

**ROWENA PATENIA-KINATAC-AN, ZOSIMA ROWELA
PATENIA-DANGO, FE RUCHIT PATENIA ALVAREZ, FATIMA ROBERTA
PATENIA-TRUPA, REY ANTHONY G. PATENIA AND RICARTE
ABSALON G. PATENIA, PETITIONE...**

G.R. No. 238325. June 15, 2020

Ponente: LOPEZ, J.

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LOPEZ, J.:

The validity of a donation of an immovable property is the core issue in this Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Appeals' (CA) Decision[1] dated June 30, 2017, in CA-G.R. CV No. 04126, which affirmed the findings of the Regional Trial Court (RTC).

ANTECEDENTS

Spouses Ramiro and Amada Patenia (Spouses Patenia) owned a 9,600-square meter (sq m) lot situated in Magugpo, Tagum City, Davao del Norte and registered under Transfer Certificate of Title (TCT) No. T-168688.[2] After Spouses Patenia's death, their children consisting of the petitioners discovered that TCT No. T-168688 has been cancelled by virtue of a Deed of Donation dated January 18, 2002 that their parents supposedly executed in favor of the respondents.[3] Aggrieved, the petitioners filed an action against the respondents to annul the donation before the Regional Trial Court, docketed as Civil Case No. 4241.[4] The petitioners alleged that Spouses Patenia's signatures on the deed were forged and that the donation impaired their legitimes.[5] On the other hand, the respondents claimed their parents owned a 30,644-sq m parcel of land which includes the donated property. Ramiro, being the eldest child, was entrusted by their parents to divide and distribute the land to his siblings. Accordingly, the deed of donation was just part of the distribution of their share on the property.[6]

On August 11, 2015, the RTC dismissed the complaint for lack of merit. It held that the petitioners failed to present preponderant evidence to establish forgery and inofficiousness of the donation,[7] thus:

On the issue of whether or not the January 18, 2002 Deed of Donation is falsified or forged, plaintiffs failed to present evidence of forgery, save for their claim of different handwriting in the Deed of Donation and the Social Security Identification Documents.

x x x x

On the issue that the Deed of Donation is violative of Articles 750, 752, 906 and 907 of the Civil Code, for being onerous and inofficious, as claimed by defendants, (sic) Again, plaintiffs failed to present evidence that at the time of the death of their father, he had no other properties except this 9,600 square meters (sic) parcel of lot registered in his name.

x x x x

WHEREFORE, plaintiffs having failed to substantiate their present action with evidence, this case is hereby

DISMISSED.[8] (Emphasis in the original.)

Dissatisfied, the petitioners appealed to the CA docketed as CA-G.R. CV No. 04126. They argued that the donation is void because the notary public failed to require the parties to sign the notarial register.[9] On June 30, 2017, the CA affirmed the findings of the RTC and explained that the irregularity in the notarization did not invalidate the donation,[10] viz.:

As to the admission of the (sic) Atty. Dagooc of the non-affixing of the signatures of the parties in his Notarial Register, the same does not invalidate the Deed of Donation.

Generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity which may only be rebutted by clear and convincing evidence. However, the presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. A defective notarization will strip the document of its public character and reduce it to a private document. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.

x x x x

In the instant case, the private document Deed of Donation is binding between the parties (Ramiro and Amada, and defendants) and the plaintiffs herein, the alleged heirs of Ramiro and Amada. This private document was duly authenticated when notary public Atty. Dagooc and respondent Eva Patenia Maghuyop testified that they were present at the time the Deed of Donation was executed. Thus, it serves as competent proof of the said document's authenticity and due execution.

x x x x

WHEREFORE, the appeal is DENIED. The August II, 2015 Decision of the Regional Trial Court, 11[th] Judicial Region, Branch 31, Tagum City, in Civil Case No. 4241, is AFFIRMED.[11]

The petitioners sought reconsideration; but was denied.[12] Hence, this recourse. The petitioners maintained that the donation impaired their legitimes and that the defective notarization renders the donation void.[13]

RULING

The petition is unmeritorious.

At the outset, we stress that the petitioners raised a question regarding the RTC and CA's appreciation of the evidence on whether the donation impaired their legitimes, which is one of fact and is beyond the ambit of this Court's jurisdiction in a petition for review on certiorari. It is not the Court's task to go over the proofs presented below to ascertain if they were appreciated and weighed correctly, most especially when the RTC and the CA speak as one in their findings and conclusions.[14] To be sure, the instant petition merely reiterates the factual issues and arguments raised in the appeal as to the inofficiousness of the donation. While it is widely held that this rule of limited jurisdiction admits of exceptions, none exists in the instant case.[15] Thus, the sole issue left is whether the defective notarization would render the donation void.

