

TEODORICO ALEJANDRO, IRENEO POLICARPIO, VIRGINIA ALEJANDRO, MARIA ALEJANDRO, SALUD ALEJANDRO, EMILIA ALEJANDRO, FLORENCIO ALEJANDRO AND DIONISIA ALEJANDRO, PETITIONERS, VS. HON....

G.R. No. L-33849. August 18, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This is a case about donations inter vivos and mortis causa. The bone of contention is Lot No. 2502 of the Lolomboy Friar Lands Estate with an area of 5,678 square meters, situated in Sta. Maria, Bulacan and covered by Transfer Certificate of Title No. 7336. The facts are as follows:

On January 20, 1949 the spouses Gabino (Gavino) Diaz and Severa Mendoza, their daughter-in-law Regina Fernando, and their three children, Olimpia Diaz, Angel Diaz and Andrea Diaz, executed a deed of donation covering eight lots of the Lolomboy Friar Lands Estate, owned by the Diaz spouses, located at Barrio Parada, Sta. Maria, Bulacan. The deed reads as follows:

"KASULATAN NG PAGKAKALOOB'
(A DEED OF DONATION)

"ALAMIN NG LAHAT NG MAKATUTUNGHAY NITO:

"Ang pagkakaloob (donation) na ito, ginawa at pinagtibay dito sa municipio ng Sta. Maria, lalawigan ng Bulacan, Pilipinas, ngayong ika 20 ng Enero, 1949, ng magasawang GABINO DIAZ at SEVERA MENDOZA, filipinos, may mga sapat na gulang, naninirahan sa nayon ng Parada, Sta. Maria, Bulacan, na dito'y kinikilalang NAGKALOOB (DONORS), sa kapakanan nila REGINA FERNANDO, filipina, may sapat na gulang, viuda; OLIMPIA DIAZ, filipina, may sapat na gulang, kasal kay Teodorico Alejandro, ANGEL DIAZ, filipino, may sapat na gulang, kasal kay Catalina Marcelo, at ANDREA DIAZ, filipina, may sapat na gulang, kasal kay Perfecto Marcelo, mga naninirahan sa nayon ng Parada, Sta. Maria, Bulacan, na dito'y kinikilalang PINAGKALOOBAN (DONEES).

P A G P A P A T U N A Y :

"Na, ang Nagkaloob (DONORS) ay siyang mayari, at kamayari at namomosision sa kasalukuyan ng mga parcelang lupa kasama ang mga kagalingan na nasa lugar ng Parada, Sta. Maria, Bulacan, mapagkikilala sa paraang mga sumusunod (description and statement as to registration are omitted):

1. TCT No. 7336, Lot No. 2502, 5,678 square meters.
2. TCT No. 10998, Lot No. 2485, 640 square meters.
3. TCT No. 10840, Lot No. 2377, 16,600 square meters.
4. TCT No. 10997, Lot No. 2448, 12,478 square meters.

5. TCT No. 2051, Lot No. 4168, 1,522 square meters.
6. TCT No. 17960, Lot No. 2522, 3,418 square meters.
7. TCT No. 17961, Lot No. 2521, 715 square meters.
8. TCT No. 21453, Lot No. 2634, 8,162 square meters.

"Na dahil at alang-alang sa pagmamahal at masuyong pagtingin na taglay ng NAG KAKALOOb (DONORS) sa Pinagkakalooban (DONEES) gayun din sa tapat at mahalagang paglilingkod noong mga lumipas na panahon na ginawa ng huli sa una, ang nabanggit na nagkakaloob sa pamamagitan ng kasulatang ito ng pagkakaloob (Donation) ay buong pusong inililipat at lubos na ibinibigay sa nasabing pinagkakalooban ang lupang binabanggit at makikilala sa unahan nito, laya sa ano mang sagutin at pagkakautang, katulad nito:

"(a) - Na ang lupang sinasaysay sa Lote No. 2502 o Titulo No. 7336, (No. 1) sa unahan nito ay hinati sa dalawang parte ang unang parte (1/2) na nasa bandang Kanluran (West) ay ipinagkakaloob ng magasawang Gabino Diaz at Severa Mendoza sa kanilang anak na si Angel Diaz, kasal kay Catalina Marcelo; at ang ikalawang parte (1/2) na nasa bandang silangan (East) ay ipinagkakaloob ng magasawang Gabino Diaz at Severa Mendoza sa kanilang anak na si Andrea Diaz, kasal kay Perfecto Marcelo."

(Note - Some dispositions are not reproduced verbatim but are merely summarized because they are not involved in this case. Paragraph (a) above is the one involved herein).

(b) - Lot No. 2485, TCT No. 10998, to Regina Fernando (daughter-in-law of the donors and widow of their deceased son, Miguel Diaz) and Olimpia Diaz in equal shares.

(c) - Lot No. 2377, TCT No. 10840, 1/3 to Angel Diaz, 1/3 to Andrea Diaz, and 1/3 "ay inilalaan o inihahanda ng magasawang Gabino Diaz at Severa Mendoza sa kanilang sariling kapakanan o mga gastos nila".

(d) - Lot No. 2448, TCT No. 10997 to Olimpia Diaz "sa condicion na pagkakalooban ni Olimpia Diaz si Crisanta de la Cruz, asawa ni Alejandro _____ (sic) sakaling si Crisanta ay mamatay ng halagang isang daang piso (P100), bilang gastos sa libing".

