

CONCHITA LIGUEZ, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, MARIA NGO VDA. DE LOPEZ, ET AL., RESPONDENTS.*G. R. No. 11240. December 18, 1957*

Ponente: REYES, J.B.L., J.

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From a decision of the Court of Appeals, affirming that of the Court of First Instance of Davao dismissing her complaint for recovery of land, Conchita Liguez has resorted to this Court, praying that the aforesaid decision be reversed on points of law. We granted certiorari on October 9, 1956.

The case began upon complaint filed by petitioner-appellant against the widow and heirs of the late Salvador P. Lopez to recover a parcel of 51.84 hectares of land, situated in Barrio Bogac-Linot, of the municipality of Mati, Province of Davao. Plaintiff averred to be its legal owner, pursuant to a deed of donation of said land, executed in her favor by the late owner, Salvador P. Lopez, on 18 May 1943. The defense interposed was that the donation was null and void for having an illicit causa or consideration, which was plaintiff's entering into marital relations with Salvador P. Lopez, a married man; and that the property had been adjudicated to the appellees as heirs of Lopez by the Court of First Instance, since 1949.

The Court of Appeals found that the deed of donation was prepared by the Justice of the Peace of Mati, Davao, before whom it was signed and ratified on the date aforesaid. At the time, appellant Liguez was a minor, only 16 years' of age. While the deed recites—

"That the DONOR, Salvador P. Lopez, for and in consideration of his Jove and affection for the said DONEE, Conchita Liguez, and also for the good and valuable services rendered to the DONOR by the DONEE, docs by these presents, voluntarily give, grant and donate to the said donee, etc." (Paragraph 2, Exhibit "A") the Court of Appeals found that when the donation was made, Lopez had been living with the parents of appellant for barely a month; that the donation was made in view of the desire of Salvador P. Lopez, a man of mature years, to have sexual relations with appellant Conchita Liguez; that Lopez had confessed to his love for appellant to the instrumental witnesses, with the remark that her parents would not allow Lopez to live with her unless he first donated the land in question; that after the donation, Conchita Liguez and Salvador P. Lopez lived together in the house that was built upon the latter's orders, until Lopez was killed on July 1st, 1943, by some guerrillas who believed him to be pro-Japanese.

It was also ascertained by the Court of Appeals that the donated land originally belonged to the conjugal partnership of Salvador P. Lopez and his wife, Maria Ngo; that the latter had met and berated Conchita for living maritally with her husband, sometime during June of 1943; that the widow and children of Lopez were in possession of the land and made improvements thereon; that the land was assessed in the tax rolls first in the name of Lopez and later in that of his widow; and that the deed of donation was never recorded.

Upon these facts, the Court of Appeals held that the deed of donation was inoperative, and null and void (1) because the husband, Lopez, had no right to donate conjugal property to the plaintiff appellant; and (2) because

the donation was tainted with illegal causa or consideration, of which donor and donee were participants.

Appellant vigorously contends that the Court of First Instance as well as the Court of Appeals erred in holding the donation void for having an illicit causa or consideration. It is argued that under Article 1274 of the Civil Code of 1889 (which was the governing law in 1943, when the donation was executed), "in contracts of pure beneficence the consideration is the liberality of the donor", and that liberality per se can never be illegal, since it is neither against law or morals or public policy.

The flaw in this argument lies in ignoring that under Article 1274, liberality of the donor is deemed causa only in those contracts that are of "pure" beneficence; that is to say, contracts designed solely and exclusively to procure the welfare of the beneficiary, without any intent of producing any satisfaction for the donor; contracts, in other words, in which the idea of self-interest is totally absent on the part of the transferor. For this very reason, the same Article 1274 provides that in remuneratory contracts, the consideration is the service or benefit for which the remuneration is given; causa is not liberality in these cases because the contract or conveyance is not made out of pure beneficence, but "solvendi animo." In consonance with this view, this Supreme Court in *Philippine Long Distance Co. vs. Jeturian*[*] G. B. L-7756, July 30, 1955, like the Supreme Court of Spain in its decision of 16 Feb. 1899, has ruled that bonuses granted to employees to excite their zeal and efficiency, with consequent 'benefit for the employer, do not constitute donation having liberality for a consideration.

