, PETER GARRUCHO OF THE DEPARTMENT OF TOURISM, REGIONAL DIRECTOR, CASIMERO NA...

Ponente: HERNANDO, J.

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HERNANDO, J.:

This is an appeal from the October 28, 2009 Decision[1] of the Regional Trial Court (RTC), Branch 26 of Argao, Cebu in Civil Case No. AV-689, an action for Declaration of Nullity of Donation, Recovery of Possession and Ownership with Damages, the dispositive portion of which, states:

“WHEREFORE, upon the foregoing, a Decision is hereby rendered in favor of the defendants and against the plaintiff, by DISMISSING the instant complaint as well as the complaint-in-intervention, on the ground of prescription and for insufficiency of evidence.

No pronouncement as to costs.

SO ORDERED.”[2]

ANTECEDENT FACTS

On July 27, 1980, plaintiff Paterno Belciña donated an unregistered 22,143 square-meter parcel of land (subject property) situated in Dakung Balas, Dalaguete, Cebu to defendant Tourism Infrastructure and Enterprise Zone Authority (formerly the Philippine Tourism Authority; hereafter, PTA) through a Deed of Donation[3]. The parcel of land was particularly described as follows:

“A parcel of land situated in the sitio of Dakung Balas, Barangay of Casay, Municipality of Dalaguete, Province of Cebu, Island of Cebu. Bounded on the North by property of Lopo and Esteban Lumayag; on the East by Seashore; on the South by property of Lopo and Tomas Lumayag; and on the West by property of Juan Segovia. Containing an area of TWENTY TWO THOUSAND ONE HUNDRED FORTY THREE (22,143) SQUARE METERS, more or less.”[4]

On August 11, 1980, the donation was accepted by defendant PTA, through then Minister of Tourism Jose D. Aspiras.[5] The Deed of Donation required defendant PTA to establish a public beach on the subject property and reserved certain rights in favor of plaintiff, to wit:

“That the DONEE is undertaking to establish a PUBLIC BEACH in the sitio of Dakung Balas, Barangay of Casay, municipality of Dalaguete, province of Cebu, which will be open for the use and enjoyment of the general public free of charge but subject to the rules and regulations to be imposed by the DONEE, and which project covers or includes the area comprising the above-described parcel of land owned by the DONOR;

xxx”[6] (underscoring supplied)

On July 16, 1990, or almost ten years after his execution of the Deed of Donation, plaintiff filed a Complaint[7]

with the RTC for Declaration of Nullity of Donation, Recovery of Possession and Ownership with Damages against defendants PTA, represented by Department of Tourism Secretary, Peter Garrucho; Regional Director Casimero Nadela; Provincial Head, Eugene Salinas; Project Manager, Marciano Ortega; and Argao Resort Development, Inc. (ARDI).

Plaintiff essentially alleged in his Complaint that his consent to the Deed of Donation was vitiated by intimidation. Sometime in 1979, a certain Mr. Anos Fonacier, allegedly a crony of former President Marcos, offered to purchase the subject property from plaintiff purportedly in representation of PTA.[8] Despite the “tempting price that was then offered,”[9] plaintiff turned it down.

A few months later, Mr. Fonacier came back with a list of plaintiff’s children[10] that were employed in the government and threatened that if plaintiff continued to refuse to sell the subject property, the employment of all his children would be endangered.[11] In consonance with this threat, plaintiff’s children, who were working in the government, were allegedly harassed.[12] When plaintiff still refused to sell, plaintiff allegedly received threats that the employment of his children with the government would be terminated through the acceptance of their resignation.[13]

Thus, plaintiff was allegedly forced to execute the Deed of Donation in favor of defendant PTA. After his execution of the same, plaintiff claimed that defendant PTA’s acceptance of the said donation was never communicated to him.[14]