(e) - Na ang lupang-solar na sinasaysay sa Lote No. 4168 o Titulo No. 2051 (No. 5); lupang-bukid na sinasaysay sa Lote No. 2522 o Titulo No. 17960 (No. 6); at lupang-bukid na sinasaysay sa Lote No. 2521 o Titulo No. 17961 (No. 7) sa unahan nito ay inilalaan o inihahanda ng magasawang Gabino Diaz at Severa Mendoza sa kanilang sariling kapakanan o mga gastos nila."

(f) - Lot No. 2643, TCT No. 21453, to Regina Fernando and her children with the deceased Miguel Diaz in whose name the said lot was already registered.

"Na kaming mga pinagkakalooban (DONEES) na sila Regina Fernando, Olimpia Diaz, Angel Diaz at Andrea Diaz ay tinatanggap namin ng buong kasiyahang loob ang pagkakaloob (Donation) na ito, at sa pamamagitan nito ay kinikilala, pinahahalagahan, at lubos na pinasasalamatan namin ang kagandahang loob at paglingap na ipinakita at ginawa ng nagkakaloob (Donors).

"AT SA WAKAS, ang pagkakaloob na ito (DONATION), ay sumasailalim sa paraang mga sumusunod:

"1. Ang mga Pinagkakalooban (Donatarios) na sila Regina Fernando, Olimpia Diaz, Angel Diaz, at Andrea Diaz, siyang nakaaalam sa mga gastos sa pagkakasakit at sa libing ng NAGKALOOb (DONANTE);

"2. Na ang mga Pinagkalooban (DONATARIOS) ay hindi maaaring makapagbili sa pangatlong tao ng nasabing mga pag-aari samantalang ang nagkaloob (Donante) ay buhay. Datapwa't kung ang pagbibiling gagawin ay upang malunasan ang mga gastos at menitencion ng Nagkaloob (Donante) samakatuwid ang nasabing pagbibili ay

matuwid;

"3. Gayun din, samantalang kaming magasawang Gabino Diaz at Severa Mendoza ay buhay, patuloy ang aming pamamahala, karapatan, at pagkamay-ari sa mga nasabing pag-aari na sinasaysay sa unahan nito na pag-aari namin; ngunit sakaling kami ay bawian rig buhay ng Panginoong Dios at mamatay na ang mga karapatan at pagkamay-ari ng bawa't Pinagkalooban (Donatarios) sa bawa't pag-aari na nauukol sa bawa't isa ay may lubos na kapangyarihan."

"SA KATUNAYAN NG LAHAT, linagdaan namin ang kasulatang ito, dito sa Sta. Maria, Bulacan, ngayon ika 20 ng Enero, 1949, sa patibay ng dalawang sacing kaharap.

Signature Thumbmark Signature

GABINO DIAZ SEVERA MENDOZA REGINA FERNANDO

Thumbmark Signature Signature

OLIMPIA DIAZ ANGEL DIAZ ANDREA DIAZ

(Acknowledgment signed by Notary Celedonio Reyes is omitted)

Gabino Diaz died in 1962. On October 20, 1964 Severa Mendoza and her two children, Andrea Diaz and Angel Diaz, executed a deed of donation denominated as "Kasulatan ng Pagbibigay na Magkakabisa Pagkamatay (Donation Mortis Causa)" over one-half of Lot No. 2377-A, which is a portion of Lot No. 2377 of the Lolomboy Friar Lands Estate (which in turn is item 3 or [c] in the 1949 deed of donation already mentioned).

In that deed of donation, Severa Mendoza donated to Andrea Diaz her one-half share in Lot 2377-A, which one-half share is identified as Lot 2377-A-1, on condition that Andrea Diaz would bear the funeral expenses to be incurred after the donor's death. She died in 1964.

It should be noted that the other one-half share in Lot 2377-A or Lot No. 2377-A-2 was previously adjudicated to Angel Diaz because he defrayed the funeral expenses on the occasion of the death of Gabino Diaz.

On May 12, 1970 Andrea Diaz sued her brother, Angel Diaz, in the Court of First Instance of Bulacan, Sta. Maria Branch V for the partition of Lots Nos. 2377-A and 2502 (Civil Case No. SM-357). Teodorico Alejandro, the surviving spouse of Olimpia Diaz, and their children intervened in the said case. They claimed one-third of Lot No. 2502. Angel Diaz alleged in his answer that he had been occupying his share of Lot No. 2502 "for more than twenty years". The intervenors claimed that the 1949 donation was a void mortis causa disposition.

On March 15, 1971 the lower court rendered a partial decision with respect to Lot No. 2377-A. The case was continued with respect to Lot No. 2502 which is item No. 1 or (a) in the 1949 deed of donation. The record does not show what happened to the other six lots mentioned in the deed of donation.

The trial court in its decision of June 30, 1971 held that the said deed of donation was a donation mortis causa because the ownership of the properties donated did not pass to the donees during the donors' lifetime but was transmitted to the donees only "upon the death of the donors".

However, it sustained the division of Lot No. 2502 into two equal parts between Angel Diaz and Andrea Diaz on the theory that the said deed of donation was effective "as an extrajudicial partition among the parents and their children". Consequently, the Alejandro intervenors were not given any share in Lot No. 2502. Angel Diaz and the intervenor's were ordered to pay Andrea Diaz "attorney's fees of P1,000 each or a total of P2,000".

