

APOLINARIA AUSTRIA-MAGAT, PETITIONER, VS. HON. COURT OF APPEALS AND FLORENTINO LUMUBOS, DOMINGO COMIA, TEODORA CARAMPOT, ERNESTO APOLO, SEGUNDA SUMPELO, MAMERTO SUMPELO AND RICA...

G.R. No. 106755. February 01, 2002

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review of the Decision[1] of the Court of Appeals,[2] dated June 30, 1989 reversing the Decision,[3] dated August 15, 1986 of the Regional Trial Court (RTC) of Cavite, Branch 17. The Decision of the RTC dismissed Civil Case No. 4426 which is an action for annulment of title, reconveyance and damages.

The facts of the case are as follows:

Basilisa Comerciante is a mother of five (5) children, namely, Rosario Austria, Consolacion Austria, herein petitioner Apolinaria Austria-Magat, Leonardo, and one of herein respondents, Florentino Lumubos. Leonardo died in a Japanese concentration camp at Tarlac during World War II.

In 1953, Basilisa bought a parcel of residential land together with the improvement thereon covered and described in Transfer Certificate of Title No. RT-4036 (T-3268) and known as Lot 1, Block 1, Cavite Beach Subdivision, with an area of 150 square meters, located in Bagong Pook, San Antonio, Cavite City.

On December 17, 1975, Basilisa executed a document designated as “Kasulatan sa Kaloobpala (Donation)”. The said document which was notarized by Atty. Carlos Viniegra, reads as follows:

KASULATANG SA KALOOBPALA
(DONATION)

TALASTASIN NG LAHAT AT SINUMAN:

Na ako, si BASELISA COMERCIANTE, may sapat na gulang, Filipina, balo, at naninirahan sa blg. 809 L. Javier Bagong Pook, San Antonio, Lungsod ng Kabite, Filipinas, sa pamamagitan ng kasulatang ito’y

NAGSASALAYSAY

Na alang-alang sa mabuting paglilingkod at pagtingin na iniukol sa akin ng apat kong mga tunay na anak na sila:

ROSARIO AUSTRIA, Filipina, may sapat na gulang, balo, naninirahan sa 809 L. Javier, Bagong Pook, San Antonio, Lungsod ng Kabite;

CONSOLACION AUSTRIA, Filipina, may sapat na gulang, balo naninirahan sa 809 L. Javier, Bagong Pook, San Antonio, Lungsod ng Kabite;

APOLINARIA AUSTRIA, Filipina, may sapat na gulang, may asawa, naninirahan sa Pasong Kawayan, Hen.

Trias, Kabite;

FLORENTINO LUMUBOS, Filipino, may sapat na gulang, asawa ni Encarnacion Magsino, at naninirahan din sa 809 L. Javier, Bagong Pook, San Antonio, Lungsod ng Kabite; ay

Kusang loob na ibinigay ko at ipinagkakaloob ng ganap at hindi na mababawi sa naulit ng apat na anak ko at sa kanilang mga tagamagmana (sic), ang aking isang lupang residential o tirahan sampu ng aking bahay nahan ng nakatirik doon na nasa Bagong Pook din, San Antonio, Lungsod ng Kabite, at nakikilala bilang Lote no. 7, Block no.1, of Subdivision Plan Psd-12247; known as Cavite Beach Subdivision, being a portion of Lot No. 1055, of the Cadastral survey of Cavite, GLRO Cadastral Rec. no. 9539; may sukat na 150 metros cuadrados, at nakatala sa pangalan ko sa Titulo Torrens bilang TCT-T-3268 (RT-4036) ng Lungsod ng Kabite;

Na ang Kaloob palang ito ay magkakabisa lamang simula sa araw na ako'y pumanaw sa mundo, at sa ilalim ng kondision na:

Magbubuhay o babawasin sa halaga ng nasabing lupa at bahay ang anumang magugul o gastos sa aking libing at nicho at ang anumang matitira ay hahatiin ng APAT na parte, parepareho isang parte sa bawat anak kong nasasabi sa itaas nito upang maliwanang (sic) at walang makakalamang sinoman sa kanila;

At kaming apat na anak na nakalagda o nakadiit sa kasulatang ito ay TINATANGGAP NAMIN ang kaloob-palang ito ng aming magulang na si Basilisa Comerciante, at tuloy pinasasalamatan namin siya ng taos sa (sic) puso dahil sa kagandahan look (sic) niyang ito sa amin.

