

SPOUSES ERNESTO AND EVELYN SICAD, PETITIONERS, VS. COURT OF APPEALS, CATALINO VALDERRAMA, JUDY CRISTINA M. VALDERRAMA AND JESUS ANTONIO VALDERRAMA, RESPONDENTS.

G.R. No. 125888. August 13, 1998

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

The issue raised in the appeal by certiorari at bar centers on the character of a deed of donation executed by the late Aurora Virto Vda. De Montinola of the City of Iloilo - as either inter vivos or mortis causa. That deed, entitled "DEED OF DONATION INTER VIVOS,"[1] was executed by Montinola on December 11, 1979. It named as donees her grandchildren, namely: Catalino Valderrama, Judy Cristina M. Valderrama and Jesus Antonio Valderrama; and treated of a parcel of land, Lot 3231 of the Cadastral Survey of Panay, Capiz, covered by Transfer Certificate Title No. T-16105 in the name of Montinola. The deed also contained the signatures of the donees in acknowledgment of the acceptance of the donation.

Montinola's Secretary, Gloria Salvilla, afterwards presented the deed for recording in the Property Registry, and the Register of Deeds cancelled TCT No. T-16105 (the donor's title) and, in its place, issued TCT No. T-16622 on February 7, 1980, in the names of the donees.[2] Montinola however retained the owner's duplicate copy of the new title (No. T-16622), as well as the property itself, until she transferred the same ten (10) years later, on July 10, 1990, to the spouses, Ernesto and Evelyn Sicad.

On March 12, 1987, Aurora Montinola drew up a deed of revocation of the donation,[3] and caused it to be annotated as an adverse claim on TCT No. T-16622 (issued, as aforesaid, in her grandchildren's names). Then on August 24, 1990, she filed a petition with the Regional Trial Court in Roxas City for the cancellation of said TCT No. T-16622 and the reinstatement of TCT No. T-16105 (in her name), the case being docketed as Special Proceeding No. 3311. Her petition was founded on the theory that the donation to her three (3) grandchildren was one mortis causa which thus had to comply with the formalities of a will; and since it had not, the donation was void and could not effectively serve as basis for the cancellation of TCT No. T-16105 and the issuance in its place of TCT No. T-16622.

The donees (Montinola's grandchildren) opposed the petition. In their opposition dated August 29, 1990, they averred that the donation in their favor was one inter vivos which, having fully complied with the requirements therefor set out in Article 729 of the Civil Code, was perfectly valid and efficacious. They also expressed doubt about the sincerity of their grandmother's intention to recover the donated property, since she had not pursued the matter of its revocation after having it annotated as an adverse claim.

The case, originally treated as a special proceeding, was subsequently considered by the lower Court as an ordinary civil action in view of the allegations and issues raised in the pleadings. Pre-trial was had, followed by trial on the merits which was concluded with the filing of the parties' memoranda. The Trial Court then rendered judgment on March 27, 1991, holding that the donation was indeed one inter vivos, and dismissing Aurora

Montinola's petition for lack of merit.[4] The matter of its revocation was not passed upon.

Montinola elevated the case to the Court of Appeals, her appeal being docketed as CA-G.R. CV No. 33202. She however died on March 10, 1993,[5] while appeal was pending.

Shortly after Montinola's demise, a "Manifestation and Motion" dated March 31, 1993 was filed by Ernesto Sicad and Evelyn Bofill-Sicad, herein petitioners,[6] in which they (a) alleged that they had become the owners of the property covered by TCT No. T-16622 in virtue of a "deed of definite sale dated May 25, 1992" accomplished by Montinola in their favor, which was confirmed by "an affidavit dated November 26, 1997 also executed by the latter, and (b) prayed that they be substituted as appellants and allowed to prosecute the case in their own behalf.

Another motion was subsequently presented under date of April 7, 1993, this time by the legal heirs of Aurora Montinola, namely: Ofelia M. de Leon, Estela M. Jaen and Teresita M. Valderrma. They declared that they were not interested in pursuing the case, and asked that the appeal be withdrawn. Montinola's counsel opposed the motion.

