

RUPERTO REYES AND REYNALDO C. SAN JUAN, IN HIS CAPACITY AS SPECIAL ADMINISTRATOR, PETITIONERS, VS. HON. LORENZO R. MOSQUEDA, JUDGE OF CFI, PAMPANGA (BRANCH VII), AND URSULA D. P...

G.R. No. L-45262. July 23, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The instant petitions have been consolidated as they arose from the same facts and involve similar issues.

Dr. Emilio Pascual died intestate and without issue on November 18, 1972. He was survived by his sister, Ursula Pascual and the children of his late sisters as follows: (1) Maria Pascual Reyes - Ruperto Reyes and Jose Reyes; (2) Ines Pascual Reyes - Jose P. Reyes, Benito Reyes, and Marina Reyes Manalastas; (3) Josefa Pascual Reyes - Augusto Reyes and Benjamin Reyes; and (4) Escolastica Pascual Dalusong (half-blood) - Pedro Dalusong.

On December 3, 1973, the heirs of Dr. Pascual filed Special Proceedings No. 73-30-M in the then Court of First Instance of Pampanga for the administration of his estate. Atty. Marcela Macapagal, Clerk of Court of Branch VII was appointed special administratrix. Macapagal was, however, replaced by Reynaldo San Juan.

On February 12, 1976, Ursula Pascual filed a motion to exclude some properties from the inventory of Pascual's estate and to deliver the titles thereto to her. Ursula alleged that Dr. Pascual during his lifetime or on November 2, 1966 executed a "Donation Mortis Causa" in her favor covering properties which are included in the estate of Dr. Pascual (subject of Special Proceedings No. 73-30-M) and therefore should be excluded from the inventory.

On August 1, 1976; the trial court issued an order excluding from the inventory of the estate the properties donated to Ursula, to wit:

"WHEREFORE, in view of all the foregoing discussion, let the properties listed in paragraph 2 of the motion of February 12, 1976 filed by Ursula D. Pascual thru counsel be, as it is hereby ordered, excluded from the inventory of the estate of the deceased Dr. Emilio D. Pascual, without prejudice to its final determination in a separate action. Special Administrator Reynaldo San Juan is hereby ordered to return to Court the custody of the corresponding certificates of titles of these properties, until the issue of ownership is finally determined in a separate action." (G.R. No. 45262, pp. 23-24)

The Order is now the subject of G.R. Nos. 45262 and 45394. On January 5, 1977, we issued a temporary restraining order enjoining the trial court from enforcing the August 1, 1976 Order.

Among the properties included in the "donation mortis causa" in favor of Ursula was Lot 24, Block No. 15 of the subdivision plan Psd-3231, located at 1109-1111 R. Papa St., Tondo, Manila as evidenced by Transfer Certificate of Title No. 17854. The records show that on May 15, 1969, Emilio Pascual executed a deed of donation of real property inter vivos over the above-mentioned lot in Manila in favor of Ofelia D. Parungao, petitioner in G.R. Nos. 73241-42 a minor with her mother, Rosario Duncil, accepting the gift and donation for and in her behalf.

When Parungao reached the age of majority or on December 20, 1976, she tried to have the donation registered. However, she found out that the certificate of title was missing from where it was supposed to be kept, prompting her to file a petition for reconstitution of title with the Court of First Instance of Manila. The petition was granted in October 1977. Parungao registered the deed of donation with the Register of Deeds of Manila who cancelled Transfer Certificate of Title No. 17854 and issued in lieu thereof Transfer Certificate of Title No. 129092 in the name of Ofelia Parungao. She then filed a motion for exclusion in Special Proceedings No. 73-30-M.

In the meantime, on September 23, 1976, Ursula Pascual executed a deed of absolute sale over the Tondo property in favor of Benjamin, Oscar, Jose and Emmanuel, all surnamed Reyes.

On May 2, 1978, Benjamin Reyes, private respondent in G.R. Nos. 73241-42 filed a complaint for declaration of nullity of Transfer Certificate of Title No. 129092, Register of Deeds of Manila and/or reconveyance of deed of title against Ofelia Parungao and Rosario Duncil with the then Court of First Instance of Manila. The case was docketed as Civil Case No. 115164.