In addition, plaintiff alleged in his Complaint instances of breach by defendant PTA of its undertakings under the Deed of Donation, to wit: (a) defendant PTA collected several kinds of fees from people who use its facilities;[15] and (b) defendant PTA allowed unauthorized persons to harvest the young coconuts on the subject property.[16]

Plaintiff therefore prayed for judgment: (a) declaring the Deed of Donation as void for lack of a valid consent; (b) declaring the Deed of Donation as nullified due to defendant PTA’s violation of its conditions; and (c) ordering defendant PTA to pay actual, moral and exemplary damages.[17]

In its Answer, defendant PTA denied that it ever employed any intimidation in connection with plaintiff’s execution of the Deed of Donation. It asserted that plaintiff freely and voluntarily executed the donation to help his son, substitute plaintiff Felipe Belciña, who was then aspiring to be appointed as fiscal in Cebu City.[18]

Defendant PTA further countered that its acceptance was conveyed to plaintiff as shown by plaintiff’s certification of willingness to sell his coconut trees on the subject property.[19] In any event, it invoked prescription under Art. 1391, par. 3 of the Civil Code, as a bar to plaintiff’s cause of action.[20]

For its part, defendant ARDI alleged[21] that plaintiff had no cause of action against it since the allegations in the Complaint only refer to defendant PTA as the beneficiary of the Deed of Donation and as the possessor of the subject property. Defendant ARDI explained that it owns and operates Argao Beach Club and Mr. Fonacier was one of its developers.[22] Mr. Fonacier was only requested to help the government in developing a public beach resort.[23] In doing so, he acted in his personal capacity and not in relation to his position in defendant ARDI.[24]

Trial then ensued. Plaintiff presented himself, substitute plaintiffs Dr. Paterno Belciña Jr. and Felipe C. Belciña. Defendant PTA presented Victorio Mangapiz, an employee of Dalaguete Beach Park-PTA (located on the subject property; hereafter, “Beach Park”); Jose Ambayec, Councilor of Brgy. Casay, Dalaguete, Cebu; Pedro Lumayag, Sr.; and Engr. Mariano Ortega, officer in charge of the Beach Park.

On May 19, 1993, intervenor Donata Belciña, plaintiff’s sister, filed a Motion to Intervene[25] which was granted[26] by the RTC. In her Complaint in Intervention, she alleged that she is a co-owner of the subject

property and that plaintiff, motivated by a desire to secure favorable concessions from the administration, succumbed to the threat and intimidation of defendant PTA and executed the Deed of Donation in violation of her right as a co-owner of one-half (1/2)[27] of the subject property. She faulted PTA's failure to verify the real owners of the subject property, which was still declared in the name of Wenceslao Belciña, father of both intervenor and plaintiff. Hence, intervenor prayed for judgment: (a) declaring the donation void as far as her half of the subject property is concerned; (b) declaring her as owner of one-half (1/2) of the subject property; and (c) ordering PTA to deliver possession and reconvey ownership to intervenor of her one-half (1/2) share of the subject property.[28]

Intervenor presented as witnesses Angelita Buenconsejo Mercado, Arceli Namari Moran and Jovita Belciña Namari.

In rebuttal thereto, substitute plaintiffs recalled Paterno and Felipe Belciña to the witness stand.

In its October 28, 2009 Decision, the RTC dismissed plaintiff's Complaint and intervenor's complaint-in-intervention on the grounds of prescription and insufficiency of evidence.[29] Intervenor and plaintiff timely filed a notice of appeal.[30]

ISSUES

Substitute plaintiffs-appellants (plaintiffs-appellants) attribute the following errors of the RTC as to its appealed judgment:[31]

1. The Court a quo erred in failing to recognize that under the tenor of the provisions of the subject instrument, the parties constituted merely a usufruct and not a donation that is irrevocable.
2. The Court a quo erred in not ruling that the donation was not perfected since the donee's acceptance was not communicated to the donor in accordance with Articles 747 and 749 of the New Civil Code.
3. The Court a quo erred in ruling that the donee did not violate the conditions of the donation since "the use and enjoyment of the beach itself is free."
4. The Court a quo erred in not ruling that the donee violated the condition by allowing outsiders to harvest the coconut trees which under the terms of the donation the plaintiff has "the exclusive right to use, enjoy and appropriate all the fruits and products of the coconut trees and other improvements found or existing within the premises of the said property."
5. The Court a quo erred in ruling that original plaintiff's action has prescribed.
6. The Court a quo erred in not dismissing the complaint-in-intervention.

