JARABINI G. DEL ROSARIO, PETITIONER, VS. ASUNCION G. FERRER, SUBSTITUTED BY HER HEIRS, VICENTE, PILAR, ANGELITO, FELIXBERTO, JR., ALL SURNAMED G. FERRER, AND MIGUELA FERRER ALTE...

G.R. No. 187056. September 20, 2010

Ponente: ABAD, J.

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ABAD, J.:

This case pertains to a gift, otherwise denominated as a donation mortis causa, which in reality is a donation inter vivos made effective upon its execution by the donors and acceptance thereof by the donees, and immediately transmitting ownership of the donated property to the latter, thus precluding a subsequent assignment thereof by one of the donors.

The Facts and the Case

On August 27, 1968 the spouses Leopoldo and Guadalupe Gonzales executed a document entitled "Donation Mortis Causa"[1] in favor of their two children, Asuncion and Emiliano, and their granddaughter, Jarabini (daughter of their predeceased son, Zoilo) covering the spouses' 126-square meter lot and the house on it in Pandacan, Manila[2] in equal shares. The deed of donation reads:

> It is our will that this Donation Mortis Causa shall be irrevocable and shall be respected by the surviving spouse.
>
> It is our will that Jarabini Gonzales-del Rosario and Emiliano Gonzales will continue to occupy the portions now occupied by them.
>
> It is further our will that this DONATION MORTIS CAUSA shall not in any way affect any other distribution of other properties belonging to any of us donors whether testate or intestate and where ever situated.
>
> It is our further will that any one surviving spouse reserves the right, ownership, possession and administration of this property herein donated and accepted and this Disposition and Donation shall be operative and effective upon the death of the DONORS.[3]

Although denominated as a donation mortis causa, which in law is the equivalent of a will, the deed had no attestation clause and was witnessed by only two persons. The named donees, however, signified their acceptance of the donation on the face of the document.

Guadalupe, the donor wife, died in September 1968. A few months later or on December 19, 1968, Leopoldo, the donor husband, executed a deed of assignment of his rights and interests in subject property to their daughter Asuncion. Leopoldo died in June 1972.

In 1998 Jarabini filed a "petition for the probate of the August 27, 1968 deed of donation mortis causa" before the Regional Trial Court (RTC) of Manila in Sp. Proc. 98-90589.[4] Asuncion opposed the petition, invoking his

father Leopoldo's assignment of his rights and interests in the property to her.

After trial, the RTC rendered a decision dated June 20, 2003,[5] finding that the donation was in fact one made inter vivos, the donors' intention being to transfer title over the property to the donees during the donors' lifetime, given its irrevocability. Consequently, said the RTC, Leopoldo's subsequent assignment of his rights and interest in the property was void since he had nothing to assign. The RTC thus directed the registration of the property in the name of the donees in equal shares.[6]

On Asuncion's appeal to the Court of Appeals (CA), the latter rendered a decision on December 23, 2008,[7] reversing that of the RTC. The CA held that Jarabini cannot, through her petition for the probate of the deed of donation mortis causa, collaterally attack Leopoldo's deed of assignment in Asuncion's favor. The CA further held that, since no proceeding exists for the allowance of what Jarabini claimed was actually a donation inter vivos, the RTC erred in deciding the case the way it did. Finally, the CA held that the donation, being one given mortis causa, did not comply with the requirements of a notarial will,[8] rendering the same void. Following the CA's denial of Jarabini's motion for reconsideration,[9] she filed the present petition with this Court.

Issue Presented

The key issue in this case is whether or not the spouses Leopoldo and Guadalupe's donation to Asuncion, Emiliano, and Jarabini was a donation mortis causa, as it was denominated, or in fact a donation inter vivos.

The Court's Ruling

That the document in question in this case was captioned "Donation Mortis Causa" is not controlling. This Court has held that, if a donation by its terms is inter vivos, this character is not altered by the fact that the donor styles it mortis causa.[10]

In Austria-Magat v. Court of Appeals,[11] the Court held that "irrevocability" is a quality absolutely incompatible with the idea of conveyances mortis causa, where "revocability" is precisely the essence of the act. A donation mortis causa has 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 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.[12] (Underscoring supplied)

The Court thus said in Austria-Magat that the express "irrevocability" of the donation is the "distinctive standard that identifies the document as a donation inter vivos." Here, the donors plainly said that it is "our will that this Donation Mortis Causa shall be irrevocable and shall be respected by the surviving spouse." The intent to make the donation irrevocable becomes even clearer by the proviso that a surviving donor shall respect the irrevocability of the donation. Consequently, the donation was in reality a donation inter vivos.

