

DIONISIA VELASQUEZ ET AL., PLAINTIFFS AND APPELLEES, VS. FRANCISCO BIALA, DEFENDANT AND APPELLANT.

G.R. No. 5140. January 07, 1911

Ponente: MAPA, J.

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MAPA, J.:

The parties to this suit admit that the land, the recovery of the possession of which the plaintiffs endeavor to obtain, belonged to Jose Velasquez, the latter's father, until the year 1897; that in that year the said Velasquez was married, in second wedlock, to Maria Soratos to whom he gave the said land in dowry by a private document which the plaintiffs signed in proof of their assent to the creation of the said dowry in favor of their stepmother, Maria Soratos; and, that the latter, after Velasquez' death, sold the land aforementioned, in the year 1904, to the herein defendant who has been in possession thereof ever since, under such a title, as owner.

In view of these facts the court decided the case in favor of the plaintiffs, on the ground that the gift of the land as a dowry, to Maria Soratos, made as it was by a private document, was entirely null and void in law, for which reason it could not convey the ownership of the said land to Maria Soratos who, consequently, could not transfer the same, by contract of purchase and sale, to the herein defendant.

This conclusion of the court is entirely in accord with the law and should be affirmed. The legal provisions relative to the necessity of the execution of a public instrument to impart validity to the creation of a dowry when, as in the present case, it consists of real property, are clear and precise.

Article 1338 of the Civil Code prescribes as follows:

"The parents and relatives of the spouses and the persons not belonging to the family may create the dowry in favor of the wife, either before or after the celebration of the marriage.

"The husband may also create it before the marriage, but not after it."

"A dowry created," textually says article 1339, "before or at the time of the celebration of the marriage shall be governed in all that is not provided in this chapter by the rules for gifts made in consideration thereof."

And these gifts, that is to say, those made by reason of the marriage or in consideration thereof, are governed, according to article 1328, by the rules established in title 2 of book 3, among which is found the provisions of article 633, the literal tenor of which is, in part, as follows:

"In order that a gift of real property may be valid it shall be made in a public instrument, stating therein in detail the property bestowed as a gift and the amount of the charges which the done must satisfy."

This last provision being applicable in the matter of the dowry herein concerned, it is evident that, pursuant to articles 1339 and 1328, cited above, the creation of the said dowry is null and void because it was not made in a public instrument, prescribed by law as a necessary and indispensable requisite for its validity.

The appellant maintains that the execution of a public instrument is not necessary for the creation of a dowry,

except in the case where it is intended to enforce it against a third person, and, in support of this theory, he cites article 1280 of the Civil Code, which provides as follows:

"The following must appear in a public instrument:

* * * * *

"3. Marriage contracts, and the creation and increase of dowries, whenever it is intended to enforce them against third persons."

From this the appellant makes the deduction that the creation of a dowry is valid and effective among the same parties who intervened therein, without need of a public instrument. As may be seen, the appellant's argument is based on a mere inference, and not on the language of the law. Opposed to this inference, there are categorical and definite legal provisions which destroy it completely. Thus, for example, with respect to marriage contracts, there is article 1321 of the Civil Code, which prescribes that "marriage contracts and modifications made therein must be contained in a public instrument executed before the celebration of the marriage."

Explaining the meaning and scope of this article, Manresa, in his Commentaries on the Civil Code, says that "marriage contracts contained in private documents have no force whatever, either between the parties or as regards third parties" * * * "It is not enough, then," he adds in another part of the same Commentaries, "that the act be recorded in writing, even in a public document; a public instrument, executed before a notary, is absolutely necessary."

And Mucius Scsevola says, in commenting on the said article 1280, in connection with article 1321:

"The deduction appears to be made from the rule of the code that when it is not intended to enforce the said contracts (marriage contracts, creation and increase of dowry) against third persons, the formality of an instrument may be dispensed with; but, aside from the fact that the expression is absolutely incorrect, because reference was made to the intention, which implies a general protective measure for third parties, we find that article 1321, without any distinction whatever between prejudice and no prejudice to third persons, directs that marriage contracts and modifications made therein must be contained in a public instrument executed before the celebration of the marriage."

Restricting the discussion to the dowry, it has already been herein before shown that its creation is subject to the rules governing gifts, and that one of these rules, established by article 633 of the Civil Code, requires the execution of a public instrument to validate the gift of real property and, therefore, likewise the creation of a dowry when it consists of real property.

In his commentary on the said article 633, Manresa lays down the following:

"The gift of real property is valid only when made by a public instrument. The framers of the Civil Code did not believe that sufficient force would be given to such a gift by article 1280, according to which, acts and contracts, the object of which is the transmission of property rights, must appear in a public instrument, because article 633 does not require any special formality with which the contracting parties may compel each other to comply, when once they have validly bound themselves to fulfill the obligation (article 1279), but the validity of the gift is made to depend upon that formality."

The same author, in another part of his work, says:

"Article 633 provides, in order that a gift of real property may be valid, that it must be made by a public instrument * * * It can not be denied that the law requires a public instrument as a necessary requisite for validity, not as a mere formality or as a probatory document * * *, because if it could be dispensed with and the parties still be bound, at all events, in any form, the requirement would be ridiculous; a requirement which

the law deems necessary for validity could be dispensed with, or, what amounts to the same thing, there would be no such necessity, nor would the instrument have any bearing whatever in the matter of the origin and force of the obligation * * *. It is not a question of form (he concludes), it is a question of substance."

To the same extent that a public instrument is required for the validity of a gift, it is necessary for the creation of a dowry consisting of real property, even for those who execute it.

It is also maintained by the appellant that the plaintiffs are barred from challenging the validity of the creation of the dowry here in question, on account of their having consented to its creation and taken a direct part therein by signing the instrument in which a record was made of the conveyance of the land as a dowry to their stepmother, Maria Soratos; but, as the judge well says in the judgment appealed from, an instrument creates no impediment when it is a violation of a positive requirement established with reference to its validity and the form of its execution. This doctrine is recognized as true by the appellant himself; he says in his brief that "it is true that no impediment exists in an instrument when the instrument is null and void." And the private document subscribed by the plaintiffs, considered as an instrument of dowry, is in fact null, void, and ineffective.

The judgment appealed from is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres and Johnson, JJ., concur.

Carson and Moreland, JJ., dissent.

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