

NAZARIO VITA, PLAINTIFF-APPELLANT, VS. SOLEDAD MONTANANO, ESTANISLAO JOVELLANO AND ESTEBANA JOVELLANO, DEFENDANTS-APPELLANTS. JOSE, ELENA AND ALODIA, ALL SURNAMED MONTANANO, INT...

G.R. No. 50553. February 19, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

In a resolution dated March 16, 1979, the Court of Appeals certified this case to Us because it involves pure questions of law (pp. 70-80, Rollo).

The pertinent facts are as follows:

A complaint was filed before the Court of First Instance (now Regional Trial Court) of Laguna by plaintiff-appellant Nazario Vita, in his capacity as judicial administrator of the estate of deceased Edilberto Vita, seeking to recover from defendants-appellants Soledad Montanano, Estanislao Jovellano and Estebana Jovellano the possession of three (3) parcels of land located in Barrio Talangan, Nagcarlan, Laguna and their annual yield since January, 1962 in the amount of P1,100.00 a year. Plaintiff-appellant claims that during the lifetime of Edilberto Vita, he was the owner and possessor of these three (3) parcels of land covered by: Tax Declaration No. 1252 (73, old) with an area of 3,640 square meters, Tax Declaration No. 1231 (72, old) with an area of 1,000 square meters, and Tax Declaration No. 1253 (4, old) with an area of 640 square meters; and he was enjoying the fruits therefrom. When he died on January 23, 1962, defendants-appellants, through stealth and strategy, took possession of the above-stated parcels of land and gathered the fruits therefrom. Notwithstanding demands from plaintiff-appellant, defendants-appellants refused to surrender the possession of these parcels of land. Plaintiff-appellant further claims reimbursement in the sum of P2,000.00 as attorney's fees and P1,000.00 as actual or compensatory damages.

In their answer dated December 1, 1964, defendants-appellants deny that the three (3) parcels of land belong to the estate of Edilberto, Vita. Instead, they claim that the two parcels of land covered by Tax Declaration No. 1252 and Tax Declaration No. 1231 belong to Soledad Montanano as these were conveyed to her by Isidra Montanano (her aunt and wife of Edilberto Vita) and Edilberto Vita in a document signed and executed by them on November 22, 1938 and ratified by one Mr. Matienzo, a Notary Public from Nagcarlan, Laguna. However, all copies of said document were lost during the last war. The parcel of land covered by Tax Declaration No. 1253 is owned in common by Soledad Montanano, her brother Jose and sisters Elena and Alodia. It originally belonged to Francisca Asilo, deceased sister of their grandmother, Micaela Asilo. Its ownership was transferred to them under the arrangement sanctioned by Edilberto Vita himself wherein all the proceeds from the yearly harvests therefrom shall be spent for the yearly masses to be held for the souls of Francisca Asilo and Isidra Montanano. This being the case, plaintiff-appellant is now estopped from instituting this action. Defendants-appellants claim also that Edilberto Vita could not have inherited these parcels of land from Isidra Montanano as the latter's estate has never

been the subject of a judicial or extra-judicial proceeding. The erroneous inclusion of these parcels of land in the inventory of the estate of Edilberto Vita in Special Proceedings No. SC-136 of the Court of First Instance of Laguna does not make them actually a part of his estate. There is no fixed income from these parcels of land because since 1962, plaintiff-appellant, with unknown persons, has been gathering whatever crops that may be taken therefrom. And, by reason of the malicious filing of this complaint, they seek reimbursement of the amount of P1,000.00 representing attorney's fees and other litigation expenses.

Replying to defendants-appellants' answer, plaintiff-appellant claims that Isidra Montanano and Edilberto Vita never executed any document on November 22, 1938 and if they had, it was thereafter repudiated, canceled and destroyed, for which reason, the three (3) parcels of land remained in the possession of Isidra Montanano and Edilberto Vita; that upon the death on September 25, 1957 of Isidra Montanano, who left neither descendants nor ascendants, her surviving spouse Edilberto Vita succeeded her and took immediate possession of her estate; and that from the time defendants-appellants took possession of these parcels of land, they have continuously gathered the fruits therefrom.

