

RICARDO LOPEZ ET AL., PLAINTIFFS AND APPELLANTS, VS. ADOLFO OLBES, EXECUTOR OF THE ESTATE OF MARTINA LOPEZ, DEFENDANT AND APPELLEE.*G.R. No. 5480. March 21, 1910*

Ponente: TORRES, J.

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On October 13, 1908, Ricardo Lopez, in his own behalf Josefina Lopez y Jaucian and her husband, Ceferino M. Villareal, and Encarnacion, Jose, and Amparo Lopez y Jaucian brought suit against Adolfo Olbes, the testamentary executor of the deceased Martina Lopez, alleging in their complaint that the latter, on the 14th of May, 1907, executed a public instrument before the notary Felix Samson whereby she donated to the plaintiffs a parcel of hemp land situated at the place called Ali, in the pueblo of Guinobatan, Albay, containing an area of 162 hectares, 2 ares, and 50 centares, the boundaries of which are expressed in the said instrument; that this property was inscribed in the registry of property of Albay in the name of the deceased Antonio Lopez, the predecessor in interest of the said Martina Lopez, also deceased; that, by virtue of the said donation, Ricardo Lopez was entitled to the usufruct of the real property concerned, and that the other plaintiffs, Josefina, Encarnacion, Jose, and Amparo, all surnamed Lopez y Jaucian, were the equal owners thereof in fee simple; that on the same date, May 14, 1907, the said donation was accepted by Ricardo Lopez on his own behalf and in representation of the minor children above designated, and the donor, Martina Lopez, on the same date, was duly notified of the said acceptance; that the said Martina Lopez was the legitimate mother of the plaintiff Ricardo Lopez, and the other plaintiffs, Josefina, Encarnacion, Jose, and Amparo, the legitimate children of Ricardo Lopez, were her legitimate grandchildren; that Adolfo Olbes was the testamentary executor duly appointed by order issued by the Court of First Instance, on April 22, 1908, in proceedings No. 918, entitled: In the matter of the estate of the deceased Martina Lopez; that the said Olbes, as executor, claimed to have rights of ownership and possession to the aforementioned land adverse to those then held by the plaintiffs, inasmuch as the said estate still continued to belong to the deceased Martina Lopez and was then in charge of a trustee by virtue of an agreement had between the attorneys of the executor and the plaintiff Ricardo Lopez, on April 18, and of the order issued by the court on the same date in the aforesaid probate proceedings; and the complaint concluded by asking that a guardian ad litem be appointed, who should be the said Ricardo Lopez, to represent his minor children, also plaintiffs; that judgment be rendered in the latter's favor and against the defendant for the ownership and possession of the said land, and that the trusteeship over the same be declared dissolved and the trustee be ordered to render an accounting, and that the amounts or products which he might have in his possession be adjudicated to the plaintiffs, with the costs against the defendant.

The defendant, having been summoned, filed a demurrer in writing, on November 23, 1908, alleging that the facts set forth in the complaint did not constitute a right of action, inasmuch as the plaintiffs, as the heirs or donees, could not maintain any suit against the testamentary executor to recover the title or possession of the land so long as the court had not adjudicated the estate to them or until the time allowed for paying the debts should have

expired, unless they be given possession of the said land by the executor.

Counsel for the plaintiffs, in answer to the demurrer, set forth that the terms of section 704 of the Code of Civil Procedure do not comprise donees, but merely heirs or devisees, because, although in the first part of the said section the word donatario (donee) appears, the subsequent paragraphs contain only the words heredero o legatario (heir or devisee), it appearing to be evident that the Spanish translation of the said section is not correct; the English text thereof is given wherein the word "donee" does not appear, only the words "heir" and "devisee," which mean heredero and legatario; this is apparently confirmed by the precedents of existing legislation, quoted by counsel, and therefore the prohibition contained in the aforesaid section of the Code of Civil Procedure only refers to the heir or devisee, and in nowise to the donee, whose title is derived from a donation inter vivos, the legal effects of which are those of a real contract which is binding on the donor from the moment of its acceptance; that the donations which are to become effective inter vivos are governed by the provisions concerning contracts and obligations (art. 621, Civil Code), and that the rule that the plaintiffs' right can not be enforced in an ordinary action, but in probate proceedings only, solely refers to the questions involving the status of heirs and their share in the inheritance and not to that class of actions provided for in section 699 of the Code of Civil Procedure, counsel citing decisions rendered in suits against testamentary executors or administrators, as the case of *Hijos de I. de la Rama vs. The Estate of Benedicto* (5 Phil. Rep., 512), and that of *Sunico vs. Chuidian* (9 Phil. Rep., 625); and for all the foregoing reasons the plaintiffs requested that the demurrer interposed by the defendant be dismissed and that he be ordered to answer the complaint within the period allowed by law.

