

**JUANITA KAPUNAN, ET AL., PETITIONERS, VS. ALIPIO N. CASILAN AND THE COURT OF APPEALS, RESPONDENTS.***G.R. No. L-8178. October 31, 1960*

Ponente: GUTIERREZ DAVID, J.

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This is a petition to review on certiorari a decision of the Court of Appeals declaring the respondent Alipio N. Casilan owner of certain real property described in the complaint and ordering petitioners to deliver possession thereof to said respondent.

The facts are not disputed. The property in question, which is a commercial lot[1] located in Tacloban City, was on October 2, 1935 donated by the spouses Ruperto Kapunan, Sr., and Iluminada Fernandez de Kapunan to their daughter Concepcion K. Salcedo, who accepted the donation in the same document. The deed of donation was acknowledged on the same date by the donors and donee before Notary Public Mateo Canonoy, the donors' son-in-law and the donee's brother-in-law. The property, however, remained in the possession of the donors.

On December 23, 1939, Concepcion K. Salcedo donated the same property to her daughter Marita Antonia Salcedo, then a minor. In behalf of said minor, Iluminada Fernandez Vda. de Kapunan, the donee's grandmother and acting guardian with whom the said donee was then living as her parents were estranged from each other, accepted the donation. The acceptance was contained in the deed of donation itself, which was authenticated by the same Notary Public Mateo Canonoy. "

On November 4, 1944, Concepcion Kapunan Salcedo and the respondent Alipio N. Casilan executed a "Deed of Conditional Sale" wherein the former accepted the latter's offer to purchase the land in dispute, and received the sum of P2,000 as part of the purchase price, the balance of P4,500 to be paid within 3 years therefrom. Notwithstanding the fact that the property in question was in the possession of the petitioners and respondent Alipio N. Casilan knew that Concepcion Kapunan Salcedo had previously donated the said property in favor of her daughter Marita Antonia Salcedo, the said respondent on June 14, 1945 proceeded to buy the same and paid the balance of the purchase price on the assurance given by the donor that the donation was not legal. The deed of sale was annotated on July 27 of the same year in the Daily Book of the Register of Deeds of Leyte, but not on the original certificate of title because of the refusal of Iluminada Vda. de Kapunan to deliver the duplicate certificate of title.

In due time, the respondent Casilan filed a petition in the Court of First Instance of Leyte to compel Iluminada Vda. de Kapunan to surrender the transfer certificate of title, but the petition was dismissed. In connection with this petition, Concepcion K. Salcedo, on March 9, 1946, gave a deposition that she had knowledge of the acceptance by her mother Iluminada Vda. de Kapunan of the donation she made to her daughter Marita Antonia Salcedo.

To recover title and possession of the property in question, respondent Casilan filed the present action in the Court of First Instance of Leyte against Concepcion Kapunan de Salcedo, Iluminada Fernandez Vda. de Kapunan and

Marita Antonia Salcedo. Juanita, Trinidad, Ruperto, Jr., Emma, Lilia, Socorro and Rosario, all surnamed Kapunan, intervened as alleged co-owners of the land in dispute and as heirs of their late father Don Ruperto Kapunan, Sr. On March 31, 1950, after hearing, the trial court, Judge Hipolito Alo presiding, rendered judgment declaring the plaintiff, herein respondent Casilan, to be the owner of the property in question and ordering the defendants and intervenors to deliver possession thereof to said plaintiff. The trial court also dismissed the complaint in intervention. Acting, however, upon the motions for reconsideration filed by the defendants and intervenors, the lower court, through Judge Jose S. Rodriguez, in a resolution dated May 30, 1950, reconsidered its decision and declared the sale of the property in question by Concepcion K. Salcedo in favor of respondent Alipio N. Casilan null and void. On appeal to the Court of Appeals, that court reversed the decision and awarded the land in dispute to AJipio N. Casilan. Hence, this petition for review.

It is petitioners' contention that Notary Public Mateo Canonoy, who was related to the parties in the donation within the fourth civil degree of affinity, was, under Articles 22 and 28 of the Spanish Notarial Law, incompetent and disqualified to authenticate the deed of donation executed by the Kapunan spouses in favor of their daughter Concepcion Kapunan Salcedo. Said deed of donation, according to petitioners, became a mere private instrument under Article 1223 of the old Civil Code, so that under the ruling laid down in the case of Barretto vs. Cabreza (33 Phil., 413), the donation was inefficacious. The appellate court, however, in the decision complained of held that the Spanish Notarial Law has been repealed with the enactment of Act No. 496. We find this ruling to be correct. In the case of Philippine Sugar Estate vs. Poizart (48 Phil., 536), cited in Vda. de Estuart vs. Garcia (Adm. Case No. 212, prom. February 15, 1957), this Court held that "The old Spanish notarial law and system of conveyance was repealed in the Philippines and another and different notarial law and system became the law of the land with the enactment of Act No. 496."