SA KATUNAYAN, ay nilagdaan o diniitan namin ito sa Nobeleta, Kabite, ngayong ika-17 ng Disyembre taong 1975.

HER MARK HER MARK

BASELISA COMERCIANTE ROSARIO AUSTRIA

Tagakaloobpala

(Sgd.) APOLINARIA AUSTRIA HER MARK

Tagatanggap-pala CONSOLACION AUSTRIA

(Sgd.)FLORENTINO LUMUBOS

Tagatanggap-pala

(Acknowledgment signed by Notary Public C.T. Viniegra is omitted).[4]

Basilisa and her said children likewise executed another notarized document denominated as "Kasulatan" which is attached to the deed of donation. The said document states that:

KASULATAN

TALASTASIN NG MADLA:

Na kaming mga nakalagda o nakadiit sa labak nito – sila Basilisa Comerciante at ang kanyang mga anak na sila:

Rosario Austria, Consolacion Austria, Apolonio Austria, at Florentino Lumubos, pawang may mga sapat na gulang, na lumagda o dumiit sa kasulatang kaloob pala, na sinangayunan namin sa harap ng Notario Publico, Carlos T. Viniegra, ay nagpapahayag ng sumusunod:

Na ang titulo numero TCT-T-2260 (RT-4036) ng Lungsod ng Kabite, bahay sa loteng tirahan ng Bagong Pook na nababanggit sa nasabing kasulatan, ay mananatili sa poder o possession ng Ina, na si Basilisa Comerciante habang siya ay nabubuhay at

Gayon din ang nasabing Titulo ay hindi mapapasangla o maipagbibili ang lupa habang maybuhay ang nasabing Basilisa Comerciante.

Sa katunayan ang nagsilagda kaming lahat sa labak nito sa harap ng abogado Carlos T. Viniegra at dalawang saksi.

Nobeleta, Kabite. Ika-17 ng Disyembre, 1975.[5]

On February 6, 1979, Basilisa executed a Deed of Absolute Sale of the subject house and lot in favor of herein petitioner Apolinaria Austria-Magat for Five Thousand Pesos (P5,000.00). As the result of the registration of that sale, Transfer Certificate of Title (TCT for brevity) No. RT-4036 in the name of the donor was cancelled and in lieu thereof TCT No. T-10434 was issued by the Register of Deeds of Cavite City in favor of petitioner Apolinaria Austria-Magat on February 8, 1979.

On September 21, 1983, herein respondents Teodora Carampot, Domingo Comia, and Ernesto Apolo (representing their deceased mother Consolacion Austria), Ricardo, Mamerto and Segunda, all surnamed Sumpelo (representing their deceased mother Rosario Austria) and Florentino Lumubos filed before the Regional Trial Court of Cavite an action, docketed as Civil Case No. 4426 against the petitioner for annulment of TCT No. T-10434 and other relevant documents, and for reconveyance and damages.

On August 15, 1986, the trial court dismissed Civil Case No. 4426 per its Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, this Court hereby renders judgment for defendant dismissing this case and ordering plaintiffs to pay the amount of P3,000.00 as attorney's fees and the costs of suit.

SO ORDERED.[6]

According to the trial court, the donation is a donation mortis causa pursuant to Article 728 of the New Civil Code inasmuch as the same expressly provides that it would take effect upon the death of the donor; that the provision stating that the donor reserved the right to revoke the donation is a feature of a donation mortis causa which must comply with the formalities of a will; and that inasmuch as the donation did not follow the formalities pertaining to wills, the same is void and produced no effect whatsoever. Hence, the sale by the donor of the said property was valid since she remained to be the absolute owner thereof during the time of the said transaction.

