

JOSE M. CARINO, PETITIONER AND APPELLANT, VS. P. FERNANDO MA. ABAYA, RESPONDENT AND APPELLEE.

G.R. No. 46706. June 26, 1940

Ponente: LAUREL, J.

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LAUREL, J.:

The root cause of the present legal controversy is a document executed on April 11, 1921 by Petrona Gray and Dorotea Gray, sisters, which, translated into English from its original Ilocano version, recites as follows:

"We the sisters, Petrona J. Gray, 70 years of age, single, and resident of the municipality of Candon, Ilocos Sur, and Dorotea Gray, 74 years old, also single and resident of the same municipality of Candon, Province of Ilocos Sur, by this instrument declare and set forth the following:

"First, not knowing when we are going to part from this life and having no legitimate heirs we the sisters have agreed to distribute our properties, including those which we have inherited from our deceased sister and brother, Paula Gray and Antero Gray, among our relatives to be mentioned in this instrument by reason of the love and affection which we profess toward them and for the services rendered by them to us, to be divided as follows:

"(a) There shall be given to Jose Carifio the following: (Description of the properties)

"(b) There shall be given to Jose Carino and Carmen Gallardo in the proportion of one-half each the following: (Description of the properties)

"(c) There shall be given to be divided among Eufemia Escobar, Esperanza Oasan and Severo Oasan the following: (Description of the properties)

"(d) There shall be given to Eufemia Escobar the following: (Description of the properties)

"(e) There shall be given to Esperanza Carino the following: (Description of the property)

"(f) There shall be given to be divided equally between Manuel C. Carino and Antero C. Carino the following: (Description of the properties)

"(g) There shall be given to be divided equally between Benito Abaya and Maximo Abaya the following: (Description of the properties)

"(h) There shall be given to be divided equally between Esperanza Oasan and Severo Oasan the following: (Description of the properties)

"(i) There shall be given to Potenciana Gray the following: (Description of the properties)

"Second, we do order that there shall be administered by Miguel Carino and those whom he may designate to succeed him the following lands and that the proceeds of sale of the products thereof shall be used for the necessary upkeep of the image of the Lady La Purisima Concepcion: (Description of the properties)

"Third, we also do hereby order that Miguel Carino and those whom he may designate to succeed him shall administer the following lands and that the proceeds of the sale of the products thereof shall be used for the necessary upkeep of the images of Nuestra Senora de las Angustias and that of San Pedro: (Description of the properties)

"Fourth, we likewise do hereby order to be set aside and to be placed in the charge of Miguel Carino and those whom he may designate to succeed him the following lands, and that the proceeds of the sale of the products thereof shall be used for the souls of the dead: (Description of the properties)

"Fifth, we also do hereby order that the lands in our possession together with those under Miguel Carino shall be administered by him and by those whom he may designate to succeed him and that the proceeds of the products thereof shall be used for the purposes to which they are at present dedicated in the same manner as it had been ordered by our grandfather priest Julio Madarang and grandmother Policarpia Madarang now deceased: (Description of the properties)

"Sixth, we do hereby also order that Isidro Abaya and those whom he may designate to succeed him shall administer the lands which are now in his possession and that the proceeds of the sale of the products thereof shall be used for the same purposes to which our grandfather, Salvador Lazaro Madarang, deceased, had ordered them to be used. Said properties are the following: (Description of the properties)

"Seventh, we the sisters do hereby order that all these properties shall be given to those to whom they have been assigned by virtue of this instrument at the expiration of thirty days after the death of the last one to die between us.

"Eighth, we do order that Miguel Carino shall act as our representative to deliver the aforesaid properties to the donees as set forth in this instrument so that no controversy may arise among themselves in connection therewith. And that Miguel Carino shall likewise take charge of all funds, if any left, belonging to us and use the same to pay whatever expenses might be incurred during our sickness including our funeral expenses and also to pay debts if any may appear to be due after our death.

"Ninth, we do hereby further order that Miguel Carino together with those who had been mentioned to inherit from us, shall take care of us in our sickness and death as well as of our adequate burial in the cemetery of the Roman Catholic Church commensurate with our standing and position.

"Tenth, we, Jose Carino, Carmen Gallardo, Eufemia Escobar, Esperanza Oasan, Severa Oasan, Esperanza C. Carino, Manuel C. Carino, Antero Carino, Benito Abaya, Maximo Abaya, Potenciana A. Gray, Miguel Carino and Isidro Abaya, after expressing our gratitude for this act of generosity granted us by Dona Petrona J. Gray and Dona Dorotea Gray, do hereby declare that we accept the aforesaid properties which had been designated for each of us. And we do hereby promise that we shall comply without fail with all the conditions, especially those of us who are charged with the trust set forth in this deed of donation.