Here the facts as found by the Court of Appeals (and which we can not vary) demonstrate that in making the donation in question, the late Salvador P. Lopez was not moved exclusively by the desire to benefit appellant Conchita Liguez, but also to secure her cohabiting, with him, so that he could gratify his sexual impulses. This is clear from the confession of Lopez to the witnesses Rodriguez and Ragay, that he was in love with appellant, but her parents would not agree unless he donated the land in question to her. Actually, therefore, the donation was but one part of an onerous transaction (at least with appellant's parents) that must be viewed in its totality. Thus considered, the conveyance was clearly predicated upon an illicit causa.

Appellant seeks to differentiate between the alleged liberality of Lopez, as causa for the donation in her favor, and his desire for cohabiting with appellant, as motives that impelled him to make the donation, and quotes from *Manresa* and the jurisprudence of this Court on the distinction that must be maintained between causa and motives (*De Jesus vs. Urrutia and Co.*, 33 Phil. 171). It is well to note, however, that *Manresa* himself (Vol. 8, pp. 641-642), while maintaining the distinction and upholding the imperativeness of the motives of the parties to determine the validity of the contract, expressly excepts from the rule those contracts that are conditioned upon the attainment of the motives of either party.

"* * * distincion importantisimii, que impide amilar el contrato por la sola ininfluencia de los motivos a no ser que se hubiera subordnado al cumplimiento de estos como condiciones la eficacia de aquel."

The same view is held by the Supreme Court of Spain, in its decisions of February 4, 1941, and December 4, 1946, holding that the motive may be regarded as causa when it predetermines the purpose of the contract.

In the present case, it is scarcely disputable that Lopez would not have conveyed the property in question had he known that appellant would refuse to cohabit with him; so that the cohabitation was an implied condition to the donation, and being unlawful, necessarily tainted the donation itself.

The Court of Appeals rejected the appellant's claim on the basis of the well-known rule "in pari delicto non oritur actio" as embodied in Article 1306 of the Code of 1889 (reproduced in Article 1412 of the new Civil Code) :

"ART. 1412. If the act in which the unlawful or forbidden cause consists does riot constitute a criminal offense, the following rules shall be observed:

- (1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;
- (2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise."

In our opinion, the Court of Appeals erred in applying to the present case the *pari delicto* rule. First, because it can not be said that both parties here had equal guilt when we consider that as against the deceased Salvador P. Lopez, who was a man advanced in years and mature experience, the appellant was a mere minor, 16 years of age, when the donation was made; that there is no finding made by the Court of Appeals that she was fully aware of the terms of the bargain entered into by and between Lopez and her parents; that her acceptance in the deed of donation (which was authorized by Article 626 of the old Civil Code) did not necessarily imply knowledge of conditions and terms not set forth therein; and that the substance of the testimony of the instrumental witnesses is that it was the appellant's parents who insisted on the donation before allowing her to live with Lopez. These facts are more suggestive of seduction than of immoral bargaining on the part of appellant. It must not be forgotten that illegality is not presumed, but must be duly and adequately proved.

In the second place, the rule that parties to an illegal contract, if equally guilty, will not be aided by the law but will both be left where it finds them, has been interpreted by this Court as barring the party from pleading the illegality of the bargain either as a cause, of action or as a defense. *Memo auditor propriam turpitudinem allegans*. Said this Court in *Perez vs. Herranz*, 7 Phil. 695-696:

"It is unnecessary to determine whether a vessel for which a certificate and license have been fraudulently obtained incurs forfeiture under these or any other provisions of this act. It is enough for this case that the statute prohibits such an arrangement as that between the plaintiff and defendant so as to render illegal both the arrangement itself and all contracts between the parties growing out of it.

It does not, however, follow that the plaintiff can succeed in this action. There are two answers to his claim as urged in his brief. It is a familiar principle that the courts will not aid either party to enforce an illegal contract, but will leave them both where it finds them; but where the plaintiff can establish a cause of action without exposing its illegality, the vice does not affect his right to recover. The American authorities cited by the plaintiff, fully sustain this doctrine. The principle applies equally to a defense. The law in those Islands applicable to the case is found in article 1305 of the Civil Code, shutting out from relief either of the two guilty parties to an illegal or vicious contract.

