

RUFINA ZAPANTA ET AL., PLAINTIFFS AND APPELLEES, VS. JUAN POSADAS, JR., ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 29204. December 29, 1928*

Ponente: AVANCEÑA, C.J.

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Father Braulio Pineda died in January 1925 without any ascendants or descendants, leaving a will in which he instituted his sister Irene Pineda as his sole heiress. During his lifetime Father Braulio donated some of his property by public instruments to the six plaintiffs, severally, with the condition that some of them would pay him a certain amount of rice, and others of money every year, and with the express provision that failure to fulfill this condition would revoke the donations ipso facto. These six plaintiff-donees are relatives, and some of them brothers of Father Braulio Pineda. The donations contained another clause that they would take effect upon acceptance. They were accepted during Father Braulio's lifetime by every one of the donees.

Every one of the six plaintiffs filed a separate action against the Collector of Internal Revenue and his deputy for the sums of which each of them paid, under protest, as inheritance tax on the property donated to them, in accordance with section 1536 of the Administrative Code, as amended by section 10 of Act No. 2835, and by section 1 of Act No. 3031. Section 1536 of the Administrative Code reads:

"Every transmission by virtue of inheritance, devise, bequest, gift mortis causa or advance in anticipation of inheritance, devise, or bequest of real property located in the Philippine Islands and real rights in such property; * * *"

The trial court in deciding these six cases, held that the donations to the six plaintiffs made by the deceased Father Braulio Pineda are donations inter vivos, and therefore, not subject to the inheritance tax, and ordered the defendants to return to each of the plaintiffs the sums paid by the latter.

The defendants appealed from this judgment.

The whole question involved in this appeal resolves into whether the donations made by Father Braulio Pineda to each of the plaintiffs are donations inter vivos, or mortis causa, for it is the latter upon which the Administrative Code imposes inheritance tax. In our opinion, said donations are inter vivos. It is so expressly stated in the instruments in which they appear. They were made in consideration of the donor's affection for the donees, and of the services they had rendered him, but he has charged them with the obligation to pay him a certain amount of rice and money, respectively, each year during his lifetime, the donations to become effective upon acceptance. They are therefore not in the nature of donations mortis causa but inter vivos.

The principal characteristics of a donation mortis causa, which distinguish it essentially from a donation inter vivos, are that in the former it is the donor's death that determines the acquisition of, or the right to, the property, and that it is revocable at the will of the donor. In the donations in question, their effect, that is, the acquisition of, or the right to, the property, was produced while the donor was still alive, for, according to their expressed terms they were to have this effect upon acceptance, and this took place during the donor's lifetime. The nature of these

donations is not affected by the fact that they were subject to a condition, since it was imposed as a resolutory condition, and in this sense, it necessarily implies that the right came into existence first as well as its effect, because otherwise there would be nothing to resolve upon the non-fulfillment of the condition imposed. Neither does the fact that these donations are revocable, give them the character of donations mortis causa, inasmuch as the revocation is not made to depend on the donor's exclusive will, but on the failure to fulfill the condition imposed. In relation to the donor's will alone, these donations are irrevocable. On the other hand, this condition, in so far as it renders the donation onerous, takes it further away from the dispositions mortis causa and brings it nearer to contract. In this sense, by virtue of this condition imposed, they are not donations throughout their full extent, but only so far as they exceed the incumbrance imposed, for so far as concerns the portion equivalent to or less than said incumbrance, it has the nature of a real contract and is governed by the rules on contracts (art 622 of the Civil Code). And in the part in which it is strictly a donation, it is a donation inter vivos, because its effect was produced by the donees' acceptance during the donor's lifetime and was not determined by the donor's death. Upon being accepted they had full effect. If the donor's life is mentioned in connection with this condition, it is only to fix the donor's death as the end of the term within which the condition must be fulfilled, and not because such death of the donor is the cause which determines the birth of the right to the donation. The property donated passed to the ownership of the donees from the acceptance of the donations, and these could not be revoked except upon the non-fulfillment of the condition imposed, or for other causes prescribed by the law, but not by the mere will of the donor.

Neither can these donations be considered as an advance on inheritance or legacy, according to the terms of section 1536 of the Administrative Code, because they are neither an inheritance nor a legacy. And it cannot be said that the plaintiffs received such advance on inheritance or legacy, since they were not heirs or legatees of their predecessor in interest upon his death (sec. 1540 of the Administrative Code). Neither can it be said that they obtained this inheritance or legacy by virtue of a document which does not contain the requisites of a will (sec. 618 of the Code of Civil Procedure).

Besides, if the donations made by the plaintiffs are, as the appellants contend, mortis causa, then they must be governed by the law on testate succession (art. 620 of the Civil Code). In such a case, the documents in which these donations appear, being instruments which do not contain the requisites of a will, are not valid to transmit the property to the donees (sec. 618, Code of Civil Procedure.) Then the defendants are not justified in collecting from the donees the inheritance tax on property which has not been legally transferred to them, and in which they acquired no right.

For these reasons the judgment appealed from is affirmed, without special pronouncement as to costs. So ordered.

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

Ostrand, and Johns, JJ., dissent.

DISSENTING

STREET, J.:

Of course I agree with so much of the discussion in the majority opinion as declares that the various donations made prior to his death by Rev. Braulio Pineda to various nephews and nieces were not donations mortis causa. But this is by no means decisive of the case. Among the forms of succession which are by law made subject to the inheritance tax are advances in anticipation of inheritance (Adm. Code, sec. 1636, as amended); and I consider these donations to be taxable in that character. The device adopted in this case for the distribution of the bulk of

the donor's property before his death is, to my mind, a transparent attempt at an evasion of the tax. The donations in question were made to all of the persons who would have been entitled to inherit if no will had been made, except one; and this one was instituted as sole heir in the will. If no will had been left, all of the donees and the heir instituted in the will would have shared jointly in the estate by regular succession. It is thus seen that the making of the donations and the making of the will were part of a single purpose, which was, to effect the distribution of the donor's property. What else is necessary to make an advance "in anticipation of inheritance?"

The suggestion in the opinion that the institution of another person as heir in the will had the effect of destroying the capacity of the donees to take as heirs, is not well founded, for the question whether these donations should be considered advances in anticipation of inheritance ought to be determined with reference to the situation at the time the donations were made. The very reason that the prospective heir to whom no donation had been made was instituted as sole heir in the will is of course found in the fact that advances had already been made to the others. The purpose of the statute was to impose a tax on successions; and in order to prevent the successful use of devices of this kind, the lawmaker expressly made the tax applicable to advances in anticipation of inheritance. If the situation before us is not within both the letter and meaning of that provision, the undersigned has entirely misinterpreted its purport.

Judgment affirmed.

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