

MA. ESTELA MAGLASANG, NICOLAS CABATINGAN AND MERLY S. CABATINGAN, PETITIONERS, VS. THE HEIRS OF CORAZON CABATINGAN, NAMELY, LUZ M. BOQUIA, PERLA M. ABELLA, ESTRELLA M. CAÑETE, L...

G.R. No. 131953. June 05, 2002

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Posed for resolution before the Court in this petition for review on certiorari filed under Rule 45 of the Rules of Court is the sole issue of whether the donations made by the late Conchita Cabatingan are donations inter vivos or mortis causa.

The facts of the case are as follows:

On February 17, 1992, Conchita Cabatingan executed in favor of her brother, petitioner Nicolas Cabatingan, a “Deed of Conditional of Donation (sic) Inter Vivos for House and Lot” covering one-half (½) portion of the former’s house and lot located at Cot-cot, Liloan, Cebu.[1] Four (4) other deeds of donation were subsequently executed by Conchita Cabatingan on January 14, 1995, bestowing upon: (a) petitioner Estela C. Maglasang, two (2) parcels of land - one located in Cogon, Cebu (307 sq. m.) and the other, a portion of a parcel of land in Masbate (50,232 sq. m.); (b) petitioner Nicolas Cabatingan, a portion of a parcel of land located in Masbate (80,000 sq. m.); and (c) petitioner Merly S. Cabatingan, a portion of the Masbate property (80,000 sq. m.).[2] These deeds of donation contain similar provisions, to wit:

“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that in the event that the DONEE should die before the DONOR, the present donation shall be deemed automatically rescinded and of no further force and effect; x x x”[3] (Emphasis Ours)

On May 9, 1995, Conchita Cabatingan died.

Upon learning of the existence of the foregoing donations, respondents filed with the Regional Trial Court of Mandaue, Branch 55, an action for Annulment And/Or Declaration of Nullity of Deeds of Donations and Accounting, docketed as Civil Case No. MAN-2599, seeking the annulment of said four (4) deeds of donation executed on January 14, 1995. Respondents allege, inter alia, that petitioners, through their sinister machinations and strategies and taking advantage of Conchita Cabatingan’s fragile condition, caused the execution of the deeds of donation, and, that the documents are void for failing to comply with the provisions of the Civil Code regarding formalities of wills and testaments, considering that these are donations mortis causa.[4] Respondents prayed that a receiver be appointed in order to preserve the disputed properties, and, that they be declared as co-owners of the properties in equal shares, together with petitioner Nicolas Cabatingan.[5]

Petitioners in their Amended Answer, deny respondents' allegations contending that Conchita Cabatingan freely, knowingly and voluntarily caused the preparation of the instruments. [6]

On respondents' motion, the court a quo rendered a partial judgment on the pleadings on December 2, 1997 in favor of respondents, with the following dispositive portion:

“WHEREFORE, and in consideration of all the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendant and unwilling co-plaintiff with regards (sic) to the four Deeds of Donation Annexes “A”, “A-1”, “B” and Annex “C” which is the subject of this partial decision by:

a) Declaring the four Deeds of Donation as null and void ab initio for being a donation Mortis Causa and for failure to comply with formal and solemn requisite under Art. 806 of the New Civil Code;

b) To declare the plaintiffs and defendants as well as unwilling co-plaintiff as the heirs of the deceased Conchita Cabatingan and therefore hereditary co-owners of the properties subject of this partial decision, as mandated under Art. 777 of the New Civil Code;

SO ORDERED.”[7]

The court a quo ruled that the donations are donations mortis causa and therefore the four (4) deeds in question executed on January 14, 1995 are null and void for failure to comply with the requisites of Article 806 of the Civil Code on solemnities of wills and testaments.[8]

Raising questions of law, petitioners elevated the court a quo's decision to this Court,[9] alleging that:

“THE LOWER COURT PALPABLY DISREGARDED THE LONG-AND-WELL-ESTABLISHED RULINGS OF THIS HONORABLE SUPREME COURT ON THE CHARACTERIZATION OF DONATIONS AS INTER VIVOS OR MORTIS CAUSA AND, INSTEAD, PROCEEDED TO INTERPRET THE DONATIONS IN QUESTION IN A MANNER CONTRARY THERETO.”[10]

Petitioners insist that the donations are inter vivos donations as these were made by the late Conchita Cabatingan “in consideration of the love and affection of the donor” for the donee, and there is nothing in the deeds which indicate that the donations were made in consideration of Cabatingan's death.[11] In addition, petitioners contend that the stipulation on rescission in case petitioners die ahead of Cabatingan is a resolutory condition that confirms the nature of the donation as inter vivos.

Petitioners' arguments are bereft of merit.