"In the testimony whereof we hereby sign in the presence of witnesses here in this town of Candon, Province of Ilocos Sur, P. I., this eleventh day of April of the year 1921.

"Donors:

(Sgd.) "Petrona J. Gray Abaya

"Dorotea Gray Abaya

"Signed in the presence of:

"Witnesses:

(Sgd.) "Agustin Carino

"honorato e. ordenes

"Marcelo Escobar

"Donees:

"Jose Carino

(Sgd. by) "Miguel Carino

"Antero Carino

(Sgd. by) "Miguel Carino

"Manuel Carino

(Sgd. by) "Miguel Carino

(Sgd.) "Miguel Carino

(Sgd.) "Benito Abaya

"Isidro Abaya

(Sgd. by) "Maximo Abaya

(Sgd.) "Maximo Abaya

(Sgd.) "POTENCIANA GRAY

(Sgd.) "ESPERANZA OASAN

(Sgd.) "Severa Oasan

(Sgd.) "Eupemia Escobar

(Sgd.) "Carmen Gallardo

(Sgd.) "Esperanza Carino

(Sgd.) "Jose Madarang

United States of America

Philippine Islands Province of Ilocos Sur

"In the municipality of San Esteban of the above-mentioned province this April 11, 1921, A. D., personally appeared Petrona J. Gray Abaya and Dorotea Gray Abaya, known to me to be same persons who executed the foregoing document and who acknowledged to have executed the same freely and voluntarily.

"The interested parties did not exhibit their cedula tax by reason of their sex.

Before me:

(Sgd.) Blas J. Espiritu

Justice of the Peace and

Notary Public Ex-Officio

Not. Reg. No. 21

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Petrona Gray and Dorotea Gray both died intestate and without either ascendants or descendants, the first on January 28, 1926, and the second on July 9, 1927. Miguel Cariio, designated in the above-quoted document as the one to administer or deliver the properties therein referred to, predeceased Dorotea Gray as he died on February 12, 1927. After the lapse of about seven years from the death of Dorotea Gray, or on February 16, 1935, Jose Carino, son of Miguel Cariio and petitioner herein, commenced intestate proceedings in the Court of First Instance of Ilocos Sur in which he prayed that he be appointed administrator of the estate left by the Gray sisters. Subsequently, on June 5, 1935, the said Jose Cariio filed an amended petition praying that the properties described in paragraph III thereof be declared trust properties and that he be appointed trustee of the same. On July 12, 1935, Father Fernando Ma. Abaya, respondent herein and first cousin of Petrona and Dorotea Gray, interposed an opposition to the amended petition alleging that the document executed on April 11, 1921, by the Gray sisters (Exhibit C-1) is null and void and praying that the court make an adjudication to that effect. While on the one hand, Jose Carino contended that Exhibit C-1 is a donation inter vivos creating at the same time a trust, Father Fernando Abaya, on the other, alleged that said document is a will. The Court of First Instance of Ilocos Sur rendered judgment, the dispositive part of which is as follows:

"In view of the foregoing reasons, the court is of the opinion and so declare that the properties described in paragraph 2, 3 and 4 of Exhibit C-1 are trust properties destined by the said trustors for religious and pious purposes; and that the properties enumerated in paragraphs 5 and 6 of the said Exhibit C-1 are invalid trust for the reason that the properties described in paragraph 5 did not belong to the said trustors, and, that the properties described in paragraph 6 thereof were destined for a trust, the purpose of which is uncertain; and that while the designation of said Jose Carino is invalid, still the court may appoint one to act as such (R. C. L.. d. 1274).

"In view thereof, the court declares the properties described in paragraphs 2, 3 and 4 of Exhibit C-1 trust properties, and, for the purpose of carrying into effect the provisions contained in said trust, application for the appointment of a competent trustee may be made by the interested parties and after due hearing, the court will appoint trustee or trustees, according as the situation may demand."

From this judgment, appeal was taken to the Court of Appeals which held that Exhibit C-1 was neither a donation inter vivos as contended by the petitioner herein nor a will as alleged by the respondent, but a void donation mortis causa, void because it was not executed with the formalities of a will. The dispositive part of the decision of the Court of Appeals is of the following tenor:

"Wherefore, the appealed judgment is hereby reversed without pronouncement as to the costs. Let the record of this case be remanded to the court of origin with instructions to proceed with the appointment of an administrator of the properties belonging to the estate of the deceased, Petrona and Dorotea Gray, involved in this appeal, said administrator to be proposed by the appellant, Fernando Abaya, and for such other appropriate proceedings as the law requires."

