

**ANGELES UBALDE PUIG, ET AL., PLAINTIFFS-APPELLANTS, VS.
ESTELA MAGBANUA PEÑAFLORIDA, ET AL.,
DEFENDANTS-APPELLANTS.**

G. R. No. 15939. January 31, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Defendants-appellants Estela Magbanua Peñaflorida, et al., insist that the reservation by the donor of the right to dispose of the property during her lifetime in the deed of December 28, 1949 indicates that title had passed to the donee in her lifetime; otherwise, it is argued, the reservation would be superfluous, and they cite American authorities in support.

This thesis would be plausible if the reservation of the power to dispose were the only indication to be considered in deciding whether the donation of December 28, 1949 was mortis causa or inter vivos. But such is not the case. The Court in its decision took into account not only the foregoing circumstance but also the fact that the deceased expressly and consistently declared her conveyance to be one of donation mortis causa, and further forbade the registration of the deed until after her death. All these features concordantly indicated that the conveyance was not intended to produce any definitive effects, nor to finally pass any interest to the grantee, except from and after the death of the grantor.

We see nothing in the deed itself to indicate that any right, title or interest in the properties described was meant to be transferred to Doña Estela Magbanua prior to the death of the grantor, Carmen Ubalde Vda. de Parcon. Not ownership, certainly, for the stipulation:

"Que esta escritura de donación mortis causa no se registrara en la oficina del Registrador de Titulos de Iloilo sino despues del fallecimiento de la Donante"

necessarily meant, according to section 50 of the Land Registration Act, that the deed in question should not take effect as a conveyance nor bind the land until after the death of the "donor".

Neither did the document operate to vest possession upon Doña Estela Magbanua, in view of the express condition that (paragraph 3) if at the date of her death the donor had not transferred, sold, or conveyed one-half of lot 58 of the Pototan Cadastre to other persons or entities, the donee would be bound to pay to Caridad Ubalde, married to Tomas Pedrola, the amount of P600.00, and such payment was to be made on the date the donee took possession of Lot No. 58. As the obligation to pay the legacy to Caridad Ubalde would not definitely arise until after the death of the donor, because only by then would it become certain that the "donor" could not transfer the property to someone else, and such payment must precede the taking possession of the property "donated", it necessarily follows that the "donee's" taking of possession could not occur before the death of the donor.

It being thus clear that the disposition contained in the deed is one that produces no effect until the death of the grantor, we are clearly faced by an act mortis causa of the Roman and Spanish law. We thus see no need of

resorting to American authorities as to the import of the reservation of the donor's right to dispose of the donated property, for the Spanish authorities are very clear on this point:

"Desde el momento en que la muerte del donante es la que determina la adquisición ó el derecho a los bienes; desde el momento en que la disposición puede ser revocada voluntariamente, se salva la línea divisoria entre unos y otros actos: la donación equivale a un legado; más aún que esto: es un legado en realidad." (5 Manresa, 5th Ed., p. 107)

"Ahora bien: si el mal llamado donante no solo dilata la fecha de la ejecución para el momento de su muerte, sino que además se reserva la facultad de revocar a su arbitrio la disposición, entonces el acto no es válido bajo la forma de contrato; hay en realidad una disposición mortis causa que exige las solemnidades del testamento." (V Manresa, 5th Ed., p. 109) (Emphasis supplied)

The presence of an acceptance is but a consequence of the erroneous concept of the true nature of the juridical act, and does not indicate that the same is a true donation inter vivos.

Appellant Magbanua further argues that the reserved power of the donor to convey the donated property to other parties during her lifetime is but a resolutive condition (albeit a potestative one) that confirms the passing of the title to the donee. In reality, this argument is a veritable *petitio principii*; it takes for granted what has to be proved, i.e., that some proprietary right has passed under the terms of the deed, which, as we have shown, is not true until the donor has died.

It is highly illuminating to compare the condition imposed in the deed of donation of December 28, 1949 with that established in the contract dealt with in *Taylor vs. Uy Tieng Piao & Tan Liuan*, 43 Phil. 874, invoked by appellants.

In the alleged deed of donation of December 28, 1949, the late Doña Carmen Ubalde imposed expressly that:

"Que antes de su muerte, la Donante podrá enajenar, vender, traspasar ó hipotecar a cualesquiera personas ó entidades los bienes aquí donados a favor de la Donataria en concepto de Donación mortis causa."

In the *Taylor vs. Uy Tieng Piao* case, on the other hand, the condition read:

"It is understood and agreed that should the machinery to be installed in said factory fail, for any reason, to arrive, in the City of Manila within the period of six months from date hereof, this contract may be cancelled by the party of the second part at its option, such cancellation, however, not to occur before the expiration of such six months." (pp. 874-875, *cas. cit.*).

In the *Uy Tieng Piao* case the contract could only be cancelled after six months, so that there could be no doubt that it was in force at least for that long, and the optional cancellation can be viewed as a resolutive condition (or more properly, a non-retroactive revocatory one); but no such restriction limited the power of the donor, Doña Carmen Ubalde, to set at naught the alleged conveyance in favor of Doña Estela Magbanua by conveying the property to other parties at any time, even at the very next instant after executing the donation, if she so chose. It requires no argument to demonstrate that the power, as reserved in the deed, was a power to destroy the donation at any time, and that it meant that the transfer is not binding on the grantor until her death made it impossible to channel the property elsewhere. Which, in the last analysis, as held in our main decision, signifies that the liberality is testamentary in nature, and must appear with the solemnities required of last wills and testaments in order to be legally valid.

WHEREFORE, the motion to reconsider is denied.

Bengzon, , C.J., Concepcion, Dizon, Regala, Bengzon, JP, and Zaldivar, JJ., concur.

Barrera, J., no part.

Makalintal, J., on leave.

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