In their answer with compulsory counterclaim Parungao and Duncil denied Reyes assertion of ownership over the Tondo property. On November 6, 1978, Ofelia Parungao filed a complaint for recovery of possession over the Tondo property against Benjamin Reyes and his nephew Oscar Reyes with the Court of First Instance of Manila. The case was docketed as Civil Case No. 119359. In her complaint, Parungao also alleged that as early as 1973, the defendants occupied two (2) doors of the apartment situated at the Tondo property by mere tolerance of the previous owner, Dr. Emilio Pascual, and later by her until April 8, 1978 when she formally demanded that the defendants vacate the premises. Parungao prayed that the defendants be evicted from the premises.

The two cases were consolidated. On June 3, 1982, the then Court of First Instance, Branch 8 rendered a joint decision, the dispositive portion of which reads:

“WHEREFORE, judgment is hereby rendered:

In Civil Case No. 115164 –

- 1) Declaring TCT No. 129092 in the name of Ofelia Parungao null and void; and ordering the Register of Deeds of Manila to cancel said title and to restore, in lieu thereof, TCT No. 17854 in the name of Emilio D. Pascual;
- 2) Ordering Ofelia D. Parungao to pay plaintiff Benjamin P. Reyes the sum of Two Thousand (P2,000.00) Pesos, as and for attorney's fees; and to pay the costs of suit including all fees which the Register of Deeds may prescribe for the full implementation of this decision.

For lack of merit, the counterclaim is dismissed.

In Civil Case No. 119359 –

- 1) Dismissing the complaint for want of merit; and
- 2) On the counterclaim, ordering Ofelia Parungao to pay defendants the sum of Two Thousand (P2,000.00) Pesos as and for attorney's fees."

Parungao appealed the decision to the then Intermediate Appellate Court. The decision was, however, affirmed, with costs against the appellant.

The Intermediate Appellate Court decision is now the subject matter in G.R. Nos. 73241-42.

On January 29, 1986, we issued a minute resolution denying the above petition for lack of merit. The resolution became final and executory on March 10, 1986 and on this same day the entry of judgment was effected. The

entry of judgment was however set aside in the resolution dated January 19, 1987 on the ground that the January 29, 1986 resolution was not received by the petitioners' counsel of record. The petitioner was granted leave to file a motion for reconsideration of the January 29, 1986 resolution.

The motion for reconsideration is now before us for resolution.

The issues raised in these petitions are two-fold: (1) In G.R. No. L-45394, petitioner Pedro Dalusong questions the jurisdiction of the probate court to exclude the properties donated to Ursula Pascual in its Order dated August 1, 1976, and (2) In G.R. No. L-45262 and G.R. Nos. 73241-42 Ruperto Reyes, Reynaldo C. San Juan, in his capacity as special administrator of the estate of Emilio Pascual (petitioner in G.R. No. L-45262), Ofelia Parungao and Rosario Duncil (petitioners in G.R. Nos. 73241-42) question the appellate court's finding that the "Donation Mortis Causa" executed by Emilio Pascual in favor of his sister Ursula Pascual was actually a Donation Inter Vivos.

We first discuss the issue on jurisdiction. The questioned August 1, 1976 order of the then Court of First Instance of Pampanga in S. P. Proc. No. 73-30-M categorically stated that the exclusion from the inventory of the estate of the deceased Dr. Emilio D. Pascual was "without prejudice to its final determination in a separate action." The provisional character of the exclusion of the contested properties in the inventory as stressed in the order is within the jurisdiction of the probate court. This was stressed in the case of *Cuizon v. Ramolete*. (129 SCRA 495 [1984]) which we cited in the case of *Morales v. Court First Instance of Cavite, Branch V* (146 SCRA 373 [1986]):

"It is well-settled rule that a probate court or one in charge of proceedings whether testate or intestate cannot adjudicate or determine title to properties claimed to be a part of the estate and which are equally claimed to belong to outside parties. All that the said court could do as regards said properties is to determine whether they should or should not be included in the inventory or list of properties to be administered by the administrator. If there is no dispute, well and good; but if there is, then the parties, the administrator, and the opposing parties have to resort to an ordinary action for a final determination of the conflicting claims of title because the probate court cannot do so (*Mallari v. Mallari*, 92 Phil. 694; *Baquial v. Amihan*, 92 Phil. 501).