The demurrer having been heard, the judge, on February 26, 1909, issued an order sustaining the said demurrer and directing that the same, as an incidental proceeding, be attached to the record of the probate proceedings of the deceased Martina Lopez.

By virtue of the petition presented by the plaintiffs asking for final judgment and the appointment of Ricardo Lopez as guardian ad litem of the other plaintiff minors, the judge issued an order on March 6, 1909, amending the preceding one by admitting the demurrer authorizing the plaintiff to amend his complaint, with the understanding that should he not file an amended complaint within the time allowed by law the case would be dismissed, with the costs against the plaintiff; this order was attached to the record of the said probate proceedings, and he appointed Ricardo Lopez guardian ad litem to represent the minor plaintiffs in the litigation.

On March 9, 1909, the plaintiffs filed a written amended complaint, a reproduction of the previous one, although this was done by Ricardo Lopez on his own behalf and in representation of his minor children, also plaintiffs, as their guardian ad litem, and by Ceferino M. Villareal as the husband of the plaintiff Josefina Lopez.

The defendant, being informed of the foregoing amended complaint, again demurred to the same on the grounds that the facts therein alleged did not constitute a right of action, inasmuch as in the amended complaint, which is a reproduction of the previous one, no new allegation was made that might supply the deficiency of right of action on the part of the plaintiffs in their endeavor to obtain a reversal of the judgment rendered, without employing legal remedies against the order of March 6; wherefore the defendant prayed the court to allow this new demurrer, to dismiss the amended complaint, and to adjudge the plaintiffs to pay the costs.

The hearing on this demurrer having been had, the judge, by order of March 24, 1909, sustained the same and dismissed the case with the costs against the plaintiffs, and provided that this question should be determined in the hearing on the said probate proceedings.

In another document of the date of March 26, 1909, counsel for the plaintiffs stated to the court that the latter desired to appeal from the said ruling to the Supreme Court, and prayed that final judgment be rendered in the case in conformity with section 101 of the Code of Civil Procedure and the doctrine established in the case of

Serrano vs. Serrano (9 Phil. Rep., 142), in order that he might perfect and duly submit his appeal; but the court, by an order of the 27th of the same month, ruled that the case having been dismissed, with the costs against the plaintiffs, in the ruling on the last demurrer of March 24, this decision was final and appealable. From this ruling¹ counsel for the plaintiffs appealed and stated in writing that the latter also appealed from the rulings of February 26 and March 24, 1909, and announced their intention to file the requisite bill of exceptions.

The court, by order of May 8, 1909, on the grounds therein set forth and in view of plaintiffs' written petition of March 26, rendered judgment against the plaintiffs and in favor of the defendant, and, finding that the allegations made in the complaint were not sufficient to constitute an action, dismissed the complaint with the costs against the plaintiffs, and ordered, moreover, that after the parties had been notified of this judgment a copy thereof, as an integral part of the bill of exceptions submitted, be forwarded to the Supreme Court.

This is a question of maintaining the rights acquired by the plaintiffs by virtue of a donation of land situated at the place called Ali, in the pueblo of Guinobatan, Albay, the boundaries of which are expressed in the complaint, against the claims of the testamentary administrator of the property left by the late Martina Lopez, who was the donor of the said land.

Although in paragraph No. 5 of the amended complaint the donees affirm that they took possession of the land in question, it is certain that the executor, who claims to have rights as such to the possession of the said land, succeeded in having the same placed in trust, inasmuch as one of the petitions of the plaintiffs is to request that the trusteeship over the property be declared dissolved. The Civil Code provides as follows:

"Art. 618. A gift is an act of liberality by which a person disposes gratuitously of a thing in favor of another, who accepts it."

"Art. 624. All persons who can contract and dispose of their property may bestow gifts."

