

DANILO ALUAD, LEONORA ALUAD, DIVINA ALUAD, PROSPERO ALUAD, AND CONNIE ALUAD, PETITIONERS, VS. ZENAIDO ALUAD, RESPONDENT.

G.R. No. 176943. October 17, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioners' mother, Maria Aluad (Maria), and respondent Zenaido Aluad were raised by the childless spouses Matilde Aluad (Matilde) and Crispin Aluad (Crispin).

Crispin was the owner of six lots identified as Lot Nos. 674, 675, 676, 677, 680, and 682 of the Pilar Cadastre, Capiz. After Crispin died, his wife Matilde adjudicated the lots to herself.[1]

On November 14, 1981, Matilde executed a document entitled "Deed of Donation of Real Property Inter Vivos"[2] (Deed of Donation) in favor of petitioners' mother Maria[3] covering all the six lots which Matilde inherited from her husband Crispin. The Deed of Donation provided:

That, for and in consideration of the love and affection of the DONOR [Matilde] for the DONEE [Maria], the latter being adopted and hav[ing] been brought up by the former the DONOR, 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death of the DONOR, but in the event that the DONEE should die before the DONOR, the present donation shall be deemed rescinded and [of] no further force and effect; Provided, however, that anytime during the lifetime of the DONOR or anyone of them who should survive, they could use[,] encumber or even dispose of any or even all of the parcels of land herein donated.[4] (Emphasis and underscoring supplied)

On September 30, 1986, Original Certificates of Title over Lot Nos. 674 and 676 were issued in Matilde's name.

On August 26, 1991, Matilde sold Lot No. 676 to respondent by a Deed of Absolute Sale of Real Property.[5]

Subsequently or on January 14, 1992, Matilde executed a last will and testament,[6] devising Lot Nos. 675, 677, 682, and 680 to Maria, and her "remaining properties" including Lot No. 674 to respondent.

Matilde died on January 25, 1994, while Maria died on September 24 of the same year.[7]

On August 21, 1995, Maria's heirs-herein petitioners filed before the Regional Trial Court (RTC) of Roxas City a Complaint,[8] for declaration and recovery of ownership and possession of Lot Nos. 674 and 676, and damages against respondent, alleging:

That in 1978, plaintiff[s] possessed the two (2) parcels of land above-described until January 1991 when defendant entered and possessed the two (2) parcels of land claiming as the adopted son of Crispin Aluad who refused to give back possession until Matilde Aluad died in [1994] and then retained the possession thereof up to and until the present time, thus, depriving the plaintiffs of the enjoyment of said parcels of land x x x;

That after the death of Matilde R. Aluad, the plaintiffs succeeded by inheritance by right of representation from

their deceased mother, Maria Aluad who is the sole and only daughter of Matilde Aluad[.][9]

To the complaint respondent alleged in his Answer.[10]

That Lot 674 is owned by the defendant as this lot was adjudicated to him in the Last Will and Testament of Matilde Aluad x x x while Lot 676 was purchased by him from Matilde Aluad. These two lots are in his possession as true owners thereof.[11] (Underscoring supplied)

Petitioners later filed a Motion for Leave to Amend Complaint Already Filed to Conform to Evidence[12] to which it annexed an Amended Complaint[13] which cited the donation of the six lots via Deed of Donation in favor of their mother Maria. Branch 15 of the RTC granted the motion and admitted the Amended Complaint.[14]

Respondent filed an Amended Answer[15] contending, inter alia, that the Deed of Donation is forged and falsified and petitioners' change of theory showed that "said document was not existing at the time they filed their complaint and was concocted by them after realizing that their false claim that their mother was the only daughter of Matild[e] Aluad cannot in anyway be established by them";[16] and that if ever said document does exist, the same was already revoked by Matilde "when [she] exercised all acts of dominion over said properties until she sold Lot 676 to defendant and until her death with respect to the other lots without any opposition from Maria Aluad." [17]

The trial court, by Decision[18] of September 20, 1996, held that Matilde could not have transmitted any right over Lot Nos. 674 and 676 to respondent, she having previously alienated them to Maria via the Deed of Donation. Thus it disposed:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

- Declaring the plaintiffs as the rightful owners of the subject Lots Nos. 674 and 676, Pilar Cadastre;
- Ordering the defendant to deliver the possession of the subject lots to the plaintiffs;
- Ordering the defendant to pay the plaintiffs:
- Thirty thousand pesos (P30,000.00) as attorney's fees;
- Twenty thousand pesos (P20,000.00), representing the income from subject Lot 676, a year from 1991 up to the time said lot is delivered to the plaintiffs, together with the interest thereof at the legal rate until fully paid;
- Ten thousand pesos (P10,000.00), representing the income from the subject Lot No. 674, a year from 1991 up to the time said lot is delivered to the plaintiffs, plus legal interest thereof at the legal rate until fully paid; and
- The costs of the suit.