As a rule, contracts are obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. When, however, the law requires that a contract be in some form to be valid, that requirement is absolute and indispensable. Its non-observance renders the contract void and of no effect.[16] Here, what transpired between Spouses Patenia and the respondents was a donation of an immovable

property that requires strict compliance with Article 749 of the Civil Code, to wit:

Art. 749. In order that the donation of the immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments. (Emphasis supplied.)

Unlike ordinary contracts, which are perfected by the concurrence of the requisites of consent, object and cause,[17] solemn contracts like donations of immovable property are valid only when they comply with legal formalities. Absent the solemnity requirements for validity, the mere intention of the parties and concurrence to the agreement will not give rise to a contract. In *Abellana v. Sps, Ponce*,^[18] we ruled that an oral donation of a real property is void and an action to declare its inexistence does not prescribe. Also, in *Sumipat v. Banga*^[19] the donation was patently void because the donees' acceptance is not manifested either in the deed itself or in a separate document.

In *Dept. of Education Culture & Sports v. Del Rosario*,^[20] we stated that a deed of donation acknowledged before a notary public is a public document. The notary public shall certify that he knows the person acknowledging the instrument and that such person is the same person who executed the instrument, acknowledging that the instrument is his free act and deed. On the other hand, it is settled that a defective notarization will strip the document of its public character and reduce it to a private instrument.^[21] Thus, a defective notarization renders the donation of an immovable property invalid since the requirement that such contract must appear in a public instrument is absent. In this case, the petitioners argued that the donation is void because the notary public failed to require the parties therein to sign the notarial register. However, we note that the prevailing law at the time of notarization was the Revised Administrative Code^[22] which mandate a notary public to record in his notarial register the necessary information regarding the instrument acknowledged before him, thus:

SECTION 245. Notarial register. — Every notary public shall keep a register to be known as the notarial register, wherein record shall be made of all his official acts as notary; and he shall supply a certified copy of such record, or any part thereof, to any person applying for it and paying the legal fees therefor.

x x x x

SECTION 246. Manners to be entered therein — The notary public shall enter in such register, in chronological order, the nature of each instrument executed, sworn to, or acknowledged before him, the person executing, swearing to, or acknowledging the instrument, the witnesses, if any, to the signature, the date of this execution, oath, or acknowledgment of the instrument, the fees collected by him for his services as notary in connection therewith, and; when the instrument is a contract, he shall keep a correct copy thereof as part of his records, and shall likewise enter in said records a brief description of the substance thereof, and shall give to each entry a consecutive number, beginning with number one in each calendar year. The notary shall give to each instrument executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument the page or pages of his register on which the same is recorded. No blank line shall be left between entries.

x x x x^[23]

There is nothing in the law that obligates the parties to a notarized document to sign the notarial register. This requirement was subsequently included only in Section 3, Rule VI of the 2004 Rules on Notarial Practice,^[24]

thus:

SECTION 3. Signatures and Thumbmarks. — At the time of notarization, the notary's notarial register shall be signed or a thumb or other mark affixed by each:

(a)

principal;

(b)

credible witness swearing or affirming to the identity of a principal; and

(c)

witness to a signature by thumb or other mark, or to a signing by the notary public on behalf of a person physically unable to sign.

As explained in *Miranda, Jr. v. Alvarez, Sr.*[25] and *Gaddi v. Atty. Velasco*,[26] the 2004 Rules on Notarial Practice provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity. At the time of notarization, "the signatory shall sign or affix with a thumb or mark the notary public's notarial register"[27] The purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. If the signatory is not acting of his or her own free will, a notary public is mandated to refuse to perform a notarial act.

The present deed of donation, however, was executed and acknowledged before the notary public on January 18, 2002, when there is no rule yet that requires the parties to sign the notarial register. In *Heirs of Pedro Alilano v. Atty. Examen*,[28] the Court discussed in brief the history of notarial rules in the Philippines, viz.:

Prior to 1917, governing law for notaries public in the Philippines was the Spanish Notarial law of 1889. However, the law governing Notarial Practice is changed with the passage of the January 3, 1916 Revised Administrative Code, which took effect in 1917. In 2004, the Revised Rules on Notarial Practice was passed by the Supreme Court.[29] (Citation omitted.)