On June 21, 1993, the Court of Appeals issued a Resolution: (a) ordering the substitution of the persons above mentioned - Ofelia M. de Leon, Estela M. Jaen and Teresita M. Valderama - as plaintiffs-appellant in place of the late Aurora Montinola, as well as the joinder of the spouses Ernesto and Evelyn Bofill-Sicad as additional appellants;[7] and (b) denying the motion for the withdrawal of the appeal.

On June 30, 1995, the Eighth Division of the Court of Appeals promulgated its Decision on the case affirming the judgment of the Regional Trial Court;[8] and on July 31, 1996, it denied the separate motions for reconsideration filed by Ofelia M. de Leon, Estela M. Jaen, and Teresita M. Valderrama, on the one hand, and by the spouses, Ernest and Evelyn Sicad, on the other.[9]

The Sicad Spouses have appealed to this Court; and here, they contend that the following errors were committed by the Appellate Tribunal, to wit:

- 1) "*** in ruling that the donation was inter vivos and in not giving due weight to the revocation of the donation; and
- 2) "*** in not ordering that the case be remanded for further reception of evidence." [10]

The Comment filed for private respondents (the donees) under date of December 19, 1996 deals with what they consider the "principal issue in this case ** (i.e.) whether the donation is mortis causa or inter vivos" and set forth the argument that the "donor clearly intended to effect the immediate transfer of ownership to the donees," that the prohibition in the deed of donation "against selling the property within ten (10) years after the death of the donor does not indicate that the donation is mortis causa," that the donor's "alleged act of physically keeping the title does not suggest any intention to defer the effectivity of the donation," that the "payment of real property taxes is consistent with the donor's reservation of the right of usufruct," that the donor's intent "is not determined by ** (her) self-serving post execution declarations," the "donation was never effectively revoked," and petitioners "have waived their right to question the proceedings in the trial court." [11]

The Reply of the Sicad Spouses dated March 14, 1997 reiterates their thesis that the donation was mortis causa, that "the circumstances surrounding the execution of the deed, and the subsequent actions of the donor incontrovertibly signify the donor's intent to transfer the property only after her death," that the donor "did not intend to give effect to the donation," and that the procedure adopted by the Trial Court in the case was fatally defective.[12] A "Rejoinder" dated April 3, 1997 was then submitted by the Valderamas, traversing the assertions of the Reply.[13]

Considering the focus of the opposing parties, and their conflicting theories, on the intention of Aurora Montinola in executing the document entitled "Deed of Donation Inter Vivos," it is needful to review the circumstances of the signing of that document by Montinola, as ostensible donor, and her grandchildren, as ostensible donees.

The evidence establishes that on December 11, 1979, when the deed of donation prepared by Montinol's lawyer (Atty. Treñas) was read and explained by the latter to the parties. Montinola expressed her wish that the donation take effect only after ten (10) years from her death, and that the deed include a prohibition on the sale of the property for such period. Accordingly, a new proviso was inserted in the deed reading: "however, the donees shall not sell or encumber the properties herein donated within 10 years after the death of the donor." [14] The actuality of the subsequent insertion of this new proviso is apparent on the face of the instrument; the intercalation is easily perceived and identified - it was clearly typed on a different machine, and is crammed into the space between the penultimate paragraph of the deed and that immediately preceding it. [15]

Not only did Aurora Montinola ordered the insertion in the deed of that restrictive proviso, but also, after recordation of the deed of donation, she never stopped treating the property as her own. She continued, as explicitly authorized in the deed itself, to possess the property, enjoy its fruits and otherwise exercise the rights of dominion, paying the property taxes as they fell due - all these she did until she transferred the property to the Sicad Spouses on July 10, 1990. She did not give the new certificate of title to the ostensible donees but retained too, until she delivered it to the Sicads on the occasion of the sale of the property to them. In any event, the delivery of the title to the donees would have served no useful purpose since, as just stated, they were prohibited to effect any sale or encumbrance thereof for a period of ten (10) years after the ostensible donor's decease. And consistent with these acts denoting retention of ownership of the property was Montinola's openly expressed view that the donation was ineffectual and could not be given affect even after ten (10) years from her death. For this view she sought to obtain judicial approval. She brought suit on August 24, 1990 to cancel TCT no. T-16622 (issued to her grandchildren) premised precisely on the invalidity of the donation for failure to comply with the requisites of testamentary dispositions. Before that, she attempted to undo the conveyance to her grandchildren by execution a deed of revocation of the donation on March 12, 1987, and causing annotation thereof as an adverse claim on said TCT No. T-16622. She also exercised indisputable acts of ownership over said property by executing, as just stated, deeds intended to pass title over it to third parties - petitioner herein. [16]