Defendant's counterclaim is ordered dismissed for lack of merit.

SO ORDERED.[19]

On petitioners' motion, the trial court directed the issuance of a writ of execution pending appeal.[20] Possession of the subject lots appears to have in fact been taken by petitioners.

By Decision[21] of August 10, 2006, the Court of Appeals reversed the trial court's decision, it holding that the Deed of Donation was actually a donation mortis causa, not inter vivos, and as such it had to, but did not, comply with the formalities of a will. Thus, it found that the Deed of Donation was witnessed by only two witnesses and had no attestation clause which is not in accordance with Article 805 of the Civil Code, reading:

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 that 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.

While the appellate court declared respondent as the rightful owner of Lot No. 676, it did not so declare with respect to Lot No. 674, as Matilde's last will and testament had not yet been probated. Thus the Court of Appeals disposed:

WHEREFORE, finding the instant petition worthy of merit, the same is hereby GRANTED and the Decision of the Regional Trial Court of Roxas City, Branch 15, dated 20 September 1996, in Civil Case No. V-6686 for declaration of ownership, recovery of ownership and possession, and damages is REVERSED and SET ASIDE.

A new one is entered in its stead declaring defendant-appellant as the lawful owner of Lot [No.] 676 of the Pilar Cadastre. Accordingly, plaintiffs-appellees are directed to return the possession of the said lot to the defendant-appellant.

Moreover, plaintiffs-appellees are ordered to pay P40,000.00 to defendant-appellant as attorney's fees and litigation expenses.

Costs against plaintiffs-appellees.

SO ORDERED.[22] (Emphasis in the original; underscoring supplied)

Their Motion for Reconsideration[23] having been denied,[24] petitioners filed the present Petition for Review,[25] contending that the Court of Appeals erred

I

X X X WHEN IT REVERSED THE DECISION OF THE COURT BELOW (RTC, Branch 15, Roxas City) HOLDING THAT THE DEED OF DONATION INTER VIVOS IN FAVOR OF PETITIONERS' MOTHER IS IN FACT A DONATION MORTIS CAUSA.

II

X X X WHEN IT RULED THAT RESPONDENT IS THE RIGHTFUL OWNER OF LOT NO. 676 AS LOT BUYER ON THE BASIS OF A DEED OF SALE EXECUTED BY THE DONOR WHO HAD NO MORE RIGHT TO SELL THE SAME.

III

X X X WHEN IT FAILED TO DECLARE PETITIONERS THE RIGHTFUL OWNER OF LOT NO. 674 AFTER HAVING RULED WHEN IT HELD THAT RESPONDENT CANNOT BE DECLARED OWNER THEREOF.

IV

X X X WHEN IT HELD THAT THE ISSUANCE OF A WRIT OF EXECUTION PENDING APPEAL IS IN VIOLATION OF PARAGRAPH (a) SECTION 2, RULE 39, OF THE RULES OF COURT (AND ORDERING PETITIONERS TO RETURN POSSESSION OF LOT 676 TO RESPONDENT) AND ORDERING PETITIONERS TO PAY ATTORNEY'S FEES AND COST[S] OF SUIT.[26]

As did the appellate court, the Court finds the donation to petitioners' mother one of mortis causa, it having the following characteristics:

(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 the death of the transferor, 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.[27] (Emphasis and underscoring supplied)

The phrase in the earlier-quoted Deed of Donation "to become effective upon the death of the DONOR" admits of no other interpretation than to mean that Matilde did not intend to transfer the ownership of the six lots to petitioners' mother during her (Matilde's) lifetime.[28]

