

**EVELYN DE LUNA, ROSALINA DE LUNA, PRUDENCIO DE LUNA, JR.,
WILLARD DE LUNA, ANTONIO DE LUNA AND JOSELITO DE LUNA,
PETITIONERS, VS. HON. SOFRONIO F. ABRIGO, PRESIDING JUDGE OF
THE...**

G.R. No. 57455. January 18, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the Order dated July 7, 1981 of respondent judge Sofronio F. Abrigo of the Court of First Instance of Quezon, Branch IX in Civil Case No. 8624 dismissing the complaint of petitioners on the ground of prescription of action.

The antecedent facts are as follows:

On January 24, 1965, Prudencio de Luna donated a portion of 7,500 square meters of Lot No. 3707 of the Cadastral Survey of Lucena covered by Transfer Certificate of Title No. T-5775 to the Luzonian Colleges, Inc., (now Luzonian University Foundation, Inc., herein referred to as the foundation). The donation, embodied in a Deed of Donation Intervivos (Annex "A" of Petition) was subject to certain terms and conditions and provided for the automatic reversion to the donor of the donated property in case of violation or non-compliance (pars. 7 and 10 of Annex "A", p. 20, Rollo). The foundation failed to comply with the conditions of the donation. On April 9, 1971, Prudencio de Luna "revived" the said donation in favor of the foundation, in a document entitled "Revival of Donation Inter-vivos" (Annex "B" of Petition) subject to terms and conditions which among others, required:

"x x x.

"3. That the DONEE shall construct at its own expense a Chapel, a Nursery and Kindergarten School, to be named after St. Veronica, and other constructions and Accessories shall be constructed on the land herein being donated strictly in accordance with the plans and specifications prepared by the O.R. Quinto & Associates and made part of this donation; provided that the flooring of the Altar and parts of the Chapel shall be of granoletic marble.

"4. That the construction of the Chapel, Nursery and Kindergarten School shall start immediately and must be at least SEVENTY (70) PER CENTUM finished by the end of THREE (3) YEARS from the date hereof, however, the whole project as drawn in the plans and specifications made parts of this donation must be completed within FIVE (5) YEARS from the date hereon, unless extensions are granted by the DONOR in writing;

"x x x." (p. 23, Rollo)

As in the original deed of donation, the "Revival of Donation Intervivos" also provided for the automatic reversion to the donor of the donated area in case of violation of the conditions thereof, couched in the following terms:

" x x x.

"11. That violation of any of the conditions herein provided shall cause the automatic reversion of the donated area to the donor, his heirs, assigns and representatives, without the need of executing any other document for that purpose and without obligation whatever on the part of the DONOR." (p. 24, Rollo)

The foundation, through its president, accepted the donation in the same document, subject to all the terms and conditions stated in the donation (p. 24, Rollo). The donation was registered and annotated on April 15, 1971 in the memorandum of encumbrances as Entry No. 17939 of Transfer Certificate of Title No. T-5775 (p. 15, Rollo).

On August 3, 1971, Prudencio de Luna and the foundation executed a "Deed of Segregation" (Annex "C" of Petition) whereby the area donated which is now known as Lot No. 3707-B of Subdivision Plan Psd-40392 was adjudicated to the foundation. As a result, transfer certificate of title No. T-16152 was issued in the name of the foundation. The remaining portion known as Lot No. 3707-A was retained by the donor. (p. 16, Rollo).

On September 23, 1980, herein petitioners, Evelyn, Rosalina, Prudencio, Jr., Willard, Antonio and Joselito, all surnamed de Luna, who claim to be the children and only heirs of the late Prudencio de Luna who died on August 18, 1980, filed a complaint (pp. 14-17, Rollo) with the Regional Trial Court of Quezon alleging that the terms and conditions of the donation were not complied with by the foundation. Among others, it prayed for the cancellation of the donation and the reversion of the donated land to the heirs. The complaint was docketed as Civil Case No. 8624.

In its answer (pp. 29-36, Rollo), respondent foundation claimed that it had partially and substantially complied with the conditions of the donation and that the donor has granted the foundation an indefinite extension of time to complete the construction of the chapel. It also invoked the affirmative defense of prescription of action and prayed for the dismissal of the complaint.