Similarly, in *Valero Vda. de Rodriguez v. Court of Appeals*, (91 SCRA 540) we held that for the purpose of determining whether a certain property should or should not be included in the inventory, the probate court may pass upon the title thereto but such determination is not conclusive and is subject to the final decision in a separate action regarding ownership which may be instituted by the parties (3 *Moran's Comments on the Rules of Court*, 1970 Edition, pages 448-449 and 473; *Lachenal v. Salas*, L-42257, June 14, 1976, 71 SCRA 262, 266)."

On the second issue, it may be noted that the Court of Appeals did not pass upon the authenticity of the 1969 donation to Parungao because of its finding that the 1966 donation to Pascual was inter vivos. The petitioners do not press the authenticity of the 1969 donation as their challenge centers on whether or not the 1966 donation was inter vivos. However, the trial court has a lengthy discussion reflecting adversely on the authenticity of the 1969 donation to Parungao.

The petitioners assert that the 1966 donation was null and void since it was not executed with the formalities of a will. Therefore, the petitioners in G.R. No. L-45262 insist that the donated properties should revert to the estate of Emilio Pascual while the petitioners in G.R. Nos. 73241-42 insist that the donation of real property inter vivos in favor of Ofelia Parungao be given effect.

The subject deed of donation titled "DONATION MORTIS CAUSA" duly notarized by a certain Cornelio M. Sigua states:

"That Dr. Emilio D. Pascual, Filipino, single of age and resident of Apalit, Pampanga, hereinafter called the

DONOR and Ursula D. Pascual, Filipino, single, also of age, resident of and with postal address at Apalit, Pampanga, hereinafter called the DONEE, have agreed, as they do hereby agree, to the following, to wit:

That the said DONOR, Dr. Emilio D. Pascual, for and in consideration of the love and affection which he has and bears unto the said DONEE, as also for the personal services rendered by the said DONEE to the said DONOR, does hereby by these presents voluntarily GIVE, GRANT, and DONATE MORTIS CAUSA, unto the said DONEE URSULA D. PASCUAL, her heirs and assigns, all of my rights, title and interest, in and to the following parcels of land with all the improvements thereon, situated in the Municipality of Apalit, Pampanga, and more particularly described and identified as follows:

xxx xxx xxx

(Enumerated herein are 41 parcels of land)

Also included in this DONATION MORTIS CAUSA are all personal properties of the DONOR in the form of cash money or bank deposits and insurance in his favor, and his real properties situated in other towns of Pampanga, such as San Simon, and in the province of Rizal, San Francisco del Monte and in the City of Manila.

That the said donor has reserved for himself sufficient property to maintain him for life; and that the said DONEE does hereby ACCEPT and RECEIVE this DONATION MORTIS CAUSA, and further does express his appreciation and gratefulness for the generosity of said DONOR;" (Rollo of G.R. No. L-45262, pp. 12-16)

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Considering the provisions of the DONATION MORTIS CAUSA the appellate court ruled that the deed of donation was actually a donation inter vivos although denominated as DONATION MORTIS CAUSA.

It is, now a settled rule that the title given to a deed of donation is not the determinative factor which makes the donation "inter vivos" or "mortis causa." As early as the case of *Laureta v. Manta, et al.*, (44 Phil. 668 [1928]) this Court ruled that the dispositions in a deed of donation - whether "inter vivos" or "mortis causa" do not depend on the title or term used in the deed of donation but on the provisions stated in such deed. This Court explained in *Concepcion v. Concepcion*. (91 Phil. 823 [1952]) -

"xxx But, it is a rule consistently followed by the courts that it is the body of the document of donation and the statements contained therein, and not the title that should be considered in ascertaining the intention of the donor. Here, the donation is entitled and called donacio onerosa mortis causa. From the body, however, we find that the donation was of a nature remunerative rather than onerous. It was for past services rendered, services which may not be considered as a debt to be paid by the donee but services rendered to her freely and in goodwill. The donation instead of being onerous or for a valuable consideration, as in payment of a legal obligation, was more of remuneratory or compensatory nature, besides being partly motivated by affection.