The Alejandro intervenors filed a motion for reconsideration. On July 16, 1971 the trial court denied that motion

but eliminated the attorney's fees. Andrea Diaz and the Alejandro intervenors filed separate appeals to this Court under Republic Act No. 5440.

Andrea Diaz contends that the 1949 deed of donation is a valid donation inter vivos and that the trial court erred in deleting the award for attorney's fees.

The Alejandro intervenors contend that the said donation is mortis causa; that they are entitled to a one-third share in Lot No. 2502, and that the trial court erred characterizing the deed as a valid partition. In the ultimately analysis, the appeal involves the issue of whether the Alejandro intervenors should be awarded one-third of Lot No. 2502, or 1,892 square meters thereof, as intestate heirs of the Diaz spouses.

To resolve that issue, it is necessary to determine whether the deed of donation is inter vivos or mortis causa. A brief exposition on the nature of donation inter vivos and mortis causa may facilitate the resolution of that issue. Many legal battles have been fought on the question of whether a particular deed is an inter vivos or mortis causa donation. The copious jurisprudence on that point sheds light on that vexed question. The Civil Code provides:

"ART. 728. Donations which are to take effect upon the death of the donor partake of the nature of testamentary provisions, and shall be governed by the rules established in the Title on Succession. (620).

"ART. 729. When the donor intends that the donation shall take effect during the lifetime of the donor, though the property shall not be delivered till after the donor's death, this shall be a donation inter vivos. The fruits of the property from the time of the acceptance of the donation, shall pertain to the donee, unless the donor provides otherwise. (n)

"ART. 730. The fixing of an event or the imposition of a suspensive condition, which may take place beyond the natural expectation of life of the donor, does not destroy the nature of the act as a donation inter vivos, unless a contrary intention appears. (n)

"ART. 731. When a person donates something subject to the resolutory condition of the donor's survival, there is a donation inter vivos. (n)

"ART. 732. Donations which are to take effect inter vivos shall be governed by the general provisions on contracts and obligations in all that is not determined in this Title. (621)."

Nature of donations inter vivos and mortis causa transfers.- Before tackling the issues raised in this appeal, it is necessary to have some familiarization with the distinctions between donations inter vivos and mortis causa because the Code prescribes different formalities for the two kinds of donations. An inter vivos donation of real property must be evidenced by a public document and should be accepted by the donee in the same deed of donation or in a separate instrument. In the latter case, the donor should be notified of the acceptance in an authentic form and that step should be noted in both instruments. (Art. 749, Civil Code. As to inter vivos donation of personal property, see art. 748).

On the other hand, a transfer mortis causa should be embodied in a last will and testament (Art. 728, supra). It should not be called donation mortis causa. It is in reality a legacy (5 Manresa, *Codigo Civil*, 6th Ed., p. 107). If not embodied in a valid will, the donation is void (Narag vs. Cecilio, 109 Phil. 299; Aznar vs. Sucilla, 102 Phil. 902; Tuason vs. Posadas, 54 Phil. 289; Serrano vs. Solomon, 105 Phil. 998, 1002).

This Court advised notaries to apprise donors of the necessity of clearly specifying whether, notwithstanding the donation, they wish to retain the right to control and dispose at will of the property before their death, without the consent or intervention of the beneficiary, since the reservation of such right would be a conclusive indication that the transfer would be effective only at the donor's death, and, therefore, the formalities of testaments should be observed; while, a converso, the express waiver of the right of free disposition would place the inter vivos

character of the donation beyond dispute (Cuevas vs. Cuevas, 98 Phil. 68, 72).

From the aforequoted articles 728 to 732, it is evident that it is the time of effectivity (aside from the form) which distinguishes a donation inter vivos from a donation mortis causa. And the effectivity is determined by the time when the full or naked ownership (dominium plenum or dominium directum) of the donated properties is transmitted to the donees. (See Lopez vs. Olbes, 15 Phil. 540; Gonzales and Fuster Fabra vs. Gonzales Mondragon, 35 Phil. 105). The execution of a public instrument is a mode of delivery or tradition (Ortiz vs. Court of Appeals, 97 Phil. 46).

If the donation is made in contemplation of the donor's death, meaning that the full or naked ownership of the donated properties will pass to the donee only because of the donor's death, then it is at that time that the donation takes effect, and it is a donation mortis causa which should be embodied in a last will and testament (Bonsato vs. Court of Appeals, 95 Phil. 481).

But if the donation takes effect during the donor's lifetime or independently of the donor's death, meaning that the full or naked ownership (nuda proprietas) of the donated properties passes to the donee during the donor's lifetime, not by reason of his death but because of the deed of donation, then the donation is inter vivos (Castro vs. Court of Appeals, L-20122, April 28, 1969, 27 SCRA 1076).

The effectivity of the donation should be ascertained from the deed of donation and the circumstances surrounding its execution. Where, for example, it is apparent from the document of trust that the donee's acquisition of the property or right accrued immediately upon the effectivity of the instrument and not upon the donor's death, the donation is inter vivos (Kiene vs. Collector of Internal Revenue, 97 Phil. 352).

There used to be a prevailing notion, spawned by a study of Roman Law, that the civil Code recognizes a donation mortis causa as a juridical act in contraposition to a donation inter vivos. That impression persisted because the implications of article 620 of the Spanish Civil Code, now article 728, that "las donaciones que hayan de producir sus efectos por muerte del donante participan de la naturaleza de las disposiciones de ultima voluntad, y se regirán por las reglas establecidas en el capítulo de la sucesión testamentaria" had not been fully expounded in the law schools. Notaries assumed that the donation mortis causa of the Roman Law was incorporated into the Civil Code.