In a petition dated August 20, 1966, Jose, Elena and Alodia Montanano sought leave of court to intervene in this case. In the order of the trial court dated April 12, 1967, the amended answer dated September 10, 1966, which intervenors-appellants filed jointly with Soledad Montanano, was admitted as their answer-in-intervention. Incorporated therein is a counterclaim that Soledad, Jose, Elena and Alodia Montanano are the co-owners of (pp. 43-44, Record on Appeal):

"(a) A parcel of coconut land situated in Bo. Bangbang, Nagcarlan, Laguna, containing an area of 2,450 square meters, more or less, and covered by Tax Declaration No. 8953;

"(b) A parcel of coconut and secano land situated in Bo. Buboy, Nagcarlan, Laguna with an area of 15,096 square meters, more or less, and covered by Tax Declaration No. 10228;

"(c) A parcel of coconut land, with its improvements, situated in Bo. Yucos, Nagcarlan, Laguna, with an area of 2,500 square meters, more or less, and covered by Tax Declaration No. 7999;

"(d) A parcel of coconut land, with its improvements, situated in Bo. Talangan, Nagcarlan, Laguna, with an area of 12,865 square meters, more or less, and covered by Tax Declaration No. 1233 (sic) (third parcel of land in the complaint); and

"(e) A parcel of residential land, with its improvements, situated in Gen. Luna, Nagcarlan, Laguna, with an area of 167.50 square meters, more or less, and covered by Tax Declaration No. 102;"

that Jose Montanano is the sole owner of (p. 44, *ibid*):

"(a) A parcel of coconut land, with improvements thereon, situated in Bo. Bangbang, Nagcarlan, Laguna, with an area of 10,000 square meters, more or less, and covered by Tax Declaration No. 6493; and

"(b) A parcel of coconut land, with improvements thereon, situated in Bo. Banago, Nagcarlan, Laguna, with an area of 9,604 square meters, more or less, and covered by Tax Declaration No. 8304;"

that Soledad Montanano is the sole owner of (p. 44, *ibid*):

"(a) A parcel of coconut land, with improvements thereon, situated in Bo. Talangan, Nagcarlan, Laguna, with an area of 4,165 square meters more or less, and covered by Tax Declaration No. 123 (sic) (the second parcel of land in the complaint); and

"(b) A parcel of coconut land, with improvements thereon, situated in Bo. Talangan, Nagcarlan, Laguna, containing an area of 10,434 square meters, more or less; and covered by Tax Declaration No. 1252 (the first

parcel of land in the complaint);"

that Alodia Montanano is the sole owner of (p. 44, *ibid*):

"(a) A parcel of coconut land and irrigated riceland, with improvements thereon, situated in Bo. Buboy, Nagcarlan, Laguna, containing an area of 24,153 square meters, more or less and covered by Tax Declaration No. 10268; and

"(b) A parcel of coconut land, with improvements thereon, situated in Bo. Buboy, Nagcarlan, Laguna, containing an area of 1,619 square meters, more or less; and covered by Tax Declaration No. 8510;"

that Elena Montanano is the sole owner of (p. 44, *ibid*):

"(a) A parcel of coconut land, with improvements thereon, situated in Bo. Buboy, Nagcarlan, Laguna, containing an area of 6,242 square meters, more or less, and covered by Tax Declaration No. 8511; and

"(b) A portion of a parcel of riceland situated at C. Lirio St., Nagcarlan, Laguna, containing an area of 9,691 square meters, more or less and covered by Tax Declaration No. 1184."

They alleged therein that they acquired ownership of the three (3) parcels of land mentioned in the complaint, which are in the possession of Soledad Montanano, and the other parcels of land mentioned in their counterclaim, which are in the possession of plaintiff-appellant, by virtue of a donation mortis causa executed by Isidra Montanano on November 22, 1938 or by a donation executed by her on December 20, 1940 which was confirmed by Edilberto Vita. They pray that these parcels of land be adjudicated to them in the manner set forth in their counterclaim; that plaintiff-appellant be ordered to account for the harvests from these parcels of land from the time he took possession; and that they be awarded damages corresponding to their litigation expenses.

In his reply dated July 4, 1967, plaintiff-appellant denied all the allegations contained in the answer-in-intervention and reiterated that there was no such donation executed by Isidra Montanano. If such donation were really executed, she was forced to do so at a time when she was not mentally in a position to execute and sign freely said document.