On the other hand, substitute intervenors-appellants (intervenors-appellants) assign the following errors:[32]

7. Whether the intervenor have [sic] the right over the property in question.
8. Whether the Deed of Donation dated July 27, 1980 executed by Paterno Belciña Sr. in favor of the Philippine Tourism Authority was tainted by [sic] fraud and collusion.
9. Whether intervenor is entitled to the award of damages.

We will discuss these issues jointly.

THE COURT'S RULING

The appeals are bereft of merit.

- I. The Deed of Donation was duly perfected.

Plaintiffs-appellants assert that the donation to appellee PTA is void since the latter's acceptance of the same was never communicated to plaintiff.[33]

Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it.[34] For a donation of immovable property to be valid, the Civil Code requires that the same be made in a public instrument.[35] The acceptance of the donation by the donee may be made in the same deed of donation or in a separate public document.[36] The donation is perfected from the moment that the donor knows of the acceptance by the donee.[37]

Plaintiffs-appellants' argument is specious and does not stand upon closer examination of the Deed of Donation.

Preliminarily, We note that appellee PTA's acceptance is manifested in the Deed of Donation and not in a separate instrument. A perusal of the document reveals that pages two and three thereof appear to be constituent parts of the said Deed. The bottom of page two states, "(con't. on p. 3)"[38] and the top of page three contains[39] the notarial certificate of the acknowledgment appearing on page two.

Donations which are to take effect inter vivos are governed by the Civil Code's general provisions on contracts and obligations in so far as not determined by the title on donations.[40] The instant donation is undoubtedly inter vivos. The form thereof was not in the form of a will nor did it comply with the formalities required of a will. It contemplated an immediate transfer of ownership during plaintiff's lifetime since plaintiff "gives and conveys,"[41] the subject property. There was no mention of death and the donee, "accepts this gift and donation"[42] and it provided for the registration[43] of the Deed of Donation with the registry of property.

On the face of the Deed of Donation, plaintiff, by his very execution thereof, acknowledged that he was notified of appellee PTA's acceptance thereof, which was also explicitly manifested. Paragraph eight of the Deed of Donation states:

"xxx

That the DONEE hereby accepts this gift and donation made in its favor by the DONOR and expresses its appreciation and gratitude for the civic concern and generosity of the said DONOR who, by these presents, acknowledges due notification of such acceptance by the DONEE;

xxx"[44] (underscoring supplied)

The requisites for a valid donation of real property are: (1) it must be made in a public instrument; (2) it must be accepted, which acceptance may be made either in the same Deed of Donation or in a separate public instrument; and (3) if the acceptance is made in a separate instrument, the donor must be notified in an authentic form, and the same must be noted in both instruments.[45] Upon the acceptance of the donation, it is generally considered irrevocable and the donee becomes the absolute owner of the donated property.[46]

Art. 1306 of the Civil Code gives the contracting parties the freedom to establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. The foregoing provision expressly manifesting appellee PTA's acceptance of the donation and the donor's cognizance of the same does not appear to be contrary to the rules on donations. It is only where the deed of donation fails to show the acceptance and the donor's cognizance thereof that the donation is null and void.[47]

Therefore, the donor cannot deny that he was duly notified of appellee PTA's acceptance of the donation. We do not find anything irregular in the express stipulation of the donee's acceptance and the donor's acknowledgment of being notified of the same. In *Quilala v. Alcantara, et al.*[48], the donee's acceptance, which was set forth in

the deed of donation, was upheld despite the donee's failure to acknowledge her acceptance of the donation before a notary public.