As already intimated, the real nature of a deed is to be ascertained by both its language and the intention of the parties as demonstrated by the circumstances attendant upon its execution. In this respect, case law has laid down significant parameters. Thus, in a decision handed down in 1946, [17] this Court construed a deed purporting to be a donation inter vivos to be in truth one mortis causa because it stipulated (like the one now being inquired into) "that all rents, proceeds, fruits, of the donated properties shall remain for the exclusive benefit and disposal of the donor, Margarita David, during her lifetime; and that, without the knowledge and consent of the donor, the donated properties could not be disposed of in any way, whether by sale, mortgage, barter, or in any other way possible." On these essential premises, the Court said, such a donation must be deemed one "mortis causa, because the combined effect of the circumstances surrounding the execution of the deed of donation and of the above-quoted clauses thereof ** (was that) the most essential elements of ownership - the right to dispose of the donated properties and the right to enjoy the products, profits, possession - remained with Margarita David during her lifetime, and would accrue to the donees only after Margarita David's death." So, too, in the case at bar, did these rights remain with Aurora Montinola during her lifetime, and could not pass to the donees until ten (10) years after her death.

In another case decided in 1954 involving similar issue, *Bonsato v. Court of Appeals*, [18] this Court emphasized that the decisive characteristics of a donation mortis causa, which it had taken into account in *David v. Sison*,

were that "the donor not only reserved for herself all the fruits of the property allegedly conveyed, but what is even more important, especially provided that 'without knowledge and consent of the donor, the donated properties could not be disposed of in any way,; thereby denying to the transferees the most essential attribute of ownership, the power to dispose of the properties."

A donation which purports to be one inter vivos but withholds from the donee that right to dispose of the donated property during the donor's lifetime is in truth one mortis causa. In a donation mortis causa - the right of disposition is not transferred to the donee while the donor is still alive." [19]

In the instant case, nothing of any consequence was transferred by the deed of donation in question to Montinola's grandchildren, the ostensible donees. They did not get possession of the property donated. They did not acquire the right to the fruits thereof, or any other right of dominion over the property. More importantly, they did not acquire the right to dispose of the property - this would accrue to them only after ten (10) years from Montinola's death. Indeed, they never even laid hands on the certificate of title to the same. They were therefore simply "paper owners" of the donated property. All these circumstances, including, to repeat, the explicit provisions of the deed of donation - reserving the exercise of rights of ownership to the donee and prohibiting the sale or encumbrance of the property until ten (10) years after her death - ineluctably lead to the conclusion that the donation in question was a donation mortis causa, contemplating a transfer of ownership to the donees only after the donor's demise.

The case of *Alejandro v. Germaldez* [20] cited by the Court of Appeals in support of its challenged judgment is not quite relevant. For in the deed of donation there in issue, there was a partial relinquishment of the right to dispose of the property, in the event only that this became necessary "to defray the expenses and support of the donors." That limited right to dispose of the donated lots, said this Court, "implies that ownership had passed to ** (the donees) by means of the donation and **, therefore, the donation was already effective during the donor's lifetime. That is the characteristic of a donation inter vivos." On the other hand, in the case at bar, the donees were expressly prohibited to make any disposition of any nature or for any purpose whatever during the donor's lifetime, and until ten (10) years after her death - a prohibition which, it may be added, makes inapplicable the ruling in *Castro v. Court of Appeals* [21] where no such prohibition was imposed, and the donor retained only the usufruct over the property.

The Valderramas' argument that the donation is inter vivos in character and that the prohibition against their disposition of the donated property is merely a condition which, if violated, would give cause for its revocation, begs the question. It assumes that they have the right to make a disposition of the property, which they do not. The argument also makes no sense, because if they had the right to dispose of the property and did in fact dispose of it to a third person, the revocation of the donation they speak of would be of no utility or benefit to the donor, since such a revocation would not necessarily result in the restoration of the donor's ownership and enjoyment of the property.