The statement in the Deed of Donation reading "anytime during the lifetime of the DONOR or anyone of them who should survive, they could use, encumber or even dispose of any or even all the parcels of land herein donated"[29] means that Matilde retained ownership of the lots and reserved in her the right to dispose them. For the right to dispose of a thing without other limitations than those established by law is an attribute of ownership.[30] The phrase in the Deed of Donation "or anyone of them who should survive" is of course out of sync. For the Deed of Donation clearly stated that it would take effect upon the death of the donor, hence, said phrase could only have referred to the donor Matilde. Petitioners themselves concede that such phrase does not refer to the donee, thus:

x x x [I]t is well to point out that the last provision (sentence) in the disputed paragraph should only refer to Matilde Aluad, the donor, because she was the only surviving spouse at the time the donation was executed on 14 November 1981, as her husband - Crispin Aluad [-] had long been dead as early as 1975.[31]

The trial court, in holding that the donation was inter vivos, reasoned:

x x x The donation in question is subject to a resolutive term or period when the donor provides in the aforequoted provisions, "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". When the donor provides that should the "DONEE" xxx die before the DONOR, the present donation shall be deemed rescinded and [of] no further force and effect" the logical construction thereof is that after the execution of the subject donation, the same became effective immediately and shall be "deemed rescinded and [of] no further force and effect" upon the arrival of a resolutive term or period, i.e., the death of the donee which shall occur before that of the donor. Understandably, the arrival of this resolutive term or period cannot rescind and render of no further force and

effect a donation which has never become effective, because, certainly what donation is there to be rescinded and rendered of no further force and effect upon the arrival of said resolutive term or period if there was no donation which was already effective at the time when the donee died?[32] (Underscoring supplied)

A similar ratio in a case had been brushed aside by this Court, however, thus:

x x x [P]etitioners contend that the stipulation on rescission in case petitioners [donee] die ahead of [donor] Cabatingan is a resolutive condition that confirms the nature of the donation as inter vivos.

Petitioners' arguments are bereft of merit.[33]

x x x x

x x x The herein subject deeds expressly provide that the donation shall be rescinded in case [donees] the petitioners predecease [the donor] Conchita Cabatingan. As stated in *Reyes v. Mosqueda*, 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 to the donee or independently of, and not by reason of her death, she would not have expressed such proviso in the subject deeds.[34] (Underscoring supplied)

As the Court of Appeals observed, "x x x [t]hat the donation is mortis causa is fortified by Matilde's acts of possession as she continued to pay the taxes for the said properties which remained under her name; appropriated the produce; and applied for free patents for which OCTs were issued under her name." [35]

The donation being then mortis causa, the formalities of a will should have been observed[36] but they were not, as it was witnessed by only two, not three or more witnesses following Article 805 of the Civil Code.[37]

Further, the witnesses did not even sign the attestation clause[38] the execution of which clause is a requirement separate from the subscription of the will and the affixing of signatures on the left-hand margins of the pages of the will. So the Court has emphasized:

x x x Article 805 particularly segregates the requirement that the instrumental witnesses sign each page of the will from the requisite that the will be "attested and subscribed by [the instrumental witnesses]. The respective intents behind these two classes of signature[s] are distinct from each other. The signatures on the left-hand corner of every page signify, among others, that the witnesses are aware that the page they are signing forms part of the will. On the other hand, the signatures to the attestation clause establish that the witnesses are referring to the statements contained in the attestation clause itself. Indeed, the attestation clause is separate and apart from the disposition of the will. An unsigned attestation clause results in an unattested will. Even if the instrumental witnesses signed the left-hand margin of the page containing the unsigned attestation clause, such signatures cannot demonstrate these witnesses' undertakings in the clause, since the signatures that do appear on the page were directed towards a wholly different avowal.

x x x It is the witnesses, and not the testator, who are required under Article 805 to state the number of pages used upon which the will is written; the fact that the testator had signed the will and every page thereof; and that they witnessed and signed the will and all the pages thereof in the presence of the testator and of one another. The only proof in the will that the witnesses have stated these elemental facts would be their signatures on the attestation clause.[39] (Emphasis and underscoring supplied)

Furthermore, the witnesses did not acknowledge the will before the notary public,[40] which is not in accordance with the requirement of Article 806 of the Civil Code that every will must be acknowledged before a notary public by the testator and the witnesses.

