

TORIBIA FONTANILLA, ET AL., PLAINTIFFS AND APPELLANTS, VS. MANUELA PACIO, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 15088. January 31, 1961

Ponente: BENGZON, J.

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BENGZON, J.:

In 1901, Flaviano Pacio married Severa Jucutan. Herein defendants were their children. Severa died in 1930; and thereafter Flaviano married the plaintiff Toribia Fontanilla, who bore him the other four plaintiffs.

The dispute between the parties in the La Union court of first instance, concerned two parcels of land which defendants allegedly retained without any right thereto. The litigants later agreed to a partition of the first parcel, and the court so decreed.

As to the second parcel, a hearing was held, and it was awarded to the defendants, on the ground that it had been donated propter nuptias to Severa, in 1901, by Flaviano Pacio, who was then admittedly the owner.

According to the stipulation of facts:

"* * * a donation propter nuptias was made in a private instrument by Flaviano Pacio in favor of his first wife, Severa Jucutan, before their marriage on June 4, 1901 * * *.

3. That the land continued to be declared in the name of Flaviano Pacio notwithstanding this donation propter nuptias until 1956 when the same was changed in the name of the defendants Brigida Manuela and Dominga, all surnamed Pacio;

4. That land taxes were paid in the name of Flaviano Pacio as shown by tax receipts for the years 1931, 1933, 1934, 1935, 1940, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1955, and 1956;

5. That Flaviano Pacio died on November 2, 1951; * * *

8. That defendants lived with their father and the second wife, Toribia Fontanilla, from the date of their marriage in 1933, except Manuela who left on the date of her marriage in 1941, and returned in 1946, and Dominga who left in 1943 and Brigida is presently living with the other defendants;

9. That while the plaintiffs and the defendants lived together during the said period, they equally shared all the harvests reaped from the land in litigation;

10. That the land taxes were paid both parcels (a) and (b) in the names of the defendants starting with the year 1957 when the tax declarations were changed into their names on December 20, 1956; * * *."

The plaintiffs-appellants contend that the donation was void, because it was not made in a public instrument. They are right. Art. 633 of the Spanish Civil Code states that "In order that a donation of real property be valid it must be made by public instrument in which the property donated must be specifically described and the amount of the encumbrances to be assumed by the donee expressed * * *."

And this Court has held that a donation propter nuptias of real property written on a private instrument is not valid even between the parties.[1]

The trial judge said "a donation propter nuptias in order to be valid between the donor and the donee, need not be embodied in a public instrument as such formality is only necessary for registration purposes in the office of the Register of Deeds" so as to bind third persons. He was obviously applying the new principles in the Philippine Civil Code effective in the year 1950.[2] But in 1901 when the gift was made, the law was contained in the Spanish Civil Code, according to which, even between the parties, the donation must be in a public instrument.

Realizing the force of plaintiffs' point, defendants emphasize that the deed of donation constituted a title on which to base acquisitive prescription, inasmuch as Severa possessed the land from 1901 to March 1930 when she died. The stipulation of facts says nothing about such possession. True, there was a witness, Monica Pacio, who testified; but she stated that both husband and wife held possession of the land, and the stipulation says that from 1933 the parties shared the harvest equally. At any rate, it is obvious that normally, prescription by adverse possession can not exist between husband and wife. See Art. 1109, Civil Code of the Philippines.

Espique vs. Espique[3] on which the appellees rely is not controlling because the prescription there mentioned did not refer to possession by the wife as against her husband.

It follows that Flaviano Pacio continued to be the owner of the land as the donation had no effect and there was no prescription. Upon his death, the land became the joint property of his children by the first and second marriage. Subject of course to the rights of his surviving spouse, the plaintiff Toribia Fontanilla.

Reversing the decision in so far as this parcel is concerned, we hereby order the return of the expediente to the court below for further proceedings on partition in accordance with these views.

Paras, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

[1]Velasquez vs. Biala, 18 Phil., 231; Solis vs. Barroso, 53 Phil. 912.

[2] Arts. 127, 1403, Civil Code of the Philippines.

[3] Phil., 369; 47 Off. Gaz., 4079.

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