"Art. 625. All persons who are not especially disqualified by law therefor may accept gifts."

"Art. 620. Gifts which are to become effective upon the death of the donor partake of the nature of provisions by last will and shall be governed by the laws established for testamentary succession."

(These gifts are denominated in law mortis causa.)

"ART. 621. Gifts which are to produce their effects inter vivos shall be governed by the general provisions of contracts and obligations in all that is not determined in this title."

"Art. 623. A gift is consummated upon the donor having knowledge of its acceptance by the donee."

"Art. 633. 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 donee must satisfy."

"The acceptance may be made in the same instrument bestowing the gift or in a different one; but it shall produce no effect if not made during the life of the donor."

"If made in a different instrument the acceptance shall be communicated to the donor in an authentic manner, and this proceeding shall be recorded in both instruments."

The action exercised by Ricardo Lopez in his own behalf and as guardian of his minor children, and by Josefina Lopez, assisted by her husband Ceferino M. Villareal, in their character of donees, is based on the rights which as such donees they had acquired by virtue of the donation inter vivos made by Martina Lopez during her lifetime in favor of the plaintiffs by an instrument executed by the donor before a notary on May 14, 1907, a donation expressly accepted on the same date by the donees and of which acceptance the donor was also informed on the

same date; wherefore, these requirements of the law having been complied with, it is unquestionable that the dominion over the land donated was properly transmitted to the donees who in fact and by operation of the law acquired the ownership of the property, as customarily occurs in all contracts of transfer of dominion.

The said action with its motive and grounds may be impugned for any reason based on the nullity or on the irregular nature of the donation, tending to make it inefficacious or to reduce it; but these exceptions, as well as those founded on some defect or vice, which affect the essential nature and formalities of the act or contract or the main questions 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.

Property of the testate estate of the deceased Martina Lopez is not here concerned. During her lifetime she gave away the land mentioned, in the exercise of a right that pertained to her as owner thereof. By virtue of the said donation the sole and true owners of the land donated are the plaintiffs, so long as the said donation is not proven to be null, inefficacious, or irregular. All the questions which by reason of the same are raised by the interested parties must be heard in a regular trial and decided by a final judgment absolutely independent of the probate proceedings concerning the estate of the deceased, who was the previous owner of the land concerned; and therefore the complaint of the donees should not have been dismissed, but the trial should have been proceeded with to final judgment. The prima facie donation inter vivos and its acceptance by the donees having been proved by means of a public instrument, and the donor having been duly notified of said acceptance, the contract is perfect and obligatory and it is perfectly in order to demand its fulfillment, unless an exception is proved which is based on some legal reason opportunely alleged by the donor or her heirs.

So long as the donation in question has not been judicially proved and declared to be null, inefficacious, or irregular, the land donated is of the absolute ownership of the donees and, consequently, does not form a part of the property of the estate of the deceased Martina Lopez; wherefore the action instituted demanding compliance with the contract, the delivery by the deforciant of the land donated, or that it be prohibited to disturb the right of the donees, should not be considered as incidental to the probate proceedings aforementioned.

The question as to whether the provisions of articles 634, 636, and 643 of the Civil Code were observed or violated should be tried and decided in an ordinary action.

With respect to whether the donees inter vivos are or are not comprised within the provisions of section 704 of the Code of Civil Procedure, the English text of the said section, which, in case of disagreement with the Spanish, is the one that must prevail and be observed, in accordance with Act No. 63 of the Philippine Commission, conclusively proves that an important mistake was made in the draft of the Spanish text, by using the word *donatario* (donee), which is not expressed in the English text, the exact translation of which into Spanish could not comprise the donee among the heirs and devisees, as was improperly done; wherefore the demurrer should have been overruled, as it is based on an error so notably unmaintainable under the general principles of law, and in particular taking into account the legal provisions relative to the respective character, condition, and juridical conception of heir, devisee, and donee.

For the foregoing reasons, we hold that the orders of February 26, March 6, 24, and 27, together with the additional order of May 8, 1909, should be and are hereby revoked, and the case shall be returned to the Court of First Instance in order that the defendant may answer the amended complaint within the regular legal period and the trial may then be had in all its proceedings and in accordance with law. So ordered.

Johnson, Carson, and Moreland, JJ., concur.

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