We are now urged to hold by counsel for the petitioner that the Court of Appeals erred:

"I. In passing upon the validity of the deed of donation, Exhibit C-1 in the absence of any appeal on this point in violation of established rules of pleading and practice.

"II. In holding that the deed of donation, Exhibit C-1, is a void donation mortis causa wanting in the formalities of a will, and not a consummated donation IN praesenti (inter vivos).

"III. In holding that Miguel Carino was not authorized by the donees to accept the donation in Exhibit C-1 in their behalf, when the question of authority is not in issue, thereby committing an act of supererogation in violation of code practice.

"IV. In not holding that the respondent Fernando Abaya (oppositor below) is without legal personality and

interest in the suit, and cannot therefore attack the validity of Exhibit C-I collaterally.

"V. In not holding that whatever right or action the respondent Fernando Abaya (oppositor below) has, by his laches and voluntary waiver and failure to appeal from so much of the judgment of the trial court, has already prescribed.

"VI. In not applying the doctrine of estoppel to the facts of the case in violation of established rules and jurisprudence applicable thereto.

"VII. In not holding that the properties described in paragraphs 2, 3, 4 and 5 of Exhibit C-I are absolute gifts to Miguel Carino, predecesor in interest of petitioner Jose M. Carino, subject only to a charge.

"VIII. In not submitting the decision appealed from to the Court in BANC in view of the considerable value of the estate, the weighty questions of law and the special circumstances of the case.

"IX. In not granting the relief prayed for by the petitioner Jose M. Carino (applicant below), and in rendering the judgment object of this review.

"X. The Honorable Court of Appeals has departed from the accepted usual course of judicial proceedings in rendering the decision object of this review.

Under the first assignment of error, the petitioner raises the point that the nature or validity of Exhibit C-I, not being a subject of appeal, could not be passed upon by the Court of Appeals. We dismiss this point for lack of basis. In the Court of First Instance of Ilocos Sur, the question of validity was directly controverted when, in his opposition, the respondent alleged that "el documento de supuesta donacion a que alude la solicitud enmendada es nulo y carece de eficacia legal." In the Court of Appeals the same issue was put in litigation as a result of the exception taken by the respondent to the judgment of the trial court, and, particularly, to the conclusion of said court that the properties described in paragraphs 2, 3, and 4 of Exhibit C-I are trust properties, an exception which, if considered in relation to the respondent's ground of opposition, necessarily involved the proposition that said properties could not be trust properties because the document creating the alleged trust is null and void. Counsel for the petitioner also argues that the trial court could not pass upon the validity of the document in question for the reason that, relying on the case of *Lopez vs. Olbes* (15 Phil., 540), the instant case is a special proceeding. We cannot concede controlling force to the decision cited, because it merely held that objections "founded on some defect or vice, which affect the essential nature and formalities of the act of consideration of the action relative thereto, must be heard and argued in an ordinary action, and must be decided in accordance with law by a final judgment, and not by a ruling on a demurrer which ordinarily occurs in connection with an incidental motion concerning mere formalities of procedure and not in a full trial or due process of law wherein the rights of the contestants have been examined, argued, and proved." In the present case the question regarding the validity of Exhibit C-1 was not determined in a ruling upon a demurrer. Furthermore, the record indicates that this is the first time the petitioner has taken the trouble of interposing the technical objection suggested in his first assignment of error, and we have already expressed our disapproval of such practice. (*Tan Machan vs. De la Trinidad et al.*, 3 Phil., 684; *Alafriz vs. Mina*, 28 Phil., 137; *Vergara vs. Laciapag*, 28 Phil., 439; *Morales vs. Macandog*, 37 Phil., 132; *U. S. vs. Inductivo*, 40 Phil., 84; *Martinez and Villar vs. Tolentino*, 43 Phil., 492; *Government vs. Osorio*, 50 Phil., 864; *Ramiro vs. Graiio*, 54 Phil., 744; *Enriquez vs. People*, 37 Off. Gaz., 2121; *Spencer Kellogg & Sons (Philippines), Inc. vs. Gelino*, G. R. No. 46271, promulgated October 18, 1939; *Meneses vs. National Loan & Investment Board*, G. R. No. 46571, promulgated October 31, 1939.) It may be added that the line of argument of the petitioner, if adopted, would be conducive to multiplicity of suits.