As explained by Justice J. B. L. Reyes in the Bonsato case, supra, article 620 broke away from the Roman Law tradition and followed the French doctrine that no one may both donate and retain. Article 620 merged donations mortis causa with testamentary dispositions and thus suppressed the said donations as an independent legal concept. Castan Tobeñas says:

"(b) Subsisten hoy en nuestro Derecho las donaciones 'mortis causa'?.- De lo que acabamos de decir se desprende que las donaciones mortis causa han perdido en el Código civil su carácter distintivo y su naturaleza, y hay que considerarlas hoy como una institución suprimida, refundida en la del legado. x x x.

"La tesis de la desaparición de las donaciones mortis causa en nuestro Código civil, acusada ya precedentemente por el proyecto de 1851, puede decirse que constituye una communis opinio entre nuestros expositores, incluso los mas recientes. x x x.

"García Goyena, comentando dicho proyecto, decía que la Comisión se habia adherido al acuerdo de suprimir las donaciones mortis causa, seguido por casi todos los Códigos modernos. 'Las donaciones mortis causa - añadía - eran una especie de monstruo entre los contratos y últimas voluntades; la algarabía del Derecho romano y patrio sobre los puntos de semejanza y disparidad de estas donaciones con los pactos y legados no podía producir sino dudas, confusión y pleitos en los rarísimos casos que ocurriesen por la dificultad de apreciar y fijar sus verdaderos caracteres'" (4 Derecho Civil Español, Común y Foral, 8th Ed., 1956, pp.

182-3).

Manresa is more explicit. He says that "la disposicion del articulo 620 significa, por lo tanto: (1) que han desaparecido las llamadas antes donaciones mortis causa, por lo que el Código no se ocupa de ellas en absoluto; (2) que toda disposición de bienes para despues de la muerte sigue las reglas establecidas para la sucesión testamentaria" (5 Comentarios al Codigo Civil Español, 6th Ed., p. 107). Note that the Civil Code does not use the term donation mortis causa. (Section 1536 of the Revised Administrative Code in imposing the inheritance tax uses the term "gift mortis causa").

What are the distinguishing characteristics of a donation mortis causa? Justice Reyes in the Bonsato case says that in a disposition post mortem (1) the transfer conveys no title or ownership to the transferee before the death of the transferor, or the transferor (meaning testator) retains the ownership, full or naked (*dominio absoluto* or *nuda proprietas*) (*Vidal vs. Posadas*, 58 Phil. 108; *De Guzman vs. Ibea*, 67 Phil. 633); (2) the transfer is revocable before the transferor's death and revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the properties conveyed (*Bautista vs. Sabiniano*, 92 Phil. 244), and (3) the transfer would be void if the transferor survived the transferee.

In other words, in a donation mortis causa it is the donor's death that determines the acquisition of, or the right to, the property donated, and the donation is revocable at the donor's will. Where the donation took effect immediately upon the donee's acceptance thereof and it was subject to the resolutory condition that the donation would be revoked if the donee did not give the donor a certain quantity of rice or a sum of money, the donation is *inter vivos*. (*Zapanta vs. Posadas, Jr.*, 52 Phil. 557).

Justice Reyes in the subsequent case of *Puig vs. Peñaflorida*, L-15939, November 29, 1965, 15 SCRA 276, synthesized the rules as follows:

1. That the Civil Code recognizes only gratuitous transfers of property which are effected by means of donations *inter vivos* or by last will and testament executed with the requisite legal formalities.
2. That in *inter vivos* donations the act is immediately operative even if the material or physical delivery (execution) of the property may be deferred until the donor's death, whereas, in a testamentary disposition, nothing is conveyed to the grantee and nothing is acquired by him until the death of the grantor-testator. The disposition is ambulatory and not final.
3. That in a mortis causa disposition the conveyance or alienation should be (expressly or by necessary implication) revocable *ad nutum* or at the discretion of the grantor or so-called donor if he changes his mind (*Bautista vs. Sabiniano*, 92 Phil. 244).
4. That, consequently, the specification in the deed of the cases whereby the act may be revoked by the donor indicates that the donation is *inter vivos* and not a mortis causa disposition (*Zapanta vs. Posadas*, 52 Phil. 557).
5. That the designation of the donation as mortis causa, or a provision in the deed to the effect that the donation is to take effect at the death of the donor", is not a controlling criterion because those statements are to be construed together with the rest of the instrument in order to give effect to the real intent of the transferor (*Laureta vs. Mata and Magno*, 44 Phil. 668; *Concepcion vs. Concepcion*, 91 Phil. 823; *Cuevas vs. Cuevas*, 98 Phil. 68).
6. That a conveyance for an onerous consideration is governed by the rules of contracts and not by those of donations or testaments (*Carlos vs. Ramil*, 20 Phil. 183; *Manalo vs. De Mesa*, 29 Phil. 495).
7. That in case of doubt the conveyance should be deemed a donation *inter vivos*, rather than mortis causa, in order to avoid uncertainty as to the ownership of the property subject of the deed.

It may be added that the fact that the donation is given in consideration of love and affection or past or future services is not a characteristic of donations inter vivos because transfers mortis causa may be made also for those reasons.