On September 15, 1973, the trial court rendered judgment adverse to all parties, the dispositive portion of which reads (p. 52, Record on Appeal):

"Considering that the plaintiff has not shown by preponderating evidence that the three (3) parcels of land covered in the complaint belong to the estate of Edilberto Vita and it appearing likewise that the defendants and intervenors have not shown that the parcels of land covered in the counterclaim were validly donated to them and that they have legally accepted the donation made by Isidra Montanano, the complaint filed by the plaintiff and the counterclaim filed by the intervenors are hereby DISMISSED. This is without prejudice to the filing of a separate proceedings (sic) in Court for the proper disposition of the estate of the deceased Isidra Montanano, including that of her share in the fruits of the properties donated to her during her marriage with Edilberto Vita which is considered part of their conjugal properties. No assessment is hereby made with respect to the damages sustained by the parties as they offset each other, if any.

"Without pronouncement as to costs.

"SO ORDERED."

All parties appealed to the Court of Appeals. The case is now before Us raising mainly the following legal issues:

1.

whether or not the three (3) parcels of land mentioned in the complaint are included in the estate of Edilberto Vita

(as regards the appeal of plaintiff-appellant); and

2.

whether or not acceptance is necessary in a donation mortis causa; and whether the donation dated December 20, 1940 is mortis causa or inter vivos (with respect to the appeal of defendants-appellants and intervenors-appellants).

Plaintiff-appellant avers that the trial court failed to consider that Edilberto Vita's right to the conjugal half in the first two parcels as surviving spouse had ceased to be inchoate upon the death of Isidra in 1957, and that such right had been vested upon him by operation of law. With respect to the conjugal half pertaining to Isidra in said two parcels, and the entirety of the third parcel as her paraphernal property, they were likewise vested upon him by operation of law, subject only to the right of her nephew and nieces, pursuant to Articles 995 and 1001 of the New Civil Code.

In other words, plaintiff-appellant is again claiming that the parcels of land covered by Tax Declaration No. 1252 (73, old) and Tax Declaration No. 1231 (72, old) are conjugal properties of Isidra Montanano and Edilberto Vita whereas the parcel of land covered by Tax Declaration No. 1253 (4, old) is the paraphernal property of Isidra Montanano. We are in conformity with the finding of the trial court that the three (3) parcels of land mentioned in the complaint were paraphernal properties of Isidra Montanano, being supported by documentary and testimonial evidence (p. 48, Record on Appeal):

"x x x, plaintiff claims that in accordance with the inventory prepared by Edilberto Vita of his properties before his death (Exhs. "O", "O-1", "O-1-A", "O-1-B" and "O-1-C"), the parcel of land covered by Tax Declaration No. 4 (old) was a paraphernal property of his wife Isidra Montanano while the parcels of land covered by Tax Declaration Nos. 72 (old) and 73 were conjugal properties of the spouses Edilberto Vita and Isidra Montanano as they were donated to the latter by Francisca Asilo during their marriage. It is the contention of the plaintiff that upon the death of Isidra Montanano, her husband Edilberto Vita acquired ownership of these properties.

"This contention of the plaintiff in effect corroborates the claim of the defendants and intervenors that all the (3) three parcels of land, subject-matter of the complaint, including all the parcels of land being claimed by them in the intervenor's counterclaim, were all paraphernal properties of Isidra Montanano. The two (2) parcels of land supposedly received as donation by Isidra Montanano during her marriage with Edilberto Vita should be classified as her paraphernal properties, it being acquired by her through lucrative title (Art. 148, Civil Code). On the other hand, plaintiff's testimony that the third parcel of land covered in the complaint was inherited by Edilberto Vita from Isidra Montanano is an admission that the said property was the paraphernal property of the latter.

"The defendants and intervenors claim that the above-stated three (3) parcels of land and the properties covered in their counterclaim were donated to them by Isidra Montanano by virtue of two (2) deeds of donation she executed on November 22, 1938 and December 20, 1940. They presented testimonial and documentary evidence to prove that Isidra Montanano acquired all these parcels of land, either by inheritance or donation, from her father Domingo Montanano, her aunt Francisca Asilo and her uncle Juan Asilo. Aside from this, the tax declarations covering the properties involved in the complaint and counterclaim are mostly in the name of Isidra Montanano, except one each in the name of her father Domingo Montanano, her aunt Francisca Asilo and her nephew Jose Samonte. The court is convinced, therefore, that all the properties involved in this litigation were the paraphernal properties of the deceased Isidra Montanano."