In that case, the heirs of Alilano stated that Atty. Examen was prohibited to notarize the absolute deeds of sale since he was related by consanguinity within the fourth civil degree with the vendee. We explained that the prohibition might have still applied had the applicable rule been the Spanish Notarial Law. Yet, the law in force at the time of signing was the Revised Administrative Code where such prohibition was removed.[30] Thus, Atty. Examen was not incompetent to notarize the document even if one of the parties to the deed was his brother. Also, we noted that it is under the 2004 Rules on Notarial Practice that a notary public is again disqualified among others to perform a notarial act if he is related by affinity or consanguinity to a principal within the fourth civil degree.[31]

Indeed, the new rules cannot be given retroactive effect if they would work injustice or impair vested rights. In *Tan, Jr. v. Court of Appeals*[32] we discussed the exceptions to the rule that procedural laws are applicable to pending actions or proceedings, to wit:

x x x The rule does not apply where the statute itself expressly or by necessary implication provides that pending actions are excepted from its operation, or where to apply it to pending proceedings would impair vested rights. Under appropriate circumstances, courts may deny the retroactive application of procedural laws in the event that to do so would not be feasible or would work injustice. Nor may procedural laws be applied

retroactively to pending actions if to do so would involve intricate problems of due process or impair the independence of the courts.[33] (Emphasis ours.)

In sum, the deed of donation between Spouses Ramiro and Amada Patenia and the respondents is valid and compliant with the solemnities in Article 749 of the Civil Code.

FOR THESE REASONS, the petition is DENIED.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, J. Reyes, Jr., and Lazaro-Javier, JJ., concur.

[1] Rollo, pp. 27-38; penned by Associate Justice Perpetua T. Atal-Paño, with the concurrence of Associate Justices Romulo V. Borja and Oscar V. Badelles.

[2] Id. at 28.

[3] Id.

[4] Id.

[5] Rollo, pp. 28-29.

[6] Id. at 29-30.

[7] Id. at 43-49.

[8] Id. at 46-49-30.

[9] Id. at 29-30

[10] Id. at 34-36

[11] Id. at 34-38.

[12] Id. at 40-42

[13] Id. at 13.

[14] *Gotan, et al. v. Vinarao, et al.*, 820 Phil. 257 (2017); *Heirs of Teresita Villanueva v. Heirs of Petronila Suquia Mendoza, et al.*, 810 Phil. 172 (2017); and *Bacsasar v. Civil Service Commission*, 596 Phil. 858 (2009).

[15] The recognized exceptions are: (a) When the findings are grounded entirely on speculation, surmises, or conjectures; (b) When the inference made is manifestly mistaken, absurd, or impossible; (c) When there is grave abuse of discretion; (d) When the judgment is based on a misapprehension of facts; (e) When the findings of facts are conflicting; (f) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (g) When the CA's findings are contrary to those by the trial court; (h) When the findings are conclusions without citation of specific evidence on which they are based; (i) When the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (k) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. See *Navaja v. Hon. de Castro, et al.*, 161 Phil. 142. 155 (2015).

[16] Dauden-Hernaez v. De los Angeles, etc., et al., 137 Phil. 900, 906-907 (1969).

[17] THE CIVIL CODE, Art. 1318.

[18] 481 Phil. 125 (2004).

[19] 480 Phil. 187 (2004).

[20] 490 Phil. 193 (2005).

[21] Meneses v. Venturozo, 675 Phil. 641 (2011); Diampoc v. Buenaventura, et al., 828 Phil. 479,489 (2018); Heirs of Salud v. Rural Bank of Salinas, Inc., 784 Phil. 21 (2016); and Philippine National Bank v. Pasimio, 768 Phil. 391 (2015).

[22] Chapter 11, Sections 231 -259.

[23] Act No. 2711. An Act Amending the Administrative Code.

[24] A.M. No. 02-8-13-SC promulgated on July 6, 2004.

[25] A.C. No. 12196. September 3 2018. 878 SCRA 489.

[26] 742 Phil. 810 (2014).

[27] Id. at 815-816.

[28] 756 Phil. 608 (2015).

[29] Id. at 616.

[30] Id., citing Kupunan, et al. v. Casilan and Court of Appeals, 109 Phil. 889 (1960).

[31] Rule IV, Section 3(c) provides that [a] notary public is disqualified from performing a notarial act if he:

x x x x

(c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree.

[32] 424 Phil. 556 (2002).

[33] Id. at 570.

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