The donors in this case of course reserved the "right, ownership, possession, and administration of the property" and made the donation operative upon their death. But this Court has consistently held that such reservation (reddendum) in the context of an irrevocable donation simply means that the donors parted with their naked title, maintaining only beneficial ownership of the donated property while they lived.[13]

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Notably, the three donees signed their acceptance of the donation, which acceptance the deed required.[14] This Court has held that an acceptance clause indicates that the donation is inter vivos, since acceptance is a requirement only for such kind of donations. Donations mortis causa, being in the form of a will, need not be accepted by the donee during the donor's lifetime.[15]

Finally, as Justice J. B. L. Reyes said in Puig v. Peñaflorida,[16] in case of doubt, the conveyance should be deemed a donation inter vivos rather than mortis causa, in order to avoid uncertainty as to the ownership of the property subject of the deed.

Since the donation in this case was one made inter vivos, it was immediately operative and final. The reason is that such kind of donation is deemed perfected from the moment the donor learned of the donee's acceptance of the donation. The acceptance makes the donee the absolute owner of the property donated.[17]

Given that the donation in this case was irrevocable or one given inter vivos, Leopoldo's subsequent assignment of his rights and interests in the property to Asuncion should be regarded as void for, by then, he had no more rights to assign. He could not give what he no longer had. Nemo dat quod non habet.[18]

The trial court cannot be faulted for passing upon, in a petition for probate of what was initially supposed to be a donation mortis causa, the validity of the document as a donation inter vivos and the nullity of one of the donor's subsequent assignment of his rights and interests in the property. The Court has held before that the rule on probate is not inflexible and absolute.[19] Moreover, in opposing the petition for probate and in putting the validity of the deed of assignment squarely in issue, Asuncion or those who substituted her may not now claim that the trial court improperly allowed a collateral attack on such assignment.

WHEREFORE, the Court GRANTS the petition, SETS ASIDE the assailed December 23, 2008 Decision and March 6, 2009 Resolution of the Court of Appeals in CA-G.R. CV 80549, and REINSTATES in toto the June 20, 2003 Decision of the Regional Trial Court of Manila, Branch 19, in Sp. Proc. 98-90589.

SO ORDERED.

Carpio, Peralta, Bersamin,[*] and Perez,[**] JJ., concur.

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[*] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order 886 dated September 1, 2010.

[**] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order 894 dated September 20, 2010.

[1] Rollo, p. 101.

[2] Covered by Transfer Certificate of Title (TCT) 101873.

[3] Supra note 1.

[4] "In the Matter of the Petition for the Allowance of the Donation Mortis Causa of Leopoldo Gonzales. Jarabini del Rosario, Petitioner."

[5] Rollo, pp. 125-128.

[6] Id. at 128.

[7] Id. at 54-64; penned by Associate Justice Apolinario D. Bruselas, Jr. with the concurrence of Associate

Justices Bienvenido L. Reyes and Mariflor P. Punzalan Castillo.

[8] Art. 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.

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.

[9] Rollo, p. 66.

[10] Concepcion v. Concepcion, 91 Phil. 823, 828 (1952).

[11] 426 Phil. 263 (2002).

[12] Aluad v. Aluad, G.R. No. 176943, October 17, 2008, 569 SCRA 697, 705-706.

[13] Austria-Magat v. Court of Appeals, supra note 11, at 274; Spouses Gestopa v. Court of Appeals, 396 Phil. 262, 271 (2000); Alejandro v. Judge Geraldez, 168 Phil. 404, 420-421 (1977); Cuevas v. Cuevas, 98 Phil. 68, 71 (1955); Bonsato v. Court of Appeals, 95 Phil. 481, 488 (1954).

[14] Rollo, p. 101.

[15] Austria-Magat v. Court of Appeals, supra note 11, at 276-277.

[16] 122 Phil. 665, 672 (1965).

[17] Heirs of Sevilla v. Sevilla, 450 Phil. 598, 613 (2003).

[18] Gochan & Sons Realty Corp. v. Heirs of Raymundo Baba, 456 Phil. 569, 579 (2003).

[19] Reyes v. Court of Appeals, 346 Phil. 266, 273 (1997).

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