On appeal, the decision of the trial court was reversed by the Court of Appeals in its subject decision, the dispositive portion of which reads, to wit:

WHEREFORE, in view of the foregoing, the appealed decision is hereby SET ASIDE and a new one rendered:

- declaring null and void the Deed of Sale of Registered Land (Annex B) and Transfer Certificate of Title No. T-10434 of the Registry of Deeds of Cavite City (Annex E) and ordering the cancellation thereof; and
- declaring appellants and appellee co-owners of the house and lot in question in accordance with the deed of donation executed by Basilisa Comerciante on December 17, 1975.

No pronouncement as to costs.

SO ORDERED.[7]

The appellate court declared in its decision that: pauleen

In the case at bar, the decisive proof that the deed is a donation inter vivos is in the provision that :

Ibinibigay ko at ipinagkakaloob ng ganap at hindi mababawi sa naulit na apat na anak ko at sa kanilang mga

tagapagmana, ang aking lupang residential o tirahan sampu ng aking bahay nakatirik doon xxx. (emphasis supplied)

This is a clear expression of the irrevocability of the conveyance. The irrevocability of the donation is a characteristic of a donation inter vivos. By the words “hindi mababawi”, the donor expressly renounced the right to freely dispose of the house and lot in question. The right to dispose of a property is a right essential to full ownership. Hence, ownership of the house and lot was already with the donees even during the donor’s lifetime.
xxx

xxx xxx xxx

In the attached document to the deed of donation, the donor and her children stipulated that:

Gayon din ang nasabing titulo ay hindi mapapasangla o maipagbibili ang lupa habang may buhay ang nasabing Basilisa Comerciante.”

The stipulation is a reiteration of the irrevocability of the dispossession on the part of the donor. On the other hand, the prohibition to encumber, alienate or sell the property during the lifetime of the donor is a recognition of the ownership over the house and lot in issue of the donees for only in the concept of an owner can one encumber or dispose a property.[8]

Hence this appeal grounded on the following assignment of errors:

I

THE RESPONDENT COURT OF APPEALS, WITH DUE RESPECT, IGNORED THE RULES OF INTERPRETATION OF CONTRACTS WHEN IT CONSIDERED THE DONATION IN QUESTION AS INTER VIVOS.

II

THE RESPONDENT COURT OF APPEALS, AGAIN WITH DUE RESPECT, ERRED IN NOT HOLDING THAT THE PRESENT ACTION HAS PRESCRIBED UNDER THE STATUTE OF LIMITATIONS.[9]

Anent the first assignment of error, the petitioner argues that the Court of Appeals erred in ruling that the donation was a donation inter vivos. She claims that in interpreting a document, the other relevant provisions therein must be read in conjunction with the rest. While the document indeed stated that the donation was irrevocable, that must be interpreted in the light of the provisions providing that the donation cannot be encumbered, alienated or sold by anyone, that the property donated shall remain in the possession of the donor while she is alive, and that the donation shall take effect only when she dies. Also, the petitioner claims that the donation is mortis causa for the reason that the contemporaneous and subsequent acts of the donor, Basilisa Comerciante, showed such intention. Petitioner cites the testimony of Atty. Viniegra, who notarized the deed of donation, that it was the intent of the donor to maintain control over the property while she was alive; that such intent was shown when she actually sold the lot to herein petitioner.

We affirm the appellate court’s decision.

The provisions in the subject deed of donation that are crucial for the determination of the class to which the donation belongs are, as follows:

xxx xxx xxx

xxx(I)binibigay ko at ipinagkakaloob ng ganap at hindi mababawi sa naulit na apat na anak ko at sa kanilang mga tagapagmana, ang aking lupang residential o tirahan sampu ng aking bahay nakatirik doon na nasa

Bagong Pook din, San Antonio, Lungsod ng Kabite

xxx xxx xxx

Na ang Kaloob palang ito ay magkakabisa lamang simula sa araw na ako'y pumanaw sa mundo, xxx.

xxx xxx xxx

Na ang titulo numero TCT-T-2260 (RT-4036) ng Lungsod ng Kabite, bahay sa loteng tirahan ng Bagong Pook na nababanggit sa nasabing kasulatan, ay mananatili sa poder o posesion ng Ina, na si Basilisa Comerciante habang siya ay nabubuhay at

Gayon din ang nasabingTitulo ay hindi mapapasangla o maipagbibili ang lupa habang maybuhay ang nasabing Basilisa Comerciante xxx.