More. The requirement that all the pages of the will must be numbered correlatively in letters placed on the upper

part of each page was not also followed.[41]

The Deed of Donation which is, as already discussed, one of mortis causa, not having followed the formalities of a will, it is void and transmitted no right to petitioners' mother. But even assuming arguendo that the formalities were observed, since it was not probated, no right to Lot Nos. 674 and 676 was transmitted to Maria.[42] Matilde thus validly disposed of Lot No. 674 to respondent by her last will and testament, subject of course to the qualification that her (Matilde's) will must be probated. With respect to Lot No. 676, the same had, as mentioned earlier, been sold by Matilde to respondent on August 26, 1991.

Petitioners nevertheless argue that assuming that the donation of Lot No. 674 in favor of their mother is indeed mortis causa, hence, Matilde could devise it to respondent, the lot should nevertheless have been awarded to them because they had acquired it by acquisitive prescription, they having been in continuous, uninterrupted, adverse, open, and public possession of it in good faith and in the concept of an owner since 1978.[43]

Petitioners failed to raise the issue of acquisitive prescription before the lower courts, however, they having laid their claim on the basis of inheritance from their mother. As a general rule, points of law, theories, and issues not brought to the attention of the trial court cannot be raised for the first time on appeal.[44] For a contrary rule would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.[45]

WHEREFORE, the petition is DENIED.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., Concur.

[1] Exhibit "G," Records, pp. 172-173.

[2] Exhibit "A," id. at 164-165.

[3] Maria Aluad, as donee, accepted the donation as expressly stated in the deed and confirmed by her signature thereon (Exhibit "A-3," [vide note 2]).

[4] Exhibit "A-1," id. at 164.

[5] Exhibit "1," id. at 221.

[6] Exhibit "2," id. at 222-223.

[7] Exhibits "B" - "C," id. at 166-167.

[8] Id. at 1-6.

[9] Id. at 3.

[10] Id. at 15-21.

[11] Id. at 18-19.

[12] Id. at 102-104.

[13] Id. at 105-110.

[14] Id. at 121-122.

[15] Id. at 132-139.

[16] Id. at 134.

[17] Id. at 136-137.

[18] Id. at 238-247.

[19] Id. at 246-247.

[20] Id. at 260-261.

[21] Penned by Court of Appeals Associate Justice Priscilla Baltazar-Padilla, with the concurrence of Associate Justices Pampio A. Abarintos and Marlene Gonzales-Sison; CA rollo, pp. 130-146.

[22] Id. at 145-146.

[23] Id. at 155-159.

[24] Id. at 166-167.

[25] Rollo, pp. 18-50.

[26] Id. at 29-30.

[27] *Maglasang v. Heirs of Corazon Cabatingan*, 432 Phil. 548, 554 (2002); *Reyes v. Mosqueda*, G.R. No. 45262, July 23, 1990, 187 SCRA 661, 670-671; *Bonsato, et al. v. Court of Appeals, et al.*, 95 Phil. 481, 487 (1954).

[28] *Ibid.*

[29] Exhibit "A-1," records, p. 164.

[30] Vide CIVIL CODE, Article 428: "The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law x x x."

[31] Rollo, p. 37.

[32] Records, pp. 242-243.

[33] *Maglasang v. Heirs of Corazon Cabatingan*, *supra* note 27 at 553-554.

[34] Id. at 556.

[35] CA rollo, p. 140.

[36] CIVIL CODE, Article 728:

Donations which are to take effect upon the death of the donor partake of the nature of testamentary provisions and shall be governed by the rules established in the Title on Succession.

Alejandro v. Judge Geraldez, 168 Phil. 404, 414-415 (1977).

[37] CIVIL CODE, Article 805.

[38] Exhibit "A," records, p. 165.

[39] *Azuela v. Court of Appeals*, G.R. No. 122880, April 12, 2006, 487 SCRA 119, 141-142. Vide *Cagro v. Cagro*, 92 Phil. 1032, 1033-1034 (1953).

[40] Exhibit "A," records, p. 165.

[41] Id. at 164-165. Vide CIVIL CODE, Article 805.

[42] Rules of Court, Rule 75, Section 1.

[43] Rollo, p. 43.

[44] Vide General Credit Cooperation v. Alsons Development and Investment Corporation, G.R. No. 154975, January 29, 2007, 513 SCRA 225, 235-236 (citations omitted).

[45] Vide Philippine Ports Authority v. City of Iloilo, 453 Phil. 927, 934 (2003) (citation omitted).

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