We do not, however, agree with the Court of Appeals that the donation in favor of Marita Antonia Salcedo was null and void in that there was no "constancia autentica" given to the donor Concepcion K. Salcedo that the donation had been accepted. Article 633 of the Civil Code of 1889 provided that-

"Art. 633. In order that a donation of real property be valid it must be made by public instrument in which the property donated must be specifically described and the amount of the encumbrances to be assumed by the donee expressed.

"The acceptance must be made in the deed of gift or in a separate public writing\*; but it shall produce no effect if not made during the lifetime of the donor.

"If the acceptance is made by separate instrument, authentic notice thereof shall be given the donor, and this proceeding shall be noted in both instruments."

Under the above legal provisions, a donation transfers title effectively if it is accepted with all the formalities that must accompany the acceptance of donations of realty, to wit, thru the medium of a public instrument with authentic notice to the donor, unless the acceptance is made in the deed of gift itself- (Tagala vs. Ybeas, 49 Off. Gaz., 200). In the present case, the deed of donation executed by Concepcion K. Salcedo in favor of her daughter Marita Antonia Salcedo states "that the said donee, Marita Antonia Kapunan Salcedo being a minor and being represented by her maternal grandmother, Iluminada P. Vda. de Kapunan, does hereby accept and receive this donation and gift, and further does express her appreciation and gratefulness for the generosity of said donor." The acceptance having been made in the deed of gift itself, notification thereof to the donor in a "constancia autentica" was evidently not necessary. It is true that the acceptance was made on another date and in a place other than that where the deed was executed, but the deed of donation as so worded implied a previous understanding between the parties who intervened therein, and, what is more, the donor, Concepcion K. Salcedo, admittedly knew of the actual acceptance by the donee through the latter's grandmother. Pursuant to Art. 623 of

the old Civil Code, her knowledge of such acceptance perfected the donation.

It is also argued that the acceptance of the donation by the donee's grandmother was not valid since at the time of the acceptance she had not yet been appointed legal guardian of the donee. Under article 626 of the old Civil Code, a donation to an incapacitated donee requires its acceptance by his lawful representative.[2] This rule, however, appears to be applicable only in case of onerous and conditional donations, where the donee may have to assume certain charges or burdens. As was said by former Justice Montemayor in *Perez vs. Calingo* (CA, 40 Off. Gaz., Supp. II, p. 53), "In simple and pure donations, a formal acceptance is not important for the donor acquires no right to be protected and the donee neither undertakes to do anything nor assumes any obligation. In this case, the acceptance may be said to be a mere formality required by law for the performance of the contract. Whenever the donation does not impose any obligation upon the donee the acceptance may be made by the donee himself." Anyway, if under the rule provided in Article 626 of the old Civil Code the donation of realty to a minor may be accepted in his behalf by his mother (*Laureta vs. Mata*, 44 Phil., 668), we see no reason why a simple and pure donation made by the mother herself in favor of her own minor daughter may not be validly accepted through the grandmother the donee's acting guardian who was later appointed as her legal guardian. It should here be stated that *Iluminada Vda. de Kapunan* who accepted the donation in behalf of the minor donee was appointed legal guardian of the said minor on June 12, 1944, or prior to the execution of the deed of conditional sale between the donor *Concepcion & Salcedo* and herein respondent *Alipio N. Casilan*. There being no showing that the donation had been revoked prior to the appointment of the donee's grandmother as her legal guardian, it is apparent that said donation had been confirmed and impliedly ratified by the parties intervening therein before the execution of the deed of sale referred to. (See *Atacador vs. Silayan*, 67 Phil., 674.)

In conclusion, we find and so hold that the donation of the property in dispute to <sup>^</sup>Marita Antonia Salcedo by *Concepcion K. Salcedo* was valid, and consequently the sale thereof by the latter in favor of respondent *Alipio N. Casilan* was null and void. Said respondent, however, may still recover what he has paid under the equitable principle that no one shall be unjustly enriched or benefited at the expense of another.

Wherefore, the decision complained of is reversed and the sale of the property in controversy in favor of respondent *Alipio N. Casilan* declared null and void. Without costs.

Paras, C. J., Bengzon, Padiua, Labrador, Reyes, J. B. L., and Barrera, JJ., concur.

Decision reversed.

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[1] Lots Nos. 13 and 14 later consolidated into Lot No. 746 as appearing in Transfer Certificate of Title No. 10518 of the land records of Leyte.

[2] Acceptance under Art. 741 of the new Civil Code may be made on behalf of minors or incapacitated donees by their parents or legal representatives.

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