It has been held that whether the donation is inter vivos or mortis causa depends on whether the donor intended to transfer ownership over the properties upon the execution of the deed.[10] In *Bonsato v. Court of Appeals*,^[11] this Court enumerated the characteristics of a donation mortis causa, to wit:

(1)

It conveys 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;

(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;

(3)

That the transfer should be void if the transferor should survive the transferee.

Significant to the resolution of this issue is the irrevocable character of the donation in the case at bar. In *Cuevas v. Cuevas*,^[12] we ruled that when the deed of donation provides that the donor will not dispose or take away the property donated (thus making the donation irrevocable), he in effect is making a donation inter vivos. He parts away with his naked title but maintains beneficial ownership while he lives. It remains to be a donation inter vivos despite an express provision that the donor continues to be in possession and enjoyment of the donated property while he is alive. In the *Bonsato* case, we held that:

(W)hat is most significant [in determining the type of donation] is the absence of stipulation that the donor could revoke the donations; on the contrary, the deeds expressly declare them to be “irrevocable”, a quality absolutely incompatible with the idea of conveyances mortis causa where revocability is of the essence of the act, to the extent that a testator can not lawfully waive or restrict his right of revocation (Old Civil Code, Art.737; New Civil Code, Art. 828).^[13]

Construing together the provisions of the deed of donation, we find and so hold that in the case at bar the donation is inter vivos. The express irrevocability of the same (“hindi na mababawi”) is the distinctive standard that identifies that document as a donation inter vivos. The other provisions therein which seemingly make the donation mortis causa do not go against the irrevocable character of the subject donation. According to the

petitioner, the provisions which state that the same will only take effect upon the death of the donor and that there is a prohibition to alienate, encumber, dispose, or sell the same, are proofs that the donation is mortis causa. We disagree. The said provisions should be harmonized with its express irrevocability. In *Bonsato* where the donation per the deed of donation would also take effect upon the death of the donor with reservation for the donor to enjoy the fruits of the land, the Court held that the said statements only mean that “after the donor’s death, the donation will take effect so as to make the donees the absolute owners of the donated property, free from all liens and encumbrances; for it must be remembered that the donor reserved for himself a share of the fruits of the land donated.”[14]

In *Gestopa v. Court of Appeals*,[15] this Court held that the prohibition to alienate does not necessarily defeat the inter vivos character of the donation. It even highlights the fact that what remains with the donor is the right of usufruct and not anymore the naked title of ownership over the property donated. In the case at bar, the provision in the deed of donation that the donated property will remain in the possession of the donor just goes to show that the donor has given up his naked title of ownership thereto and has maintained only the right to use (*jus utendi*) and possess (*jus possidendi*) the subject donated property.

Thus, we arrive at no other conclusion in that the petitioner’s cited provisions are only necessary assurances that during the donor’s lifetime, the latter would still enjoy the right of possession over the property; but, his naked title of ownership has been passed on to the donees; and that upon the donor’s death, the donees would get all the rights of ownership over the same including the right to use and possess the same.

Furthermore, it also appeared that the provision in the deed of donation regarding the prohibition to alienate the subject property is couched in general terms such that even the donor is deemed included in the said prohibition (“*Gayon din ang nasabing Titulo ay hindi mapapasangla o maipagbibili ang lupa habang maybuhay ang nasabing Basilisa Comerciante*”). Both the donor and the donees were prohibited from alienating and encumbering the property during the lifetime of the donor. If the donor intended to maintain full ownership over the said property until her death, she could have expressly stated therein a reservation of her right to dispose of the same. The prohibition on the donor to alienate the said property during her lifetime is proof that naked ownership over the property has been transferred to the donees. It also supports the irrevocable nature of the donation considering that the donor has already divested herself of the right to dispose of the donated property. On the other hand, the prohibition on the donees only meant that they may not mortgage or dispose the donated property while the donor enjoys and possesses the property during her lifetime. However, it is clear that the donees were already the owners of the subject property due to the irrevocable character of the donation.

