

ESTANISLAO SERRANO, PLAINTIFF AND APPELLANT, VS. MELCHOR SOLOMON, DEFENDANT AND APPELLEE.*G.R. No. 12093. June 29, 1959*

Ponente: MONTEMAYOR, J.

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Estanislao Serrano is appealing the decision of the Court of First Instance of Ilocos Sur, Judge Jose G. Bautista presiding, declaring null and void the supposed donation, propter nuptias on which his complaint was based and dismissing the later upon motion of the defendant. The motion for dismissal was filed before the hearing but the trial court deferred action upon it until after submission of evidence by the parties. Said parties entered into a stipulation of facts after which they declined to submit any other evidence except Exhibit "A", the supposed deed of donation propter nuptias, the translation of which, for purposes of reference, is reproduced below:

"That, I Melchor Solomon, single, Filipino, of legal age, native of the municipality of Sinait, province of Ilocos Sur and residing at present in Sinait, having decided to get married with the consent of my parents, brothers or sisters and relatives, have announced and manifested my determination and desire to Mr. Estanislao Serrano to whose family the flower I intend to win belongs, namely Miss Alexandria Feliciano single, born in Hawaii but is actually residing in Cabugao, Ilocos Sur.

This ardent desire favored by good luck and accepted by the noble lady the one concerned, is to be realized and complied with under agreement or stipulation which affirms, promotes and vivifies the union. This agreement donating all my exclusive properties in order that we shall have a basic capital for our conjugal life and in order that there will be ready maintenance and support of our offsprings has come out voluntarily and expontaneously from me, I the very one concerned.

These which I am donating my exclusive properties because I have honestly acquired the same with the sweat of my brows and I donate them gladly, to wit * * *;

The referred to properties are donated in accordance with the existing laws of the Philippines and our children out of the wedlock will be the ones to inherit same with equal shares. But if God will not blew our union with any child one half of all my properties including the properties acquired during; our conjugal union will be given the (to) my brothers or sisters or their heirs if I, the husband will die before my wife and if my beloved wife will die before me, one half of all my properties and those acquired by us will be given to those who have reared my wife in. token of my love to her* * * * (Italics supplied)

Alejandria Feliciano, whose father went to Hawaii to seek his fortune and who until now resides there, had been left to her father's friend named Estanislao Serrano who took care of and raised her from the age of 12 until she readied womanhood. On June 21, 1948, defendant Melchor Solomon married Alejandria. On the same day of the marriage but before the marriage ceremony he executed the alleged Deed of Donation, Exhibit "A" above reproduced. Less than nine months, after the marriage, or rather on March 2, 1949, Alejandria died without issue. Several months thereafter Estanislao Serrano commenced the present action to enforce and implement the terms of the alleged donation particularly that portion thereof to the effect that if Alejandria died before her husband

Melchor and left no children, then one half of Melchor's properties and those acquired by him and his wife would be given to those persons who had raised and taken care of her namely, Estanislao Serrano.

Acting upon the motion for dismissal the trial court found that the donation could not be regarded as a donation propter nuptias for the reason that though it was executed before the marriage, it was not made in consideration of the marriage and, what is more important, that the donation was not made to one or both of the (marriage) contracting parties, but to a third person.

After a careful study of the case, we fully agree with the trial court Article 1327 of the Old Civil Code reads:

"Art 1327. Donations by reasons of marriage are those bestowed before its celebration in consideration of the same, upon one or both of the spouses."

This article was reproduced in the new Civil Code under Article 126. Whether we apply Article 1327 for the reason that the document Exhibit "A" was executed in 1948 before the promulgation of the New Civil Code in 1950 or whether we apply Article 126 of the New Civil Code the result would be the same.

Was the donation made in consideration of the marriage between Melchor and Alexandria or was it made in consideration of the death of either of them in the absence of any children? True, the Deed of Donation was executed on the occasion when they married. But, the marriage in itself was not the only consideration or condition under Which terms of the donation would be carried out The marriage would have to be childless and one of the spouses would have to die before the other before the donation would operate. So, strictly speaking, the donation may not be regarded as one made in consideration of the marriage.

But assuming for the moment that it was made in consideration of the marriage, still, we have the fact that the donation was being made not in favor of Alejandria, the wife, but rather in favor of those who acted as her parents and raised her from girlhood to womanhood in the absence of her father. That does not place it within the provisions of Article 1327 and Article 126 of the Old Civil Code and the New Civil Code, respectively. Manresa, in his commentary on Article 1327 of the Civil Code, says the following:

"Donations excluded are those (1) made in favor of the spouses after the celebration of marriage; (2) executed in favor of the future spouses but not in consideration of the marriage; and (3) granted to persons other than the spouses even though they may be founded on the marriage (6 M. 232)."

Having come to the conclusion that the Deed of Dona tion does not fulfill the requirements of a donation propter nuptias and that it might be considered a donation inter vivos, can it be considered valid and effective? Hardly, because it was never accepted by the donee either in the same instrument of donation or in a separate document as required by law.

Again, may the donation be regarded a donation mortis causa, and given effect? The answer has to be in the negative for the reason that this Tribunal has heretofore consistently held that a donation to take effect after the death of the donor, is equivalent to a disposition or bequest of property by last will, and it should be executed in accordance with the requisites and strict provisions governing the execution of wills x; and Exhibit "A" does not fulfill said requirements. Moreover, in the present case, the donor is still alive and naturally, even if the donation were otherwise valid, still, the time and occasion have not arrived for considering its operation and implementation.

In view of the foregoing, the appealed decision is hereby affirmed, with costs.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Concepcion, Endencia, and Barrera, JJ., concur.

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