

URSULINA GANUELAS, METODIO GANUELAS AND ANTONIO GANUELAS, PETITIONERS VS. HON. ROBERT T. CAWED, JUDGE OF THE REGIONAL TRIAL COURT OF SAN FERNANDO, LA UNION (BRANCH 29), LEOCADIA...

G.R. No. 123968. April 24, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The present petition for review under Rule 45 of the Rules of Court assails, on a question of law, the February 22, 1996 decision[1] of the Regional Trial Court of San Fernando, La Union, Branch 29, in Civil Case No. 3947, an action for declaration of nullity of a deed of donation.

The facts, as culled from the records of the case, are as follows:

On April 11, 1958, Celestina Ganuelas Vda. de Valin (Celestina) executed a Deed of Donation of Real Property[2] covering seven parcels of land in favor of her niece Ursulina Ganuelas (Ursulina), one of herein petitioners.

The pertinent provision of the deed of donation reads, quoted verbatim:

x x x x x x x x

That, for and in consideration of the love and affection which the DONOR has for the DONEE, and of the faithful services the latter has rendered in the past to the former, the said DONOR does by these presents transfer and convey, by way of DONATION, unto the DONEE the property above, described, to become effective upon the death of the DONOR; but in the event that the DONEE should die before the DONOR, the present donation shall be deemed rescinded and of no further force and effect.

x x x x x x x x.[3]

On June 10, 1967, Celestina executed a document denominated as Revocation of Donation[4] purporting to set aside the deed of donation. More than a month later or on August 18, 1967, Celestina died without issue and any surviving ascendants and siblings.

After Celestina's death, Ursulina had been sharing the produce of the donated properties with private respondents Leocadia G. Flores, et al., nieces of Celestina.

In 1982, or twenty-four years after the execution of the Deed of Donation, Ursulina secured the corresponding tax declarations, in her name, over the donated properties, to wit: Tax Declarations Nos. 18108, 18109, 18110, 18111, 18112, 18113 and 18114, and since then, she refused to give private respondents any share in the produce of the properties despite repeated demands.

Private respondents were thus prompted to file on May 26, 1986 with the RTC of San Fernando, La Union a complaint[5] against Ursulina, along with Metodio Ganuelas and Antonio Ganuelas who were alleged to be

unwilling plaintiffs. The complaint alleged that the Deed of Donation executed by Celestina in favor of Ursulina was void for lack of acknowledgment by the attesting witnesses thereto before notary public Atty. Henry Valmonte, and the donation was a disposition mortis causa which failed to comply with the provisions of the Civil Code regarding formalities of wills and testaments, hence, it was void. The plaintiffs-herein private respondents thus prayed that judgment be rendered ordering Ursulina to return to them as intestate heirs the possession and ownership of the properties. They likewise prayed for the cancellation of the tax declarations secured in the name of Ursulina, the partition of the properties among the intestate heirs of Celestina, and the rendering by Ursulina of an accounting of all the fruits of the properties since 1982 and for her to return or pay the value of their shares.

The defendants-herein petitioners alleged in their Answer[6] that the donation in favor of Ursulina was inter vivos as contemplated under Article 729 of the Civil Code,[7] hence, the deed did not have to comply with the requirements for the execution of a valid will; the Revocation of Donation is null and void as the ground mentioned therein is not among those provided by law to be the basis thereof; and at any rate, the revocation could only be legally enforced upon filing of the appropriate complaint in court within the prescriptive period provided by law, which period had, at the time the complaint was filed, already lapsed.

By Decision of February 22, 1996, the trial court, holding that the provision in the Deed of Donation that in the event that the DONEE should predecease the DONOR, the “donation shall be deemed rescinded and of no further force and effect” is an explicit indication that the deed is a donation mortis causa,[8] found for the plaintiffs-herein private respondents, thus:

WHEREFORE the Court renders judgment declaring null and void the Deed of Donation of Real Property executed by Celestina Ganuelas, and orders the partition of the estate of Celestina among the intestate heirs.