The second, third and seventh errors assigned by counsel for the petitioner submit the major question whether Exhibit C-I is a donation inter vivos as claimed by the petitioner, or a will as insisted by the respondent. We

concur in the conclusion of the Court of Appeals that the document in dispute is a donation mortis causa. The seventh clause of the document reciting that "we the sisters do hereby order that all these properties shall be given to those to whom they have been assigned by virtue of this instrument at the expiration of thirty days after the death of the last one to die between us," considered in conjunction with the fact that the grantors employed the terms "there shall be given to," "shall administer," and "shall be administered," which have reference to the future, clearly brings forth the intention on the part of the Gray sisters to make the distribution of their estate, as mapped out in Exhibit C-1, effective after their death. The abovequoted seventh clause, being without limitation, applies as well to the properties intended to be distributed as to the properties merely to be administered by Miguel Carino. It is worthy of observation, also, that in the ninth clause of Exhibit C-1 the phrase "together with those who had been mentioned to inherit from us" supplies a cogent reason for concluding that the grant therein made was meant to take effect after the death of the grantors, for the word "inherit," as used here, implies the acquisition of property by the heirs after the death of the Gray sisters. In support of the contention that the document in controversy is a donation inter vivos, the petitioner alleges that Miguel Carino administered the properties described in the second, third, fourth and fifth paragraphs of Exhibit C-1, thereby insinuating that the donation took effect even before the death of the grantors. Upon this question we can make no choice as it is not within our province to review, much less alter, the finding of the Court of Appeals that the petitioner's contention "is not supported by the facts." (Hodges vs. People, G. R. No. 4446, promulgated May 25, 1939; Mora Electric Co., Inc. vs. Matic et al., G. R. No. 45441, promulgated June 26, 1939; Bundoc vs. Hilario et al., G. R. No. 46852, promulgated February 27, 1940.)

Donations which are to become effective upon the death of the donor partake of the nature of disposals of property by will and shall be governed by the rules established for testamentary successions. (Art. 620, Civil Code.) Accordingly, said donations can only be made with the formalities of a will. (Tuason and Tuason vs. Posadas, 54 Phil. 289.) As the document Exhibit C-1 was not executed in conformity with the provisions of section 618 of the Code of Civil Procedure, conspicuously for lack of attestation clause and marginal signatures, we are constrained to hold that the same cannot be accorded any force and effect. It may be stated in passing that the case at bar cannot be controlled by the decisions in Laureta vs. Mata and Magno (44 Phil., 668); Zapanta vs. Posadas (52 Phil., 557); and Balaqui vs. Dongso (53 Phil., 673), cited by the petitioner, in view of difference in factual basis.

The Court of Appeals found that the respondent is the nearest relative of Petrona and Dorotea Gray, a finding of fact which we cannot revise. It results that, as such, the respondent has an interest in any property of his deceased cousins, in that, in default of testamentary heirs, he would be entitled to inherit from them to the exclusion of more remote relatives. (Arts. 913, 921, Civil Code.) The respondent is accordingly interested in obtaining a judicial declaration in the present action that the document which would otherwise have impaired such right to inherit, is void. Hence, the petitioner's contention, under the fourth assignment of error, that the respondent is without legal personality and interest in this suit, is without merit. Moreover, the appellate court should not incline to hear this criticism for the reason that, as the Court of Appeals found, it was not raised in the trial court. (Tan Machan vs. De la Trinidad, supra; Alafriz vs. Mina, supra; Vergara vs. Laciapag, supra; Martinez and Villar vs. Tolentino, supra; Soriano vs. Ramirez, supra; Government vs. Ossorio, supra; Ramiro vs. Graiio, supra; Meneses vs. National Loan & Investment Board, supra.)

Under the fifth and sixth assignments of error, it is maintained by counsel for the petitioner that the opposition of the respondent being in the nature of an action to annul, the right of action of the latter has prescribed as the said opposition was filed on July 12, 1935, or about fourteen years after the date of the execution of Exhibit C-1. To dispose of this argument it is only necessary to state that this defense of prescription on the part of the petitioner was neither pleaded nor raised in the trial court, and the same was raised for the first time in the motion filed by

the petitioner for the reconsideration of the decision of the Court of Appeals. And the argument of the petitioner that the respondent has waived his rights over the properties in question is refuted by the finding of the Court of Appeals that "as a matter of fact the appellant, Abaya, is in actual possession of those properties, and was, at least at the time the original petition of Jose Carino was filed, the latter having alleged it in said petition."

Much less did the Court of Appeals err in not submitting the appealed decision to the court in bane, since there is no law or rule making the submission to the court in bane of such a case as is now before us, mandatory.

In view of what has been said, the judgment of the Court of Appeals will be, as the same is hereby, affirmed, with costs against the petitioner. So ordered.

Avanceña, C.J., Imperial, Diaz, and Moran, JJ., concur.

Judgment affirmed.

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