Whatever merit there may be in plaintiff-appellant's claim that upon the death of Isidra Montanano, the ownership of these parcels of land (except with respect to the parcel of land covered by Tax Declaration No. 1253 (4, old)

which was validly donated to defendants-appellants and intervenors-appellants by Isidra Montanano, as We shall discuss later) are vested upon Edilberto Vita by operation of law, subject only to the right of her nephew and nieces, liquidation of the conjugal partnership of Isidra Montanano and Edilberto Vita must be undertaken prior to the adjudication of properties to the heirs (Vicente J. Francisco, *The Revised Rules of Court in the Philippines*, 1970 Edition, p. 619). In this connection, contrary to the trial court's ruling, it is not necessary to file a separate proceeding in court for the proper disposition of the estate of Isidra Montanano. Under Rule 73, Section 2 of the Rules of Court, if both spouses have died, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either. In the present case, therefore, the conjugal partnership of Isidra Montanano and Edilberto Vita should be liquidated in the testate proceedings of the latter.

Defendants-appellants and intervenors-appellants allege the following: 1) that a donation mortis causa (as in the case of the November 22, 1938 donation), being in the nature of a legacy, need not be accepted; their acceptance of that donation is superfluous; and 2) that the December 20, 1940 donation is a donation inter vivos because: a) there is no stipulation or provision therein that the donation is essentially revocable; b) there was an acceptance of the donation; c) the donation was not simply made in consideration of the death of the donor but of her affection for the donees.

It is explicit in Article 725[*] of the Civil Code that acceptance is necessary in a donation. This applies to all kinds of donation because the law does not make any distinction. The rationale behind the requirement of acceptance is that nobody is obliged to receive a benefit against his will (Arturo M. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Volume II, 1972 Edition, p. 521). We uphold the trial court that (p. 50, Record on Appeal):

"x x x, notwithstanding the fact that from the secondary evidence presented, the said deed of donation mortis causa of November 22, 1938 seems to have been legally and validly executed, it cannot be given force and effect as the acceptance thereof by the donees is void and illegal in as much (sic) as they were made at the time of the execution of the document, not after the death of the donor Isidra Montanano. A donation mortis causa takes effect only after the death of the donor, consequently it is only after the latter's death that its acceptance maybe made.

"x x x.

However, We adopt a view contrary to that of the trial court regarding the second allegation of defendants-appellants and intervenors-appellants. According to the trial court (p. 50, Record on Appeal):

"The defendants and intervenors further claim that all the properties covered by that counterclaim were donated to them by Isidra Montanano pursuant to a second deed of donation executed by the latter on December 20, 1940 (Exh. '3'). A careful study of the said document, however, shows that it is another deed of donation mortis causa, considering the following provisions appearing therein with respect to its effectivity: 'Na bagaman at sa kasulatang ito ay lubusan ng ibinigay at ipinagkakaloob sa bawat isa ng pag-aaring dito'y itinungod sa kani--kanila, matangi ang ganang napaukol sa kay Dr. Vicente C. Chipongian at kay Maria Osuna, na iyon ay patuluyan nang ngayo'y iguinagawad sa kanila ng walang pasubali, na magagawa na nila ang buong karapatan ngayon bilang tunay na may-ari, gayon man, ay kami pa ring mag-asawa ang mananatili sa pag-mamayari, pakikinabang at pamomosision, sa kani-kaniyang pag-aaring dito'y ipinagkakaloob, sa buong panahon na ang bawat isa sa amin mag-asawa'y nabubuhay, at kung kailan bawian kami ng hiram na buhay, ay saka at saka pa lamang maaring matamo nila ang ganap na pagmamayari at pakikinabang sa mga pag-aaring iyan na dito'y inihayag nila ang pagtanggap.'

"From this provision of the document, it clearly appears that the donors shall continue to be the owner and possessors of the properties involved in the donation and shall continue to enjoy the fruits of said properties while

they are still living and it is only upon their death that ownership will transfer to the donees. It was the evident intent of the donors in this case to give the donation after their death. In the meantime, they retain full or naked ownership and control of the properties while they are still living and title will pass to the donees only after their death. This is donation mortis causa (Heirs of Bonsato v. Court of Appeals, G.R. No. L-6600, duly 30, 1954, 50 O.G. 3568; Howard v. Padilla, G.R. L-7064, 7098, April 22, 1955)."