The petitioner argues that the subsequent and contemporaneous acts of the donor would show that her intention was to maintain control over her properties while she was still living. We disagree. Respondent Domingo Comia testified that sometime in 1977 or prior to the sale of the subject house and lot, his grandmother, the donor in the case at bar, delivered the title of the said property to him; and that the act of the donor was a manifestation that she was acknowledging the ownership of the donees over the property donated.[16] Moreover, Atty. Viniegra testified that when the donor sold the lot to the petitioner herein, she was not doing so in accordance with the agreement and intent of the parties in the deed of donation; that she was disregarding the provision in the deed of donation prohibiting the alienation of the subject property; and that she knew that the prohibition covers her as well as the donees.[17]

Another indication in the deed of donation that the donation is inter vivos is the acceptance clause therein of the donees. We have ruled that an acceptance clause is a mark that the donation is inter vivos. Acceptance is a requirement for donations inter vivos. On the other hand, donations mortis causa, being in the form of a will, are not required to be accepted by the donees during the donor’s lifetime.[18]

We now rule on whether the donor validly revoked the donation when one of her daughters and donees, Consolacion Austria, violated the prohibition to encumber the property. When Consolacion Austria mortgaged the subject property to a certain Baby Santos, the donor, Basilisa Comerciante, asked one of the respondents herein, Domingo Comia, to redeem the property, which the latter did. After the petitioner in turn redeemed the property from respondent Domingo, the donor, Basilisa, sold the property to the petitioner who is one of the donees.

The act of selling the subject property to the petitioner herein cannot be considered as a valid act of revocation of the deed of donation for the reason that a formal case to revoke the donation must be filed pursuant to Article 764 of the Civil Code^[19] which speaks of an action that has a prescriptive period of four (4) years from non-compliance with the condition stated in the deed of donation. The rule that there can be automatic revocation without benefit of a court action does not apply to the case at bar for the reason that the subject deed of donation is devoid of any provision providing for automatic revocation in event of non-compliance with the any of the conditions set forth therein. Thus, a court action is necessary to be filed within four (4) years from the non-compliance of the condition violated. As regards the ground of estoppel, the donor, Basilisa, cannot invoke the violation of the provision on the prohibition to encumber the subject property as a basis to revoke the donation thereof inasmuch as she acknowledged the validity of the mortgage executed by the donee, Consolacion Austria, when the said donor asked respondent Domingo Comia to redeem the same. Thereafter, the donor, Basilisa likewise asked respondent Florentino Lumubos and the petitioner herein to redeem the same.^[20] Those acts implied that the donees have the right of control and naked title of ownership over the property considering that the donor, Basilisa condoned and acknowledged the validity of the mortgage executed by one of the donees, Consolacion Austria.

Anent the second issue, the petitioner asserts that the action, against the petitioner, for annulment of TCT No. T-10434 and other relevant documents, for reconveyance and damages, filed by the respondents on September 21, 1983 on the ground of fraud and/or implied trust has already prescribed. The sale happened on February 6, 1979 and its registration was made on February 8, 1979 when TCT No. RT-4036 in the name of the donor was cancelled and in lieu thereof TCT No. T-10434 in the name of the petitioner was issued. Thus, more than four (4) years have passed since the sale of the subject real estate property was registered and the said new title thereto was issued to the petitioner. The petitioner contends that an action for reconveyance of property on the ground of alleged fraud must be filed within four (4) years from the discovery of fraud which is from the date of registration of the deed of sale on February 8, 1979; and that the same prescriptive period also applies to a suit predicated on a trust relationship that is rooted on fraud of breach of trust.