II. The action to annul the donation has prescribed.

The RTC found that the complaint is already barred by the Statute of Limitations, to wit:

“xxx Nonetheless, the plaintiff filed this complaint for declaration of nullity of donation xxx only on July 16, 1990 xxx.

Considering that xxx the action for annulment shall be brought within four years from the time the defect of the consent ceases, the herein plaintiff should have filed his complaint anytime on or before February 24, 1990, as the then President Marcos left the country on February 24, 1986.”[49]

Plaintiffs-appellants deny that their action has prescribed. They maintain that the period for prescription has not begun to run since the donation was never perfected due to appellee PTA's failure to communicate its acceptance of the donation to plaintiff.

In light of the foregoing discussion on the donor's cognizance of appellee PTA's acceptance of the donation, We deem it unnecessary to belabor this point.

III. The action to revoke the donation has likewise prescribed.

Plaintiffs-appellants claim that the tenor of the Deed of Donation shows that the donor merely intended to convey usufructuary rights to appellee PTA.[50] The said rights were subject to revocation upon appellee PTA's alleged violation of the terms of the donation, which it allegedly did when appellee PTA (a) collected entrance fees and other fees; and (b) allowed outsiders to harvest the coconut trees.[51]

The express terms of the Deed of Donation belie plaintiffs-appellants' claim.

By the deed's terms, the conveyor clearly intended a donation and not a mere transfer of usufructuary rights. Paterno Belciña was motivated by “love and affection and civic concern...and as a gesture of liberality and generosity,” in his execution of the donation.[52]

The donation contemplated an immediate transfer of the property's naked title to appellee PTA while reserving usufructuary rights in favor of plaintiff, to wit:

“That this donation shall take effect immediately and the property herein donated is deemed transferred and delivered to the DONEE upon the latter's acceptance, but the DONOR hereby reserves for himself, his heirs and successors-in-interest, the exclusive right to use, enjoy and appropriate all the fruits and products of the coconut trees and other improvements found or existing within the premises of the said property;

xxx

“xxx the parties herein have agreed to register this instrument in accordance with the provisions of Act No. 3344, as amended.”[53] (underscoring supplied)

In consonance with the reservation of usufructuary rights in favor of plaintiff, appellee PTA requested for his prior consent to sell the coconut trees on the subject property.[54] Furthermore, plaintiffs-appellants were allowed free entry to the subject property and free use of the beach cottages[55].

The action to revoke the donation has already prescribed.

When the donee fails to comply with any of the conditions of the donation, the donation may be revoked at the instance of the donor.[56] This action prescribes after four years from non-compliance with the condition.[57]

Plaintiffs-appellants' action to revoke is predicated on appellee PTA's alleged failure to comply with the terms of the donation when it collected entrance fees and fees for the use of its facilities. As such, it is subject to the four-year prescriptive period. Here, the record reveals that PTA started to collect fees for the use of its facilities on the subject property on August 25, 1981.[58] Thus, the prescriptive period should be reckoned therefrom. Consequently, plaintiffs-appellants had four years from August 25, 1981, or until August 26, 1985 to file an action to revoke the donation on the ground of the donee's non-compliance with a condition therein. Since Paterno Belciña filed his complaint only on July 16, 1990[59], his action to revoke the donation had clearly prescribed.

IV. Intervenor-appellants' complaint should be dismissed for being an improper remedy.

Intervenor's action sought the annulment of the donation with respect to her portion of the subject property and the reconveyance of the said portion to her. Intervenor-appellants contest the RTC's dismissal of the said action on the ground that the same has not prescribed. They maintain that Donata, as a co-owner of the subject property, never gave her consent to the donation. The absence of Donata's consent to the donation made the conveyance void and the action consequently did not prescribe.

