MANUEL A. ECHAVEZ, PETITIONER, VS. DOZEN CONSTRUCTION AND DEVELOPMENT CORPORATION AND THE REGISTER OF DEEDS OF CEBU CITY, RESPONDENTS.

G.R. No. 192916. October 11, 2010

Ponente: BRION, J.

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BRION, J.:

Vicente Echavez (Vicente) was the absolute owner of several lots in Cebu City, which includes Lot No. 1956-A and Lot No. 1959 (subject lots). On September 7, 1985, Vicente donated the subject lots to petitioner Manuel Echavez (Manuel) through a Deed of Donation Mortis Causa.[1] Manuel accepted the donation.

In March 1986, Vicente executed a Contract to Sell over the same lots in favor of Dozen Construction and Development Corporation (Dozen Corporation). In October 1986, they executed two Deeds of Absolute Sale over the same properties covered by the previous Contract to Sell.

On November 6, 1986, Vicente died. Emiliano Cabanig, Vicente's nephew, filed a petition for the settlement of Vicente's intestate estate. On the other hand, Manuel filed a petition to approve Vicente's donation mortis causa in his favor and an action to annul the contracts of sale Vicente executed in favor of Dozen Corporation. These cases were jointly heard.

The Regional Trial Court (RTC) dismissed Manuel's petition to approve the donation and his action for annulment of the contracts of sale.[2] The RTC found that the execution of a Contract to Sell in favor of Dozen Corporation, after Vicente had donated the lots to Manuel, was an equivocal act that revoked the donation. The Court of Appeals (CA) affirmed the RTC's decision.[3] The CA held that since the donation in favor of Manuel was a donation mortis causa, compliance with the formalities for the validity of wills should have been observed. The CA found that the deed of donation did not contain an attestation clause and was therefore void.

The Petition for Review on Certiorari

Manuel claims that the CA should have applied the rule on substantial compliance in the construction of a will to Vicente's donation mortis causa. He insists that the strict construction of a will was not warranted in the absence of any indication of bad faith, fraud, or substitution in the execution of the Deed of Donation Mortis Causa. He argues that the CA ignored the Acknowledgment portion of the deed of donation, which contains the "import and purpose" of the attestation clause required in the execution of wills. The Acknowledgment reads:

> BEFORE ME, Notary Public, this 7[th] day of September 1985 at Talisay, Cebu, personally appeared VICENTE S. Echavez with Res. Cert. No. 16866094 issued on April 10, 1985 at [sic] Talisay, Cebu known to me to be the same person who executed the foregoing instrument of Deed of Donartion Mortis Causa before the Notary Public and in the presence of the foregoing three (3) witnesses who signed this instrument before and in the presence of each other and of the Notary Public and all of them acknowledge to me that the same is their voluntary act and deed. [Emphasis in the original.]

THE COURT'S RULING

The CA correctly declared that a donation mortis causa must comply with the formalities prescribed by law for the validity of wills,[4] "otherwise, the donation is void and would produce no effect." [5] Articles 805 and 806 of the Civil Code should have been applied.

As the CA correctly found, the purported attestation clause embodied in the Acknowledgment portion does not contain the number of pages on which the deed was written. The exception to this rule in Singson v. Florentino[6] and Taboada v. Hon. Rosal,[7] cannot be applied to the present case, as the facts of this case are not similar with those of Singson and Taboada. In those cases, the Court found that although the attestation clause failed to state the number of pages upon which the will was written, the number of pages was stated in one portion of the will. This is not the factual situation in the present case.

Even granting that the Acknowledgment embodies what the attestation clause requires, we are not prepared to hold that an attestation clause and an acknowledgment can be merged in one statement.
That the requirements of attestation and acknowledgment are embodied in two separate provisions of the Civil Code (Articles 805 and 806, respectively) indicates that the law contemplates two distinct acts that serve different purposes. An acknowledgment is made by one executing a deed, declaring before a competent officer or court that the deed or act is his own. On the other hand, the attestation of a will refers to the act of the instrumental witnesses themselves who certify to the execution of the instrument before them and to the manner of its execution.[8]

Although the witnesses in the present case acknowledged the execution of the Deed of Donation Mortis Causa before the notary public, this is not the avowal the law requires from the instrumental witnesses to the execution of a decedent's will. An attestation must state all the details the third paragraph of Article 805 requires. In the absence of the required avowal by the witnesses themselves, no attestation clause can be deemed embodied in the Acknowledgement of the Deed of Donation Mortis Causa.

Finding no reversible error committed by the CA, the Court hereby DENIES Manuel's petition for review on certiorari.

SO ORDERED.

Carpio Morales, Bersamin, Villarama, Jr., and Sereno, JJ., concur.

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[1] The deed of donation partly states that:

[T]he DONOR, VICENTE S. ECHAVEZ, for and in consideration of the love and affection upon and unto the DONEE, MANUEL A. ECHAVEZ, and of the uncertainty of life and inevitableness of death that may strike a man at the most unexpected moment, and wishing to give DONEE while able to do so, to take effect after death, the DONOR, do hereby give, transfer and convey by way of donation the following personal and real properties to wit: x x x [Emphasis in the original.], rollo, p. 90.

[2] In SP Proc. No. 1776-CEB dated December 27, 1996, rollo, pp. 25-28.

[3] In CA-G.R. CV No. 58328 dated May 29, 2000, id. at 84-97.

[4] CIVIL CODE, Article 728, which states:

Donations which are to take effect upon the death of the donor partake the nature of testamentary provisions, and

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shall be governed by the rules established in the Title on Succession.

[5] Maglasang v. Heirs of Corazon Cabatingan, G.R. No. 131953, June 5, 2002, 383 SCRA 6, citing The National Treasurer of the Phils. v. Vda. de Meimban, No. L-61023, August 22, 1984, 131 SCRA 264.

[6] 92 Phil. 161 (1952).

[7] No. L-36033, November 5, 1982, 118 SCRA 195.

[8] Tenefrancia v. Abaja, 87 Phil. 139 (1950).

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