There is difficulty in applying the distinctions to controversial cases because it is not easy sometimes to ascertain when the donation takes effect or when the full or naked title passes to the transferee. As Manresa observes, "when the time fixed for the commencement of the enjoyment of the property donated be at the death of the donor, or when the suspensive condition is related to his death, confusion might arise" (5 *Codigo Civil*, 6th Ed., p. 108).

The existence in the deed of donation of conflicting stipulations as to its effectivity may generate doubt as to the donor's intention and as to the nature of the donation (*Concepcion vs. Concepcion*, 91 Phil. 823).

Where the donor declared in the deed that the conveyance was mortis causa and forbade the registration of the deed before her death, the clear inference is that the conveyance was not intended to produce any definitive effect nor to pass any interest to the grantee except after her death. In such a case, the grantor's reservation of the right to dispose of the property during her lifetime means that the transfer is not binding on her until she dies. It does not mean that the title passed to the grantee during her lifetime. (*Ubalde Puig vs. Magbanua Peñaflorida*, L-15939, Resolution of January 31, 1966, 16 SCRA 136).

In the following cases, the conveyance was considered a void mortis causa transfer because it was not cast in the form of a last will and testament as required in article 728, formerly article 620:

(a) Where it was stated in the deed of donation that the donor wanted to give the donee something "to take effect after his death" and that "this donation shall produce effect only by and because of the death of the donor, the property herein donated to pass title after the donor's death" (*Howard vs. Padilla*, 96 Phil. 983). In the *Padilla* case the donation was regarded as mortis causa although the donated property was delivered to the donee upon the execution of the deed and although the donation was accepted in the same deed.

(b) Where it was provided that the donated properties would be given to the donees after the expiration of thirty days from the donor's death, the grant was made in the future tense, and the word "inherit" was used (*Cariño vs. Abaya*, 70 Phil. 182).

(c) Where the donor has the right to dispose of all the donated properties and the products thereof. Such reservation is tantamount to a reservation of the right to revoke the donation (*Bautista vs. Sabiniano*, 92 Phil. 244).

(d) Where the circumstances surrounding the execution of the deed of donation reveal that the donation could not have taken effect before the donor's death and the rights to dispose of the donated properties and to enjoy the fruits remained with the donor during her lifetime (*David vs. Sison*, 76 Phil. 418).

But if the deed of donation makes an actual conveyance of the property to the donee, subject to a life estate in the donors, the donation is inter vivos (*Guarin vs. De Vera*, 100 Phil. 1100).

Articles 729, 730 and 731 have to some extent dissipated the confusion surrounding the two kinds of donation. The rule in article 729 is a crystallization of the doctrine announced in decided cases.

A clear instance where the donor made an inter vivos donation is found in *De Guzman vs. Ibea*, 67 Phil. 633. In that case, it was provided in the deed that the donor donated to the donee certain properties so that the donee "may hold the same as her own and always" and that the donee would administer the lands donated and deliver the fruits thereof to the donor, as long as the donor was alive, but upon the donor's death the said fruits would belong

to the donee. It was held that the naked ownership was conveyed to the donee upon the execution of the deed of donation and, therefore, the donation became effective during the donor's lifetime.

In *Sambaan vs. Villanueva*, 71 Phil. 303, the deed of donation, as in *Balaqui vs. Dongso*, 53 Phil. 673, contained conflicting provisions. It was provided in the deed that the donation was made "en consideracion al afecto y cariño" of the donor for the donee but that the donation "surtirá efectos después de ocurrida mi muerte" (donor's death).

That donation was held to be inter vivos because death was not the consideration for the donation but rather the donor's love and affection for the donee. The stipulation that the properties would be delivered only after the donor's death was regarded as a mere modality of the contract which did not change its inter vivos character. The donor had stated in the deed that he was donating, ceding and transferring the donated properties to the donee. (See *Joya vs. Tiongco*, 71 Phil. 379).

In *Laureta vs. Mata and Magno*, 44 Phil. 668 the deed of donation provided that the donor was donating mortis causa certain properties as a reward for the donee's services to the donor and as a token of the donor's affection for him. The donation was made under the condition that "the donee cannot take possession of the properties donated before the death of the donor"; that the donee should cause to be held annually masses for the repose of the donor's soul, and that he should defray the expenses for the donor's funeral.

It was held that the said donation was inter vivos despite the statement in the deed that it was mortis causa. The donation was construed as a conveyance in praesenti ("a present grant of a future interest") because it conveyed to the donee the title to the properties donated "subject only to the life estate of the donor" and because the conveyance took effect upon the making and delivery of the deed. The acceptance of the donation was a circumstance which was taken into account in characterizing the donation as inter vivos.

In *Balaqui vs. Dongso*, supra, the deed of donation involved was more confusing than that found in the *Laureta* case. In the *Balaqui* case, it was provided in the deed that the donation was made in consideration of the services rendered to the donor by the donee; that "title" to the donated properties would not pass to the donee during the donor's lifetime, and that it would be only upon the donor's death that the donee would become the "true owner" of the donated properties. However, there was the stipulation that that the donor bound herself to answer to the donee for the property donated and that she warranted that nobody would disturb or question the donee's right.

Notwithstanding the provision in the deed that it was only after the donor's death when the "title" to the donated properties would pass to the donee and when the donee would become the owner thereof, it was held in the *Balaqui* case that the donation was inter vivos.

It was noted in that case that the donor, in making a warranty, implied that the title had already been conveyed to the donee upon the execution of the deed and that the donor merely reserved to herself the "possession and usufruct" of the donated properties.