We note that the subject property is still declared[60] in the name of plaintiff and intervenor's father, Wenceslao Belciña. Ownership of the subject property only passes to Wenceslao's heirs upon his death. Yet no proof was ever presented of such death.

Nevertheless, on the assumption that a co-ownership between intervenor and plaintiff was validly established, it was improper for intervenor to file an action to annul Paterno Belciña's donation of the subject property and for reconveyance of the same. Each co-owner has full ownership of his/her part and may therefore alienate, assign or mortgage it; but the effect of the alienation or mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.[61] Consequently, Paterno Belciña's donation of his share to the subject property was valid. It produced the following effects: (a) it substituted appellee PTA in the enjoyment thereof; and (b) appellee PTA became a co-owner of the subject property by virtue of the part which belonged to plaintiff at the time of the donation. There is therefore no reason to recover possession of the subject property or to declare the donation made to appellee PTA as void.

As early as 1910, it has been held that even if a co-owner disposes the whole property as his/hers, the same will only affect such co-owner's share but not those of the other co-owners who did not consent to the sale.[62] The disposition affects only such co-owner's undivided share and the transferee gets only what would correspond to his/her grantor in the partition of the property held in common.[63] Alternatively, since a co-owner is entitled to sell his/her undivided share, a disposition of the entire property by one co-owner without the consent of the other co-owners is not void.[64] Only the rights of the co-owner/seller are transferred, thereby making the buyer a co-owner of the property.[65]

If there is now a co-ownership between appellee PTA and intervenors-appellants, an action for reconveyance by the latter is manifestly improper. However, intervenors-appellants are not without recourse. Co-owners are not obliged to remain in the co-ownership and may demand at any time the partition of the subject property owned in common, insofar as their share is concerned.[66] This may properly be done through an action for partition under Rule 69 of the Rules of Court.

The early case of *Mainit, et al. v. Bandoy, et al.*[67] provides the jurisprudential authority on the appropriate remedy, to wit:

“In view of the fact that a coownership [sic] is firmly established, between the defendants on the one hand and Calixto Mainit and Alejandro Mainit on the other, an action for nullification or for the recovery of possession

can not be maintained. In this case, some of the remedies provided by the Civil Code in favor of coheirs and coowners [sic] with respect to the division of the property or the consolidation thereof should be resorted to; none of them, not even by implication, appears to have been applied in this case.

We therefore decide that the complaint as presented should be dismissed; without any special ruling as to the costs in both instances, it is so ordered.”[68] (underscoring supplied)

This holding was subsequently clarified in *Heirs of Protacio Go, Sr., et al. v. Servacio, et al.*[69], which held:

“The proper action in cases like this is not for the nullification of the sale or for the recovery of possession of the thing owned in common from the third person who substituted the co-owner or co-owners who alienated their shares, but the DIVISION of the common property as if it continued to remain in the possession of the co-owners who possessed and administered it [Mainit v. Bandy, supra]...

Thus, it is now settled that the appropriate recourse of co-owners in cases where their consent were not secured in a sale of the entire property as well as in a sale merely of the undivided shares of some of the co-owners is an action for PARTITION under Rule 69 of the Revised Rules of Court.

In the meanwhile, Servacio would be a trustee for the benefit of the co-heirs of her vendors in respect of any portion that might not be validly sold to her.”[70] (underscoring supplied)

Similarly, intervenors-appellants’ resort to an action for reconveyance and annulment of donation was an improper remedy and therefore should be dismissed.

A separate action for partition would allow intervenors-appellants to properly establish: (a) whether they are co-heirs of Wenceslao and co-owners of the subject property; and (b) their share to the co-ownership. Clearly, these matters are best threshed out in an action for partition.

WHEREFORE, the appeals are DENIED. The October 28, 2009 Decision of the Regional Trial Court, Branch 26 of Argao, Cebu in Civil Case No. AV-689 is AFFIRMED.

SO ORDERED.

Quijano-Padilla, and Azcarraga-Jacob, JJ., concur.