We should not give too much importance or significance to or be guided by the use of the phrase 'mortis causa' in a donation and thereby to conclude that the donation is not one of inter vivos. In the case of *De Guzman et al. v. Ibea, et al.* (67 Phil. 633), this Court through Mr. Chief Justice Avanceña said that if a donation by its terms is inter vivos, this character is not altered by the fact that the donor styles it mortis causa.

In the case of *Laureta v. Mata, et al.* (44 Phil. 668), the court held that the donation involved was inter vivos. There, the donor Severa Magno y Laureta gave the properties involved as -

“a reward for the services which he is rendering me, and as a token of my affection toward him and of the fact that he stands high in my estimation, I hereby donate ‘mortis causa’ to said youth all the properties described as follows:

XXX XXX XXX

"I also declare that it is the condition of this donation that the donee cannot take possession of the properties donated before the death of the donor, and in the event of her death the said donee shall be under obligation to cause a mass to be held annually as a suffrage in behalf of my soul, and also to defray the expenses of my burial and funerals."

It will be observed that the present case and that of Laureta above cited are similar in that in both cases the donation was being made as a reward for services rendered and being rendered, and as a token of affection for the donee; the phrase 'mortis causa' was used; the donee to take possession of the property donated only after the death of the donor; the donee was under obligation to defray the expenses incident to the celebration of the anniversary of the donor's death, including church fees. The donation in both cases were duly accepted. In said case of Laureta this Court held that the donation was in praesenti and not a gift in futuro."

In the later case of *Bonsato, et al. v. Court of Appeals, et al.* (95 Phil. 481 [1954]) this Court, distinguished the characteristics of a donation inter vivos and "mortis causa" in this wise:

"Did the late Domingo Bonsato make donations inter vivos or dispositions post mortem in favor of the petitioners herein? If the latter, then the documents should reveal any or all of the following characteristics:

(1) Convey no title or ownership to the transferee before the death of the transferor; or, what amounts to the same thing, that the transferor should retain the ownership (full or naked) and control of the property while alive (*Vidal v. Posadas*, 58 Phil., 108; *Guzman v. Ibea*, 67 Phil., 633);

(2) That before his death, the transfer should be revocable by the transferor at will, ad nutum; but revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the properties conveyed (*Bautista v. Sabiniano*, G.R. No. L-4326, November 18, 1952);

(3) That the transfer should be void if the transferor should survive the transferee."

These principles were repeated in the case of *Castro v. Court of Appeals* (27 SCRA 1076 [1969]), to wit:

"Whether a donation is inter vivos or mortis causa depends upon the nature of the disposition made. 'Did the donor intend to transfer the ownership of the property donated upon the execution of the donation? If this is so, as reflected from the provisions contained in the donation, then it is inter vivos; otherwise, it is merely mortis causa, or made to take effect after death.' (*Howard v. Padilla and Court of Appeals*, G.R. No. L-7064 and L-7098, April 22, 1955."

Applying the above principles to the instant petitions, there is no doubt that the so-called DONATION MORTIS CAUSA is really a donation inter vivos. The donation was executed by Dr. Pascual in favor of his sister Ursula Pascual out of love and affection as well as a recognition of the personal services rendered by the donee to the donor. The transfer of ownership over the properties donated to the donee was immediate and independent of the death of the donor. The provision as regards the reservation of properties for the donor's subsistence in relation to the other provisions of the deed of donation confirms the intention of the donor to give naked ownership of the properties to the donee immediately after the execution of the deed of donation.

With these findings we find no need to discuss the other arguments raised by the petitioners.

WHEREFORE, this Court hereby renders judgment as follows:

1) In G.R. Nos. 45262 and 45394 the petitions are DENIED. The Temporary Restraining Order issued on January 5, 1977 is hereby LIFTED; and

2) In G.R. Nos. 73241-42, the motion for reconsideration is DENIED. This DENIAL is FINAL.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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