In *Concepcion vs. Concepcion*, 91 Phil. 823, it was provided in the deed of donation, which was also styled as mortis causa, that the donation was made in consideration of the services rendered by the donee to the donor and of the donor's affection for the donee; that the donor had reserved what was necessary for his maintenance, and that the donation "ha de producir efectos solamente por muerte de la donante".

It was ruled that the donation was inter vivos because the stipulation that the donation would take effect only after the donor's death "simply meant that the possession and enjoyment, of the fruits of the properties donated should take effect only after the donor's death and not before".

Resolution of the instant case.- The donation in the instant case is inter vivos because it took effect during the lifetime of the donors. It was already effective during the donors' lifetime, or immediately after the execution of the deed, as shown by the granting, habendum and warranty clause of the deed (quoted below).

In that clause it is stated that, in consideration of the affection and esteem of the donors for the donees and the valuable services rendered by the donees to the donors, the latter, by means of the deed of donation, wholeheartedly transfer and unconditionally give to the donees the lots mentioned and described in the early part of the deed, free from any kind of liens and debts:

"Na dahil at alang-alang sa pagmamahal at masuyong pagtingin na taglay ng NAGKAKALOOb (DONORS) sa Pinagkakalooban (DONEES) gayun din sa tapat at mahalagang paglilingkod noong mga lumipas na panahon na ginawa ng huli sa una, ang nabanggit na nagkakaloob sa pamagitan ng kasulatang ito ng pagkakaloob (Donation) ay buong pusong inililipat at lubos na ibinibigay sa nasabing pinagkakalooban ang lupang binabanggit at makikilala sa unahan nito, laya sa ano mang sagutin at pagkakautang, katulad nito:"

Following the above-quoted granting, habendum and warranty clause is the donors' declaration that they donate (ipinagkakaloob) Lot No. 2502, the property in litigation, in equal shares to their children Angel Diaz and Andrea Diaz, the western part to Angel and the eastern part to Andrea.

The acceptance clause is another indication that the donation is inter vivos. Donations mortis causa, being in the form of a will, are never accepted by the donees during the donors' lifetime. Acceptance is a requirement for donations inter vivos.

In the acceptance clause herein, the donees declare that they accept the donation to their entire satisfaction and, by means of the deed, they acknowledge and give importance to the generosity and solicitude shown by the donors and sincerely thank them.

In the reddendum or reservation clause of the deed of donation, it is stipulated that the donees would shoulder the expenses for the illness and the funeral of the donors and that the donees cannot sell to a third person the donated properties during the donors' lifetime but if the sale is necessary to defray the expenses and support of the donors, then the sale is valid.

The limited right to dispose of the donated lots, which the deed gives to the donees, implies that ownership had passed to them by means of the donation and that, therefore, the donation was already effective during the donors' lifetime. That is a characteristic of a donation inter vivos.

However, paragraph 3 of the reddendum or reservation clause provides that "also, while we, the spouses Gabino Diaz and Severa Mendoza, are alive, our administration, right, and ownership of the lots mentioned earlier as our properties shall continue but, upon our death, the right and ownership of the donees to each of the properties allocated to each of them shall be fully effective". The foregoing is the translation of the last paragraph of the deed of donation which reads:

"(3) Gayun din, samantalang kaming magasawang Gabino Diaz at Severa Mendoza ay buhay, patuloy ang aming pamamahala, karapatan, at pagkamayari sa mga nasabing pagaari na sinasayay sa unahan nito na pagaari namin; ngunit saka-ling kami ay bawian ng buhay ng Panginoong Dios at mamatay na, ang mga karapatan at pagkamayari ng bawa't pinagkalooban (Donatarios) sa bawa't pagaari nauukol sa bawa't isa ay may lubos na kapangyarihan."

Evidently, the draftsman of the deed did not realize the discordant and ambivalent provisions thereof. The habendum clause indicates the transfer of the ownership over the donated properties to the donees upon the execution of the deed. But the reddendum clause seems to imply that the ownership was retained by the donors

and would be transferred to the donees only after their death.

We have reflected on the meaning of the said contradictory clauses. All the provisions of the deed, like those of a statute and testament, should be construed together in order to ascertain the intention of the parties. That task would have been rendered easier if the record shows the conduct of the donors and the donees after the execution of the deed of donation.

But the record is silent on that point, except for the allegation of Angel Diaz in his answer (already mentioned) that he received his share of the disputed lot long before the donors' death and that he had been "openly and adversely occupying" his share "for more than twenty years". (Andrea Diaz on page 17 of her brief in L-33849 states that the donees took possession of their respective shares as stipulated in the deed of donation. Pages 3, 4, 18 and 19, tsn March, 1971).

Our conclusion is that the aforequoted paragraph 3 of the reddendum or reservation clause refers to the beneficial ownership (*dominium utile*) and not to the naked title and that what the donors reserved to themselves, by means of that clause, was the management of the donated lots and the fruits thereof. But, notwithstanding that reservation, the donation, as shown in the habendum clause, was already effective during their lifetime and was not made in contemplation of their death because the deed transferred to the donees the naked ownership of the donated properties.

That conclusion is further supported by the fact that in the deed of donation, out of the eight lots owned by the donors, only five were donated. Three lots, Lots Nos. 4168, 2522 and 2521 were superfluously reserved for the spouses or donors in addition to one-third of Lot No. 2377. If the deed of donation in question was intended to be a *mortis causa* disposition, then all the eight lots would have been donated or devised to the three children and daughter-in-law of the donors.