When one's property is registered in another's name without the former's consent, an implied trust is created by law in favor of the true owner. Article 1144 of the New Civil Code provides:

Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

- (1) Upon a written contract;
- (2) Upon an obligation created by law;
- (3) Upon a judgment. (n)

Thus, an action for reconveyance of the title to the rightful owner prescribes in ten (10) years from the issuance of the title.^[21] It is only when fraud has been committed that the action will be barred after four (4) years.^[22]

However, the four-year prescriptive period is not applicable to the case at bar for the reason that there is no fraud in this case. The findings of fact of the appellate court which are entitled to great respect, are devoid of any finding of fraud. The records do not show that the donor, Basilisa, and the petitioner ever intended to defraud the

respondents herein with respect to the sale and ownership of the said property. On the other hand, the sale was grounded upon their honest but erroneous interpretation of the deed of donation that it is mortis causa, not inter vivos; and that the donor still had the rights to sell or dispose of the donated property and to revoke the donation.

There being no fraud in the trust relationship between the donor and the donees including the herein petitioner, the action for reconveyance prescribes in ten (10) years. Considering that TCT No. T-10434 in the name of the petitioner and covering the subject property was issued only on February 8, 1979, the filing of the complaint in the case at bar in 1983 was well within the ten-year prescriptive period.

The Court of Appeals, therefore, committed no reversible error in its appealed Decision.

WHEREFORE, the appealed Decision dated June 30, 1989 of the Court of Appeals is hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Associate Justice Santiago M. Kapunan (now Associate Justice of the Supreme Court) and concurred in by Associate Justices Ricardo J. Francisco and Minerva Gonzaga-Reyes (former Associate Justices of the Supreme Court); Rollo, pp. 17-24.

[2] Third Division.

[3] Penned by Judge Rolando D. Diaz; Records, pp. 107-114.

[4] Trial Court Records, p. 56.

[5] Records, p. 57.

[6] Records, p. 114.

[7] Rollo, p. 24.

[8] Rollo, pp. 21-22.

[9] Rollo, pp. 6-7.

[10] *Gestopa v. Court of Appeals*, 342 SCRA 105, 110 (2000) citing *Reyes v. Mosqueda*, 187 SCRA 661, 671 (1990).

[11] 95 Phil 481, 487 (1954).

[12] 98 Phil 68, 70-71 (1955).

[13] *Supra*, Note 11, pp. 487-488.

[14] *Id.*, p. 488.

[15] *Supra*, Note 10, p. 111.

[16] TSN dated April 10, 1986, pp. 16-17.

[17] Atty Viniegra testified: "She said, it was her right to disregard that prohibition but I reminded her that there was a sort of prohibition in that Kasulatan to the effect that nobody could dispose that but she insisted that it was

her prerogative to dispose that the way she wanted to specially at the time she needs money xxx” ; TSN dated March 1, 1985, p. 98.

[18] *Alejandro v. Geraldez*, 78 SCRA 245, 261 (1977).

[19] Art. 764. The donation shall be revoked at the instance of the donor, when the donee fails to comply with any of the conditions which the former imposed upon the latter.

In this case, the property donated shall be returned to the donor, the alienation made by the donee and the mortgages imposed thereon by him being void, with the limitations established, with regard to third persons, by the Mortgage Law and the Land Registration laws.

This action shall prescribe after four years from the noncompliance with the condition, may be transmitted to the heirs of the donor, and may be exercised against the donee’s heirs.(647a)

[20] TSN dated January 23, 1986, pp. 27-32.

[21] A. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, VOL.4. Art. 1144 of the Civil Code (1991) citing *Cañete v. Benedicto* 158 SCRA 575 (1989); *Heirs of Bartolome Infante v. Court of Appeals* 162 SCRA 431 (1988).

[22] *Id.* citing *Damanon v. Butuan City Rural Bank*, 119 SCRA 193 (1982); *Marcopper Mining Corporation v. Garcia*, 143 SCRA 178 (1986); *Beaterio del Santisimo Rosario de Molo v. Court of Appeals*, 137 SCRA 459 (1985); *Cimafranca v. Intermediate Appellate Court*, 147 SCRA 611 (1987).

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