In the case at bar the plaintiff could establish *prima facie* his sole ownership by the bill of sale from Smith, Bell & Co. and the official registration. The defendant, on his part, might overthrow this title by proof through a certain subsequent agreement between him and the plaintiff, dated March 16, 1902, that they had become owners in common of the vessel, the agreement not disclosing the illegal motive for placing the formal title in the plaintiff. Such an ownership is not in itself prohibited, for the United States courts recognize the equitable ownership of a vessel as against the holder of a legal title, where the arrangement is not one in fraud of the law. (*Weston vs. Penniman*, Federal Case 17455; *Scudder vs. Calais Steamboat Company*, Federal Case 12566.)

On this proof, the defendant being a part owner of the vessel, would have defeated the action for its exclusive possession by the plaintiff. The burden would then be cast upon the plaintiff to show the illegality of the arrangement, which under the cases cited he would not be allowed to do."

The rule was reaffirmed in *Lima vs. Lim Chu Kao*, 51 Phil. 477.

The situation confronting us is exactly analogous. The appellant seeks recovery of the disputed land on the strength of a donation regular on its face. To defeat its effect, the appellees must plead and prove that the same is

illegal. But such plea on the part of the Lopez heirs is not receivable, since Lopez himself, if living, would be barred from setting up that plea; and his heirs, as his privies and successors in interest, can have no better rights than Lopez himself.

Appellees, as successors of the late donor", being thus precluded from pleading the defense of immorality or illegal causa of the donation, the total or partial ineffectiveness of the same must be decided by different legal principles. In this regard, the Court of Appeals correctly held that Lopez could not donate the entirety of the property in litigation, to the prejudice of his wife Maria Ngo, because said property was conjugal in character, and the right of the husband to donate community property is strictly limited by law (Civil Code of 1889, Arts. 1409, 1415, 1413; Baello vs. Villanueva, 54 Phil. 213).

"ART. 1409. The conjugal partnership shall also be chargeable with anything which may have been given or promised by the husband alone to the children born of the marriage in order to obtain employment for them or give them a profession or by both spouses by common consent, should they not have 'Stipulated that such expenditures should be borne in whole or in part by the separate property of one of them."

"ART. 1415. The husband may dispose of the property of the conjugal partnership for the purposes mentioned in Article 1409."

"ART. 1413. In addition to his powers as manager the husband may for a valuable consideration alienate and encumber the property of the conjugal partnership without the consent of the wife."

The text of the articles makes it plain that the donation made by the husband in contravention of law is not void in its entirety, but only in so far as it prejudices the interest of the wife. In this regard, as Manresa points out (Commentaries, 5th Ed., pp. 650-651, 652-653), the law makes no distinction between gratuitous transfers and conveyances for a consideration.

"Puede la mujer como propietaria hacer aunar las donaciones aun durante el matrimonio? Esta es, en suma, la cuestion, reducida a determinar si la distinta naturaleza entre los actos a titulo oneroso y los actos a titulo lucrativo, y sus especiales y diversas circunstancias, pueden motivar una solucion" diferente en cuanto a la epoca en que la mujer ha de reclamar y obtener la nulidad del acto; cuestion que no deja de ser interesantissima.

ElCodigo, a pesar de la variacion que ha introducido en el proyecto de 1851, poniendo como segundo parrafo del articulo 1.413, como limitacion de las enajenaciones u obligaciones a titulo oneroso, lo que era una limitacion general de todos los actos del marido, muestra, sin embargo, que no ha variado de criterio, y que para el las donaciones deben en todo equipararse a cualquier otro acto ilegal o fraudulento de caracter oneroso, al decir en el art. 1.419: 'Tambien se traera a colacion' en el inventario de la sociedad—el importe de las dotaciones y enajenaciones que deban considerarse legales o fraudulentas, con sujecion al art. 1.413.' (Debio tambien citarse el articulo 1.415, que es el que habla de donaciones.)"