It is also error to suppose that the donation under review should be deemed one inter vivos simply because founded on considerations of love and affection. In *Alejandro v. Germaldez*, supra, [22] this Court also observed that "the fact that the donation is given in consideration of love and affection ** is not a characteristic of donation inter vivos (solely) because transfers mortis causa may also be made for the same reason." Similarly, in *Bonsato v. Court of Appeals*, supra, this Court opined that the fact "that the conveyance was due to the affection of the donor to the donees and services rendered by the latter, is of no particular significance in determining whether the deeds, Exh. '1' and '2,' constitute transfers inter vivos or not, because a legacy may have identical motivation." [23]

Finally, it is germane to advert to the legal principle in Article 1378 of the Civil Code to the effect that in the case of doubt relative to a gratuitous contract, the construction must be that entailing "the least transmission of rights and interests."^[24]

The donation in question, though denominated inter vivos, is in truth one mortis causa; it is void because the essential requisites for its validity have not been complied with.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CV No. 33202 dated June 30, 1995 as well as the Resolution denying reconsideration thereof and the Decision of the Regional Trial Court in Special Case No. 3311 are SET ASIDE. The Deed of Donation Inter Vivos (Exh. "A") executed by Aurora Virto Vda. De Montinola on December 11, 1979 in favor of Catalino M. Valderrama, Judy Cristina M. Valderrama and Jesus Antonio M. Valderrama is declared null and void. The Register of Deed of Roxas City is directed to cancel Transfer Certificate of Title No. T-16622, revive and reinstate Transfer Certificate of Title No. T-16105.

SO ORDERED.

Romero, Kapunan, and Purisima, JJ., concur.

[1] Marked Exh. A (and Exh. 2) in the proceedings before the Trial Court.

[2] Marked Exh. B (and Exh. 3) in the proceedings before the Trial Court.

[3] The revocation was based "***on the ground of ingratitude committed by said donees against my person consisting of utterances of defamatory words ** also, the said donees are engaged in criminal scheme to eliminate me so that they can immediately obtain title to and dispose of the property donated which they cannot do while I am still alive -- Montinola reiterated that act of renovatio in her holographic will dated November 21, 1988, viz.: "Teresita and her children (the Valderramas) are not good to me and they are in a hurry for me to die and they want to kill me and I personally heard it in the extension of the telephone** I am revoking all my donations to the children and grandchildren of Teresita."

[4] Rollo, pp. 75-82.

[5] SEE Annex P of petition for review (Rollo, p. 174)

[6] Rollo, pp. 133-134.

[7] On July 5, 1993, Estela M. Jaen and Teresita M. Valderama, filed a motion for their substitution as plaintiffs-appellants in place of their deceased mother Aurora de Montinola, which the Court of Appeals granted.

[8] Per Lantin, J., concurred in by Austria-Martinez and Salas, JJ.; Rollo, pp. 39-54.

[9] Rollo, p. 56.

[10] Id., p. 25.

[11] Id., pp. 183-196.

[12] Id., pp. 204-212.

[13] Id., pp. 218-221.

[14] SEE testimony of Gloria Salvilla, Montinola's private secretary – TSN, 21 December 1990, pp. 4, 12-13.

[15] SEE original record, Sp. Case No. 3311 of Trial Court: P. 9, being the second page of Exh. A (Also marked,

Exh. 2)

[16] Deed of definite sale dated May 25, 1992 executed by Montinola in favor of the spouses, Ernesto and Evelyn Sicad, later confirmed by an affidavit dated November 26, 1992; SEE page 3, *supra*

[17] *David v. Sison*, 76 Phil (1946) 418, 423.

[18] 95 Phil. (1954) 481, 489.

[19] SEE Paras, Edgardo L., *Civil Code of the Philippines*, 1994 ed., vol. II, pp. 778-779.

[20] 78 SCRA 245, 259-261

[21] 27 SCRA 1084.

[22] SEE footnote 20

[23] *Bonsato v. Court of Appeals*, *supra*, at p. 499.

[24] Said Art. 1378 pertinently provides that "[w]hen it is absolutely impossible to settle doubts by the rules established in the preceding articles, and the doubts refer to incidental circumstances of gratuitous contract, the least transmission of rights and interests shall prevail."

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