In a donation mortis causa, “the right of disposition is not transferred to the donee while the donor is still alive.”[12] In determining whether a donation is one of mortis causa, the following characteristics must be taken into account:

(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;

and

(3) That the transfer should be void if the transferor should survive the transferee.[13]

In the present case, the nature of the donations as mortis causa is confirmed by the fact that the donations do not

contain any clear provision that intends to pass proprietary rights to petitioners prior to Cabatingan's death.[14] The phrase "to become effective upon the death of the DONOR" admits of no other interpretation but that Cabatingan did not intend to transfer the ownership of the properties to petitioners during her lifetime. Petitioners themselves expressly confirmed the donations as mortis causa in the following Acceptance and Attestation clauses, uniformly found in the subject deeds of donation, to wit:

"That the DONEE does hereby accept the foregoing donation mortis causa under the terms and conditions set forth therein, and avail herself of this occasion to express her profound gratitude for the kindness and generosity of the DONOR."

x x x

"SIGNED by the above-named DONOR and DONEE at the foot of this Deed of Donation mortis causa, which consists of two (2) pages x x x." [15]

That the donations were made "in consideration of the love and affection of the donor" does not qualify the donations as inter vivos because transfers mortis causa may also be made for the same reason. [16]

Well in point is *National Treasurer of the Phils. v. Vda. de Meimban*. [17] In said case, the questioned donation contained the provision:

"That for and in consideration of the love and affection which the DONOR has for the DONEE, the said Donor by these presents does hereby give, transfer, and convey unto the DONEE, her heirs and assigns a portion of ONE HUNDRED THOUSAND (100,000) SQUARE METERS, on the southeastern part Pro-indiviso of the above described property. (The portion herein donated is within Lot 2-B of the proposed amendment Plan Subdivision of Lots Nos. 1 and 2, Psu-109393), with all the buildings and improvements thereon, to become effective upon the death of the DONOR. (italics supplied.)" [18]

Notably, the foregoing provision is similar to that contained in the donation executed by Cabatingan. We held in *Meimban* case that the donation is a mortis causa donation, and that the above quoted provision establishes the donor's intention to transfer the ownership and possession of the donated property to the donee only after the former's death. Further:

"As the donation is in the nature of a mortis causa disposition, the formalities of a will should have been complied with under Article 728 of the Civil Code, otherwise, the donation is void and would produce no effect. As we have held in *Alejandro v. Germaldez* (78 SCRA 245,253), "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 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. (Citing *Bonsato v. Court of Appeals*, 95 Phil. 481)." [19]

We apply the above rulings to the present case. The herein subject deeds expressly provide that the donation shall be rescinded in case petitioners predecease Conchita Cabatingan. As stated in *Reyes v. Mosqueda*, [20] 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. This is exactly what Cabatingan provided for in her donations. If she really intended that the donation should take effect during her lifetime and that the ownership of the properties donated be transferred to the donee or independently of, and not by reason of her death, she would have not expressed such proviso in the subject deeds.

Considering that the disputed donations are donations mortis causa, the same partake of the nature of testamentary provisions [21] and as such, said deeds must be executed in accordance with the requisites on solemnities of wills and testaments under Articles 805 and 806 of the Civil Code, to wit:

“ART. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator’s name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

The attestation shall state the number of pages used upon which the will is written , and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them. (n)

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. (n)”

The deeds in question although acknowledged before a notary public of the donor and the donee, the documents were not executed in the manner provided for under the above-quoted provisions of law.

Thus, the trial court did not commit any reversible error in declaring the subject deeds of donation null and void.

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

SO ORDERED.

Vitug, (Acting Chairman),and Kapunan, JJ., concur.
Davide, Jr., C.J., and Ynares-Santiago, J., on official leave.

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- [1] Original Records, See Annex “D”, pp. 107-108.
[2] Original Records, See Annexes “A” to “C”, pp. 99-106.
[3] Ibid.
[4] Original Records, Amended Complaint, pp. 93-97.
[5] Original Records, p. 97.
[6] Amended Answer, pp. 2-3; Original Records, pp. 125-126.
[7] Decision, p. 8; Original Records, p. 207.
[8] Original Records, See Partial Decision dated December 2, 1997, p. 200.
[9] The petition was given due course per S.C. Resolution dated April 24, 1998.
[10] Petition, p. 5; Rollo, p. 17.
[11] Petition, pp. 13-14; Rollo, pp. 25-26.
[12] Sicad v. Court of Appeals, 294 SCRA 183 [1998], p. 193.

[13] Reyes v. Mosqueda, 187 SCRA 661 [1990], at pp. 670-671, citing Bonsato, et al. v. Court of Appeals, et al., 95 Phil. 481 [1954].

[14] Rollo, See Annexes “B” to “E”, pp. 45-51.

[15] Rollo, Annexes “B” to “E”, pp. 45-52.

[16] Sicad v. Court of Appeals, supra, p. 194, citing Alejandro v. Geraldez, 78 SCRA 245 [1977].

[17] 131 SCRA 264 [1984].

[18] Ibid., p. 269.

[19] Ibid, p. 270.

[20] See Note 13.

[21] Article 728, Civil Code.

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