SO ORDERED.[9]

The trial court also held that the absence of a reservation clause in the deed implied that Celestina retained complete dominion over her properties, thus supporting the conclusion that the donation is mortis causa,[10] and that while the deed contained an attestation clause and an acknowledgment showing the intent of the donor to effect a postmortem disposition, the acknowledgment was defective as only the donor and donee appear to have acknowledged the deed before the notary public, thereby rendering the entire document void.[11]

Lastly, the trial court held that the subsequent execution by Celestina of the Revocation of Donation showed that the donor intended the revocability of the donation ad nutum, thus sustaining its finding that the conveyance was mortis causa.[12]

On herein petitioners’ argument that the Revocation of Donation was void as the ground mentioned therein is not one of those allowed by law to be a basis for revocation, the trial court held that the legal grounds for such revocation as provided under the Civil Code arise only in cases of donations inter vivos, but not in donations mortis causa which are revocable at will during the lifetime of the donor. The trial court held, in any event, that given the nullity of the disposition mortis causa in view of a failure to comply with the formalities required therefor, the Deed of Revocation was a superfluity.[13]

Hence, the instant petition for review, petitioners contending that the trial court erred:

- . . . WHEN IT DECLARED NULL AND VOID THE DONATION EXECUTED BY CELESTINA GANUELAS;
- . . . WHEN IT UPHELD THE REVOCATION OF DONATION;
- . . . IN RENDERING ITS DECISION ADVERSE TO PETITIONER URSULINA GANUELAS.[14]

Petitioners argue that the donation contained in the deed is inter vivos as the main consideration for its execution was the donor's affection for the donee rather than the donor's death;[15] that the provision on the effectivity of the donation—after the donor's death—simply meant that absolute ownership would pertain to the donee on the donor's death;[16] and that since the donation is inter vivos, it may be revoked only for the reasons provided in Articles 760,[17] 764[18] and 765[19] of the Civil Code.

In a letter of March 16, 1998,[20] private respondent Corazon Sipalay, reacting to this Court's January 28, 1998 Resolution requiring private respondents "to SHOW CAUSE why they should not be disciplinarily dealt with or held in contempt" for failure to submit the name and address of their new counsel, explains that they are no longer interested in pursuing the case and are "willing and ready to waive whatever rights" they have over the properties subject of the donation. Petitioners, who were required to comment on the letter, by Comment of October 28, 1998,[21] welcome private respondents' gesture but pray that "for the sake of enriching jurisprudence, their [p]etition be given due course and resolved."

The issue is thus whether the donation is inter vivos or mortis causa.

Crucial in the resolution of the issue is the determination of whether the donor intended to transfer the ownership over the properties upon the execution of the deed.[22]

Donation inter vivos differs from donation mortis causa in that in the former, the act is immediately operative even if the actual execution may be deferred until the death of the donor, while in the latter, nothing is conveyed to or acquired by the donee until the death of the donor-testator.[23] The following ruling of this Court in *Alejandro v. Geraldez* is illuminating:[24]

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.

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.

The distinction between a transfer inter vivos and mortis causa is important as the validity or revocation of the donation depends upon its nature. If the donation is inter vivos, it must be executed and accepted with the formalities prescribed by Articles 748[25] and 749[26] of the Civil Code, except when it is onerous in which case the rules on contracts will apply. If it is mortis causa, the donation must be in the form of a will, with all the formalities for the validity of wills, otherwise it is void and cannot transfer ownership.[27]

The distinguishing characteristics of a donation mortis causa are the following:

- 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;
- 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;
- That the transfer should be void if the transferor should survive the transferee.[28]

In the donation subject of the present case, there is nothing therein which indicates that any right, title or interest

in the donated properties was to be transferred to Ursulina prior to the death of Celestina.

The phrase “to become effective upon the death of the DONOR” admits of no other interpretation but that Celestina intended to transfer the ownership of the properties to Ursulina on her death, not during her lifetime.[29]

More importantly, the provision in the deed stating that if the donee should die before the donor, the donation shall be deemed rescinded and of no further force and effect shows that the donation is a postmortem disposition.

As stated in a long line of cases, one of the decisive characteristics of a donation mortis causa is that the transfer should be considered void if the donor should survive the donee.[30]

More. The deed contains an attestation clause expressly confirming the donation as mortis causa:

SIGNED by the above-named donor, Celestina Ganuelas, at the foot of this deed of donation mortis causa, consisting of two (2) pages and on the left margin of each and every page thereof in the joint presence of all of us who at her request and in her presence and that of each other have in like manner subscribed our names as witnesses.[31] (Emphasis supplied)

To classify the donation as inter vivos simply because it is founded on considerations of love and affection is erroneous. That the donation was prompted by the affection of the donor for the donee and the services rendered by the latter is of no particular significance in determining whether the deed constitutes a transfer inter vivos or not, because a legacy may have an identical motivation.[32] In other words, love and affection may also underline transfers mortis causa.[33]

In *Maglasang v. Heirs of Cabatingan*,[34] the deeds of donation contained provisions almost identical to those found in the deed subject of the present case:

That for and in consideration of the love and affection of the DONOR for the DONEE, x x x the DONOR does hereby, by these presents, transfer, convey, by way of donation, unto the DONEE the above-described property, together with the buildings and all improvements existing thereon, to become effective upon the death of the DONOR; PROVIDED, HOWEVER, that in the event that the DONEE should die before the DONOR, the present donation shall be deemed automatically rescinded and of no further force and effect. (Italics supplied)

In that case, this Court held that the donations were mortis causa, for the above-quoted provision conclusively establishes the donor’s intention to transfer the ownership and possession of the donated property to the donee only after the former’s death. Like in the present case, the deeds therein did not contain any clear provision that purports to pass proprietary rights to the donee prior to the donor’s death.

As the subject deed then is in the nature of a mortis causa disposition, the formalities of a will under Article 728 of the Civil Code should have been complied with, failing which the donation is void and produces no effect.[35]

As noted by the trial court, the attesting witnesses failed to acknowledge the deed before the notary public, thus violating Article 806 of the Civil Code which provides:

Art. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court. (Italics supplied)

The trial court did not thus commit any reversible error in declaring the Deed of Donation to be mortis causa.

WHEREFORE, the petition is hereby DENIED for lack of merit.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, and Corona, JJ., concur.

Puno, J., (Chairman), Took no part. Knows one of the parties.

[1] Rollo at 39-51.

[2] Exhibit "A", Records at 36-37.

[3] Id. at 37.

[4] Exhibit "B", Records at 38.

[5] Records at 1-11.

[6] Id. at 62-67, 82-87.

[7] 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.

[8] Id. at 48.

[9] Rollo at 13.

[10] Ibid.

[11] Id. at 50.

[12] Id. at 49.

[13] Id. at 50.

[14] Id. at 18-19.

[15] Id. at 20.

[16] Id. at 31.

[17] Art. 760. Every donation inter vivos, made by a person having no children or descendants, legitimate or legitimated by subsequent marriage, or illegitimate, may be revoked or reduced as provided in the next article, by the happening of any of these events:

(1) If the donor, after the donation, should have legitimate or legitimated or illegitimate children, even though they be posthumous;

(2) If the child of the donor, whom the latter believed to be dead when he made the donation, should turn out to be living;

(3) If the donor should subsequently adopt a minor child.

[18] 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 alienations 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.

[19] Art. 765. The donation may also be revoked at the instance of the donor, by reason of ingratitude in the following cases:

(1) If the donee should commit some offense against the person, the honor or the property of the donor, or of his wife or children under his parental authority;

(2) If the donee imputes to the donor any criminal offense, or any act involving moral turpitude, even though he should prove it, unless the crime or the act has been committed against the donee himself, his wife or children under his authority;

(3) If he unduly refuses him support when the donee is legally or morally bound to give support to the donor.

[20] Rollo at 90.

[21] Id. at 97.

[22] *Gestopa v. Court of Appeals*, 342 SCRA 105, 110 (2000) (citation omitted).

[23] *Puig v. Peñaflorida*, 15 SCRA 276, 282 (1965) (citation omitted).

[24] 78 SCRA 245, 253, citations omitted (1977).

[25] Art. 748. The donation of a movable may be made orally or in writing.

An oral donation requires the simultaneous delivery of the thing or of the document representing the right donated.

If the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance shall be made in writing. Otherwise, the donation shall be void.

[26] Art. 749. In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

[27] Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. II, 1998 ed. at 538.

[28] *Austria-Magat v. Court of Appeals*, G.R. No. 106755, February 1, 2002 (citation omitted).

[29] *Maglasang v. Heirs of Cabatingan*, G.R. No. 131953, June 5, 2002.

[30] *Bonsato v. Court of Appeals*, 95 Phil 482, 487 (1954); *Alejandro v. Geraldez*, 78 SCRA 245, 255 (1977); *Reyes v. Mosqueda*, 187 SCRA 661, 671 (1990); *Austria-Magat v. Court of Appeals*, G.R. No. 106755, February 1, 2002; *Maglasang v. Heirs of Cabatingan*, G.R. No. 131953, June 5, 2002.

[31] Exhibit "A", Records at 37.

[32] *Bonsato v. Court of Appeals*, 95 Phil 482, 488 (1954).

[33] *Alejandro v. Geraldez*, 78 SCRA 245, 256 (1977).

[34] G.R. No. 131953, June 5, 2002.

[35] *National Treasurer v. Vda. de Meimban*, 131 SCRA 264, 270 (1984); *Puig v. Peñaflorida*, 15 SCRA 276, 287 (1965).

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