The trial court's conclusion that the said deed of donation, although void as a donation *inter vivos*, is valid "as an extrajudicial partition among the parents and their children" is not well-taken. Article 1080 of the Civil Code provides that "should a person make a partition of his estate by an act *inter vivos*, or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs."

We have already observed that the said donation was not a partition of the entire estate of the Diaz spouses since, actually, only five of the eight lots, constituting their estate, were partitioned. Hence, that partition is not the one contemplated in article 1080.

There is another circumstance which strengthens the view that the 1949 deed of donation in question took effect during the donors' lifetime. It may be noted that in that deed Lot No. 2377 (items 3 and [c]) was divided into three equal parts: one-third was donated to Andrea Diaz and one-third to Angel Diaz. The remaining one-third was reserved and retained by the donors, the spouses Gabino Diaz and Severa Mendoza, for their support. That reserved one-third portion came to be known as Lot No. 2377-A.

In 1964, or after the death of Gabino Diaz, his surviving spouse Severa Mendoza executed a donation *mortis causa* wherein she conveyed to her daughter, Andrea Diaz (plaintiff-appellant herein), her one-half share in Lot No. 2377-A, which one-half share is known as Lot No. 2377-A-1, the other half or Lot No. 2377-A-2 having been already conveyed to Angel Diaz.

That disposition of Lot No. 2377-A-2 clearly implies that the conveyance in the 1949 deed of donation as to Lot No. 2377 took effect during the lifetime of the donors, Gabino Diaz and Severa Mendoza, and proves that the 1949 donation was *inter vivos*.

The instant case has a close similarity to the prewar cases already cited and to three post-liberation cases. In the Bonsato case, the deed of donation also contained contradictory dispositions which rendered the deed susceptible of being construed as a donation inter vivos or as a donation mortis causa.

It was stated in one part of the deed that the donor was executing "una donacion perfecta e irrevocable consumada" in favor of the donee in consideration of his past services to the donor; that at the time of the execution of the deed, the donor "ha entregado" to the donee "dichos terrenos donados"; that while the donor was alive, he would receive the share of the fruits corresponding to the owner; and "que en vista de la vejez del donante, el donatario Felipe Bonsato tomará posesion inme-diatamente de dichos terrenos a su favor". These provisions indicate that the donation in question was inter vivos.

However, in the last clause of the deed in the Bonsato case (as in the instant case), it was provided "que después de la muerte del donante entrará en vigor dicha donacion y el donatario Felipe Bonsato tendrá todos los derechos de dichos terrenos en concepto de dueño absoluto de la propiedad libre de toda responsabilidad y gravamen y pueda ejercitar su derecho que crea conveniente". These provisions would seem to show that the donation was mortis causa.

Nevertheless, it was held in the Bonsato case that the donation was inter vivos because (1) the ownership of the things donated passed to the donee; (2) it was not provided that the transfer was revocable before the donor's death, and (3) it was not stated that the transfer would be void if the transferor should survive the transferee.

It was further held in the Bonsato case that the stipulation "que después de la muerte del donante entrará en vigor dicha donacion", should be interpreted together with the prior provision regarding its irrevocable and consummated character, and that would mean that the charge or condition as to the donor's share of the fruits would be terminated upon the donor's death.

The Puig case, supra, is even more doubtful and controversial than the instant case. In the Puig case, the donor, Carmen Ubalde Vda. de Parcon, in a deed entitled "Donacion Mortis Causa" dated November 24, 1948 "cede y transfiere, en concepto de donacion mortis causa", to the donee, Estela Magbanua Peñaflorida, three parcels of land in consideration of the donee's past services and the donor's love and affection for the latter.

It was stipulated in the deed that the donor could alienate or mortgage the donated properties "cuando y si necesita fondos para satisfacer sus propias necesidades, sin que para ello tenga que intervenir la Donataria, pues su consentimiento se sobre entiende aqui, parte de que la donacion que aqui se hace es mortis causa, es decir que la donacion surtirá sus efectos a la muerte de la donante". It was repeated in another clause of the deed "que la cesión y transferencia aqui provista surtirá efecto al fallecer la Donante".

It was further stipulated that the donee would defray the medical and funeral expenses of the donor unless the donor had funds in the bank or "haya cosecho levantada o recogida, en cual caso dichos recursos responderán portales gastos a disposicion y dirección de la donataria". Another provision of the deed was that it would be registered only after the donor's death. In the same deed the donee accepted the donation.

In the Puig case the donor in another deed entitled "Escritura de Donacion Mortis Causa" dated December 28, 1949 donated to the same donee, Estela Magbanua Peñaflorida, three parcels of land "en concepto de una donacion mortis cause" in consideration of past services. It was provided in the deed "que antes de su muerte, la donante, podrá enajenar vender, traspasar o hipotecar a cualesquiera persona o entidades los bienes aqui donados a favor de la donataria en concepto de una donacion mortis causa". The donee accepted the donation in the same deed.

After the donor's death both deeds were recorded in the registry of deeds. In the donor's will dated March 26,

1951, which was duly probated, the donation of a parcel of land in the second deed of donation was confirmed.