The quoted provision in the second deed of donation should be understood in its entirety. Thus, based on the first part of the paragraph which states "[n]a bagaman at sa kasulatang ito ay lubusan ng ibinibigay at ipinagkakaloob sa bawat isa x x x na iyon ay patuluyan nang ngayo'y iguinagawad sa kanila ng walang pasubali, na magagawa na nila ang buong karapatan ngayon bilang tunay na may-ari x x x'" (underscoring supplied), supra, it was obviously the intention of Isidra Montanano to grant a donation inter vivos to defendants-appellants and intervenors-appellants. Although the rest of the paragraph states "gayon man, ay kami pa ring mag-asawa ang mananatili sa pagmamayari, pakikinabang at pamomosision, - na kani-kaniyang pag-aaring dito'y ipinagkakaloob, sa buong panahon na ang bawat isa sa amin mag-asawa'y nabubuhay, at kung kailan bawian kami na hiram na buhay, ay saka at saka pa lamang maaring matamo nila ang ganap na pagmamayari at pakikinabang sa mga pag-aaring iyan x x x,'" supra, We have adjudged in the case of Heirs of Juan Bonsato, et al. v. Court of Appeals, et al., 95 Phil. 481, 488:

"It is true that the last paragraph in each donation contains the phrase 'that after the death of the donor the aforesaid donation shall become effective.' x x x However, said expression must be construed together with the rest of the paragraph, and thus taken, its meaning clearly appears to be that after the donor's death, the donation will take effect so as to make the donees the absolute owners of the donated property, free from all liens and encumbrances; for it must be remembered that the donor reserved for himself a share of the fruits of the land donated. Such reservation constituted a charge or encumbrance that would disappear upon the donor's death, when full title would become vested in the donees."

It was also Our observation therein that (ibid, at p. 487):

"x x x. The donor only reserved for himself, during his lifetime, the owner's share of the fruits or produce x x x, a reservation that would be unnecessary if the ownership of the donated property remained with the donor. Most significant is the absence of stipulation that the donor could revoke the donations x x x x."

Furthermore, mention must be made of the fact that the consideration of the second deed of donation is love and services rendered by defendants-appellants and intervenors-appellants to Isidra Montanano, as revealed by the third and fourth paragraphs therein (Exhibit "3," for the defendants):

"Na sapagkat ang banal kong nais ay kung bawian man ako ng aking hiram na buhay ay matumbasan man lamang sa pamamag-itan ng isinasagawa kong pagkakaloob sa hinaharap na kasulatan yuong manga pagdamay, pagmamahal at paghahasikaso, na tinanggap ko at tunay na ipinakita sa akin ng mga dito'y itinangi ko, -

"Kaya't dahil diya'y buong puso kong ibinibigay, isinusulit at ganap na IPINAGKAKALOOb, ang mga natitira ko pang mga pag-aari, na wala pang kinatutunguran o napagbibigyan, sa kaparaanang dito'y itinatagubilen ko, sa manga taong gaya nitong mga sumusunod:

"x x x."

As We have ruled in Concepcion, et al. v. Concepcion, 91 Phil. 823, 830:

"x x x, even if he (donor) says it (the donation) is to take effect after his death, when from the body of the instrument or donation it is to be gathered that the main consideration of the donation is not the death of the donor but rather services rendered to him, by the donee or his affection for the latter, then the donation should

be considered as inter vivos, x x x, and the condition that the donation is to take effect only after the death of the donor should be interpreted as meaning that the possession and enjoyment of the fruits of the property donated should take place only after donor's death."

Along the same line of ratiocination is Our holding in *Balagui, et al. v. Dongso, et al.*, 53 Phil. 673, 677:

"x x x, that as the donor guaranteed the right which she conferred on the donee by virtue of the deed of gift, wherein, in recompense of the latter's good services to the former, she donates to her the two parcels of land with their improvements, said gift is inter vivos and irrevocable, and not mortis causa, notwithstanding the fact that the donor stated in said deed that she did not transfer the ownership of the two parcels of land donated, save upon her death, for such a statement can mean nothing else than that she only reserved to herself the possession and usufruct of said property, and because the donor could not very well guarantee the aforesaid right after her death."

ACCORDINGLY, the appeal of plaintiff-appellant is hereby DENIED whereas the appeal of defendants-appellants is hereby PARTLY GRANTED. The decision of the Court of First Instance of Laguna dated September 15, 1973 is MODIFIED as follows: 1) the dismissal of the complaint of plaintiff-appellant is AFFIRMED; 2) the dismissal of the counterclaim of defendants-appellants and intervenors-appellants is SET ASIDE; and 3) plaintiff-appellant is ordered: a) to deliver the possession of the properties donated to defendants-appellants and intervenors-appellants by virtue of the deed of donation dated December 20, 1940, and b) to render an accounting of the products harvested therefrom from January 23, 1962 up to the present.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

[*] Article 725 of the Civil Code provides:

"ART. 725. Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it."

(see also Articles 734, 745 and 746 of the same Code).

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