

FORTUNATA SOLIS, PLAINTIFF AND APPELLEE, VS. MAXIMA BARROSO ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 27939. October 30, 1928*

Ponente: AVANCEÑA, C.J.

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The spouses Juan Lambino and Maria A. Barroso begot three children named Alejo, Eugenia and Marciana Lambino. On June 2, 1919 said spouses made a donation of propter nuptias of the lands described in the complaint in favor of their son Alejo Lambino and Fortunata Solis in a private document (Exhibit A) in consideration of the marriage which the latter were about to enter into. One of the conditions of this donation is that in case of the donees, one-half of these lands thus donated would revert to the donora while the surviving donee would retain the other half. On the 8th of the said month of June 1919, Alejo Lambino and Fortunata Solis were married and immediately thereafter the donors delivered the possession of the donated lands to them. On August 3, 1919 donee Alejo Lambino died. In the same year donor Juan Lambino also died. After the latter's death, his wife, Maxima Barroso recovered possession the donated lands.

The surviving donee Fortunata Solis filed the action, which is the subject matter of this appeal, against the surviving donor Maxima Barroso and Eugenia And Marcelina Lambino, heirs of the deceased donor Juan Lambino, with their respective husbands, demanding of the defendants the execution of the proper deed of donation according to law, transferring one-half of the donated property, and moreover, to "proceed to the partition of the donated property and its fruits.

The court rendered judgment based upon article 1279 of the Civil Code granting¹ plaintiff's prayer and ordering the defendants to execute a deed of donation in favor of the plaintiff, adequate in form and substance to transfer to the latter the legal title to the part of the donated lands assigned to her in the original donation.

We are of the opinion that article 1279 of the Civil Code, relating to contracts, is not applicable to the present case.

We are concerned with a donation propter nuptias, which, according to article 1328 of the Civil Code, must be governed by the rules established in Title II, Book III of this Code, on donations (articles 618 to 656). Article 633 provides that in order that a donation of real property may be valid, it must be made in a public instrument. This is the article applicable to donation propter nuptias in so far as its formal validity is concerned. The only exceptions to this rule are onerous and remuneratory donations, in so far as they do not exceed the value of the charge imposed, which are then governed by the rules on contracts (art. 622), and those which are to take effect upon the donor's death, which are governed by the rules established for testamentary successions (art. 620).

We have, therefore, a donation propter nuptias which is not valid and did not create any right, since it was not made in a public instrument, and hence, article 1279 of the Civil Code which the lower court applied is not applicable thereto. The last named article provides that, should the law require the execution of an instrument or any other special form in order to make the obligations of a contract effective, the contracting parties may compel

each other to comply with such formality from the moment that consent has been given, and the other requirements for the validity of the contract exist. Suffice it to state that this article refers to contracts, and is inapplicable to the donation in question, which must be governed by the rules on donations. It may further be noted, at first sight, that this article presupposes the existence of a valid contract and cannot possibly refer to the form required in order to make it valid, which it already has, but rather to that required simply to make it effective, and for this reason, it would, at all events, be inapplicable to the donation in question, wherein the form is required precisely to make it valid.

But the lower court states in its judgment that the present donation is onerous, and pursuant to article 622 of the Civil Code must be governed by the rules on contracts. This opinion is not well founded. Donations for valuable consideration, as may be inferred from article 619 of the Civil Code, are such as compensate services which constitute debts recoverable from the donor, or which impose a charge equal to the amount of the donation upon the donee, neither of which is true of the present donation, which was made only in consideration of marriage. The lower court insists that, by the fact that this is a donation propter nuptias, it is based upon the marriage as a consideration, and must be considered onerous. Neither is this opinion well founded. In donations propter nuptias, the marriage is really a consideration, but not in the sense of being necessary to give birth to the obligation. This may be clearly inferred from article 1333, which makes the fact that the marriage did not take place a cause for the revocation of such donations, thus taking it for granted that there may be a valid donation propter nuptias, even without marriage, since that which has not existed cannot be revoked. And such a valid donation would be forever valid, even if the marriage never took place, if the proper action for revocation were not instituted, or if it were instituted after the lapse of the statutory period of prescription. This is so, because the marriage in a donation propter nuptias is rather a resolutive condition which, as such, presupposes the existence of the obligation which may be resolved or revoked, and it is not a condition necessary for the birth of the obligation.

The judgment appealed from mentions the decision of this court in the case of *Torres de Villanueva vs. Standard Oil Co. of New York* (34 Phil., 370), which is inapplicable to this case. That was a case of arras offered in 1875, and it was held that its effects were to be determined by the laws then in force, and not by the Civil Code, which became effective later.

The judgment appealed from is reversed and the defendants are hereby absolved from the complaint, without special pronouncement of costs. So ordered.

Johnson, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

DISSENTING

Street, J.:

I am compelled to record my dissent. A donation made in consideration of a marriage contracted by the donee, or donees, on the faith of such donation, is, in my opinion, made for a valuable consideration within the meaning of article 622 of the Civil Code. The contrary view seems to me to be based upon a process of reasoning more congenial to the spirit of the schoolmen of the middle ages than to the jurisprudence of the present epoch.

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