Under these facts, it was held that the 1948 deed of donation mortis causa was inter vivos in character in spite of repeated expressions therein that it was a mortis causa donation and that it would take effect only upon the donor's death. Those expressions were not regarded as controlling because they were contradicted by the provisions that the donee would defray the donor's expenses even if not connected with her illness and that the donee's husband would assume her obligations under the deed, should the donee predecease the donor. Moreover, the donor did not reserve in the deed the absolute right to revoke the donation.

But the 1949 deed of donation was declared void because it was a true conveyance mortis causa which was not embodied in a last will and testament. The mortis causa character of the disposition is shown by the donor's reservation of the right to alienate or encumber the donated properties to any person or entity.

In the Cuevas case, *supra*, one Antonina Cuevas executed on September 18, 1950 a notarial conveyance styled as "Donacion Mortis Cause" where she ceded to her nephew Crispulo Cuevas a parcel of unregistered land. Crispulo accepted the donation in the same instrument. Subsequently, or on May 26, 1952, the donor revoked the donation.

The deed of donation in the Cuevas case contained the following provisions which, as in similar cases, are susceptible of being construed as making the conveyance an inter vivos or a mortis causa transfer:

"Dapat maalaman ni Crispulo Cuevas na samantalang ako ay nabubuhay, ang lupa na ipinagkakaloob ko sa kaniya ay ako pa rin ang patuloy na mamomosecion, makapagpapatrabajo, makikinabang at ang iba pang karapatan sa pagmamayari ay sa akin pa rin hanggang hindi ako binabawian ng buhay ng Maykapal at ito naman ay hindi ko ñga iya-alis pagkat kung ako ay mamatay na ay inilalaan ko sa kaniya."

Translation

"Crispulo Cuevas should know that while I am alive, the land which I donated to him will still be under my continued possession; I will be the one to have it cultivated; I will enjoy its fruits and all the other rights of ownership until Providence deprives me of life and I cannot take away the property from him because when I die I reserve the property for him." (sic)

It was held that the donation was inter vivos because the phrase "hindi ko ñga iya-alis" ("I will not take away the property") meant that the donor expressly renounced the right to freely dispose of the property in favor of another person and thereby manifested the irrevocability of the conveyance of the naked title to the donee. The donor retained the beneficial ownership or dominium utile. Being an inter vivos donation, it could be revoked by the donor only on the grounds specified by law. No such grounds existed. The donee was not guilty of ingratitude.

The other point to be disposed of is the matter of the claim for attorney's fees of Andrea Diaz against the Alejandro intervenors.

After a careful consideration of the facts and circumstances of the case, particularly the apparent good faith of the Alejandro intervenors in asserting a one-third interest in the disputed lot and their close relationship to Andrea Diaz, we find that it is not proper to require them to pay attorney's fees (*Salao vs. Salao*, L-26699, March 16, 1976, 70 SCRA 65). (Andrea Diaz did not implead Angel Diaz as a respondent in her petition for review.)

WHEREFORE, the trial court's amended decision is reversed insofar as it pronounces that the deed of donation is void. That donation is declared valid as a donation inter vivos.

The disputed lot should be partitioned in accordance with that deed between Andrea Diaz and Angel Diaz.

The decision is affirmed insofar as it does not require the Alejandro intervenors to pay attorney's fees to Andrea Diaz. No costs.

SO ORDERED.

Fernando, (Chairman), Barredo, Concepcion, Jr., and Santos, JJ., concur.

Antonio, J., concurs in a separate opinion.

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CONCURRING OPINION

ANTONIO, J.:

I concur. I agree that all the features concordantly pointed out by Justice Aquino indicate that the conveyance was intended to produce definitive effect upon the execution of said instrument. For the important characteristic of a donation inter vivos is that it takes effect independently of the donor's death. Thus, when the donor states that he donates the properties subject to the "condition that the donee cannot take possession of the properties donated until after my death",[1] or the ownership and possession of the property, as well as its administration, were turned over to the donee, but the right to reap and dispose of the fruits was deferred until after the death of the donor,[2] or when it was expressly stated that the donation would take effect upon acceptance, but would be revoked ipso facto upon the non-fulfillment of certain conditions,[3] it has been held that the donation is inter vivos, and the ownership over the property donated is transferred to the donee.[4]

A donation inters vivos is a gratuitous contract whereby the donor divests himself, at present and irrevocably, of the thing given in favor of the donee and, therefore, like any other contract, requires the concurrence of the reciprocal consent of the parties, and does not become perfect until it is accepted by the donee.[5] As observed by Manresa,[6] upon acceptance by the donee, the donor can no longer withdraw, and he can be compelled to comply with his offering or to deliver the things he wanted to donate. Consequently, it may not be revoked unilaterally or by the sole and arbitrary will of the donor. The donation, however, may be made revocable upon the fulfillment of resolutive conditions,[7] or may be revoked only for the reasons provided in Articles 760, 764 and 765 of the Civil Code. As explained in Bautista, et al. v. Sabiniano,[8] 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 inter vivos but a mortis causa donation." Here, the conveyance or alienation of the properties donated is not revocable ad nutum.

[1] Laureta v. Mata, 44 Phil. 668.

[2] Guzman v. Ibea, Off. Gaz. June 26, 1941, p. 1834.

[3] Zapanta v. Posadas, 52 Phil. 557.

[4] Lopez v. Olbes, 15 Phil. 540.

[5] Article 734, Civil Code.

[6] 5 Manresa 88.

[7] Zapanta v. Posadas, *supra*.

[8] 92 Phil. 245, 249.

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