[*] Deceased; He is substituted by his surviving heirs: Dolores B. Almagro, Felipe Belciña, Ernesta B. Villanueva, Fe B. Monceda, Gualberto C. Belciña, Paterno C. Belciña, Jr., and Primitiva C. Belciña, Jr. per March 4, 1999 Ex-Parte Motion for Substitution of Plaintiff; Record, p. 183.

[**] Deceased; She is substituted by her surviving heirs: Jovita Belciña Vda. De Namare and her brother, Miguel Hernaez and the former’s son, Peter Namare per July 24, 1997 Order; Id. at p. 146.

[1] Rollo, pp. 16-30.

[2] Rollo, p. 30.

[3] Record, pp. 162-164.

[4] Id. at p. 162.

[5] Id. at p. 164.

[6] See Note 3, supra.

[7] Record, pp. 1-9.

- [8] Record, p. 2.
- [9] Par. 5; Ibid.
- [10] Seven were plaintiff's children while three were his sons-in-law; Record, p. 3.
- [11] Ibid.
- [12] Ibid.
- [13] Ibid.
- [14] Record, p. 4.
- [15] Ibid.
- [16] Ibid.
- [17] Record, pp. 5-6.
- [18] Record, p. 36.
- [19] Ibid.
- [20] Record, p. 37.
- [21] Id. at p. 18.
- [22] Par. 4; Id. at pp. 16-17.
- [23] Ibid.
- [24] Ibid.
- [25] Record, pp. 114-116.
- [26] June 2, 1993 Order; Record, p. 120.
- [27] Id. at p. 121.
- [28] Record, p. 122.
- [29] Id. at p. 401.
- [30] Id. at pp. 404, 440.
- [31] Rollo, p. 43.
- [32] Rollo, p. 75.
- [33] Id. at p. 46.
- [34] Civil Code, Art. 725.
- [35] Civil Code, Art. 749.
- [36] Ibid.
- [37] Civil Code, Art. 734.
- [38] Ibid.

- [39] Record, p. 164.
- [40] Civil Code, Art. 732.
- [41] Record, p. 162.
- [42] Id. at p. 163.
- [43] Par. 9; supra.
- [44] See note 42, supra.
- [45] Arangote v. Spouses Maglunob, et al., G.R. No. 178906, February 18, 2009, 579 SCRA 637.
- [46] Quilala v. Alcantara, et al., G.R. No. 132681, December 3, 2001, 371 SCRA 317.
- [47] Civil Code, Arts. 734 and 749.
- [48] G.R. No. 132681, December 3, 2001, 371 SCRA 320.
- [49] Rollo, p. 29.
- [50] Rollo, p. 45.
- [51] Id. at p. 48.
- [52] Record, p. 162.
- [53] Id. at pp. 162-163.
- [54] February 1, 1982 agreement to sell signed by plaintiff; Id. at p. 160; February 24, 1992 Transcript of Stenographic Notes (TSN), p. 23.
- [55] August 1, 1991 TSN, p. 43.
- [56] Civil Code, Art. 764, par. 1.
- [57] Civil Code, Art. 764, par. 3.
- [58] August 25, 1981 Memo for the Manager; Record, p. 165.
- [59] Record, pp. 1-9.
- [60] Id. at p. 313.
- [61] Civil Code, Art. 493.
- [62] Mainit, et al. v. Bandy, et al., No. L-5334, January 10, 1910.
- [63] See Republic of the Philippines v. Heirs of Francisca Dignos-Sorono, et al., G.R. No. 171571, March 24, 2008, 549 SCRA 66.
- [64] Ibid.
- [65] Ibid.
- [66] Civil Code, Art. 494.
- [67] See Note 62, supra.

[68] See Note 62, *supra*.

[69] G.R. No. 157537, September 7, 2011.

[70] *Heirs of Protacio Go, Sr., et al. v. Servacio, et al.*, G.R. No. 157537, September 7, 2011.

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