"En resumen: el marido solo puede donar los bienes gananciales dentro de los limites marcados en el art. 1.415. Sin embargo, solo la mujer o sus herederos pueden reclamar contra la validez de la donacion, pues solo en su interes se establece la prohibicion. La mujer o sus herederos, para poder dejar sin efecto el acto, han de sufrir verdadero perjuicio, entendiendose que no le hay hasta, tanto que, terminada por cualquier causa la sociedad de gananciales, y hecha su liquidacion, no pueda imputarse lo donado al haber por cualquier concepto del marido, ni obtener en su consecuencia la mujer la debida indemnizacion. La donacion reviste por tanto legalmente, una eficacia condicional, y en armonia con esto caracter, deben fijarse los efectos de la misma con relacion a los adquirentes y a los terceros poseedores, leniendo, en su caso, en cuenta lo dispuesto en la Ley Hipotecaria. Para prevenir todo perjuicio, puede la mujer, durante el matrimonio inmediatamente al acto, hacer constar ante los Tribunales su existencia y solicitar medidas de precaucion, como ya se ha dicho. Para evitarlo en lo sucesivo, y cuando las circunstancias lo requieran, puede instar la declaracion de prodigalidad."

To determine the prejudice to the widow, it must be shown that the value of her share in the property donated can not be paid out of the husband's share of the community profits. The requisite data, however, are not available to us and necessitate a remand of the records to the court of origin that settled the estate of the late Salvador P. Lopez.

The situation of the children and forced heirs of Lopez approximates that of the widow. As privies of their parent, they are barred from invoking the illegality of the donation. But their right to a legitime out of his estate is not thereby affected, since the legitime is granted them by the law itself, over and above the wishes of the deceased. Hence, the forced heirs are entitled to have the donation set aside in so far as inofficious: i.e., in excess of the portion of free disposal (Civil Code of 1889, Articles 636, 654), computed as provided in Articles 818 and 819, and bearing in mind that "collationable gifts" under Article 818 should include gifts made not only in favor of the forced heirs, but even those made in favor of strangers, as decided by the Supreme Court of Spain in its decisions of 4 May 1899 and 16 June 1902. So that in computing the legitimes, the value of the property donated to herein appellant, Conchita Liguez, should be considered part of the donor's estate. Once again, only the court of origin has the requisite data to determine whether the donation is inofficious or not.

With regard to the improvements in the land in question, the same should be governed by the rules of accession and possession in good faith, it being undisputed that the widow and heirs of Lopez were unaware of the donation in favor of the appellant when the improvements were made.

The appellees, relying on *Galion vs. Garayes*, 53 Phil. 43, contend that by her failure to appear at the liquidation proceedings of the estate of Salvador P. Lopez in July 1943, the appellant has forfeited her right to uphold the donation if the prejudice to the widow Maria Ngo resulting from the donation could be made good out of the husband's share in the conjugal profits. It is also argued that appellant was guilty of laches in failing to enforce her rights as donee until 1951. This line of argument overlooks the capital fact that in 1943, appellant was still a minor of sixteen; and she did not reach the age of majority until 1948. Hence, her action in 1951 was only delayed three years. Nor could she be properly expected to intervene in the settlement of the estate of Lopez: first, because she was a minor during the great part of the proceedings; second, because she was not given notice thereof; and third, because the donation did not make her a creditor of the estate. As we have ruled in *Lopez vs. Olbes*, 15 Phil. 547-548:

"The prima facie donation inter vivos and its acceptance by the donees having been proved by means of a public instrument, and the donor having been duly notified of said acceptance, the contract is perfect and obligatory and it is perfectly in order to demand its fulfillment, unless an exception is proved which is based on some legal reason opportunely alleged by the donor or her heirs.

So long as the donation in question has not been judicially proved and declared to be null, inefficacious, or irregular, the land donated is of the absolute ownership of the donees and consequently, does not form a part of the property of the estate of the deceased Martina, Lopez; wherefore the action instituted demanding compliance with the contract, the delivery by the deforciant of the land donated, or that it be prohibited to disturb the right of the donees, should not be considered as incidental to the probate proceedings aforementioned."

The case of *Gallon vs. Gayares*, supra, is not in point. First, because that case involved a simulated transfer that can have no effect, while a donation with illegal causa may produce effects under certain circumstances where the parties are not of equal guilt; and again, because the transferee in the *Gallon* case took the property subject to lis pendens notice, that in this case does not exist.

In view of the foregoing, the decisions appealed from are reversed and set aside, and the appellant Conchita Liguez declared entitled to so much of the donated property as may be found, upon proper liquidation, not to

prejudice the share of the widow Maria Ngo in the conjugal partnership with Salvador P. Lopez or the legitimes of the forced heirs of the latter. The records are ordered remanded to the court of origin for further proceedings in accordance with this opinion. Costs against appellees. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

[*] 97 Phil. , 981.

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