During the pre-trial of the case, the foundation moved for a preliminary hearing of its affirmative defense of prescription of action which was opposed by the plaintiffs. After the parties have filed their respective written motions, oppositions and memoranda, an Order (pp. 40-43, Rollo) dated July 7, 1981 was issued dismissing the complaint. The dispositive portion of the Order states:

"In view of the foregoing considerations, this Court finds the motion to dismiss deemed filed by the defendant on the ground of prescription to be well-taken and the same is hereby GRANTED.

"WHEREFORE, the instant complaint is hereby ordered DISMISSED.

"No pronouncement as to costs.

"SO ORDERED." (pp. 42-43, Rollo)

No motion for reconsideration was filed by petitioners.

On July 22, 1981, petitioners brought the instant petition for review with the following assignment of errors:

"I. THE LOWER COURT ERRED IN HOLDING THAT THE DONEE'S CONSENT TO THE REVOCATION OF A DONATION TO BE VALID MUST BE GIVEN SUBSEQUENT TO THE EFFECTIVITY OF THE DONATION OR VIOLATION OF (THE) ANY OF THE CONDITIONS IMPOSED THEREIN.

"II. THE LOWER COURT ERRED IN TREATING THE COMPLAINT AS ONE FOR JUDICIAL DECREE OF REVOCATION OF THE DONATION IN QUESTION AS CONTEMPLATED IN ARTICLE 764 OF THE CIVIL CODE OF THE PHILIPPINES AND WHICH PRESCRIBES IN FOUR (4) YEARS AND IN NOT CONSIDERING IT AS AN ACTION TO ENFORCE A WRITTEN CONTRACT WHICH

PRESCRIBES IN TEN (10) YEARS AS PROVIDED IN ARTICLE 1144, HENCE, THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT.

“III. THE LOWER COURT ERRED IN NOT RENDERING JUDGMENT ON THE MERITS BY WAY OF JUDGMENT ON THE PLEADINGS.” (pp. 1-2, Petitioner's Brief)

We gave due course to the petition on August 3, 1981 (p. 45, Rollo). After the parties' submission of their respective briefs, the Court resolved to consider the petition submitted for decision on January 27, 1982 (p. 62, Rollo).

The assailed order of the trial court stated that revocation (of a donation) will be effective only either upon court judgment or upon consent of the donee as held in the case of *Parks v. Province of Tarlac*, No. 24190, July 13, 1926, 49 Phil. 143. The trial court dismissed the claim of petitioners that the stipulation in the donation providing for revocation in case of non-compliance of conditions in the donation is tantamount to the consent of the donee, opining that the consent contemplated by law should be such consent given by the donee subsequent to the effectivity of the donation or violation of the conditions imposed therein. The trial court further held that, far from consenting to the revocation, the donee claimed that it had already substantially complied with the conditions of the donation by introducing improvements in the property donated valued at more than the amount of the donated land. In view thereof, a judicial decree revoking the subject donation is necessary. Accordingly, under Article 764 of the New Civil Code, actions to revoke a donation on the ground of non-compliance with any of the conditions of the donation shall prescribe in four years counted from such non-compliance. In the instant case, the four-year period for filing the complaint for revocation commenced on April 9, 1976 and expired on April 9, 1980. Since the complaint was brought on September 23, 1980 or more than five (5) months beyond the prescriptive period, it was already barred by prescription.

On the other hand, petitioners argue that Article 764 of the New Civil Code was adopted to provide a judicial remedy in case of non-fulfillment of conditions when revocation of the donation has not been agreed upon by the parties. By way of contrast, when there is a stipulation agreed upon by the parties providing for revocation in case of non-compliance, no judicial action is necessary. It is then petitioners' claim that the action filed before the Court of First Instance of Quezon is not one for revocation of the donation under Article 764 of the New Civil Code which prescribes in four (4) years, but one to enforce a written contract which prescribes in ten (10) years.

The petition is impressed with merit.

From the viewpoint of motive, purpose or cause, donations may be 1) simple, 2) remuneratory or 3) onerous. A simple donation is one the cause of which is pure liberality (no strings attached). A remuneratory donation is one where the donee gives something to reward past or future services or because of future charges or burdens, when the value of said services, burdens or charges is less than the value of the donation. An onerous donation is one which is subject to burdens, charges or future services equal (or more) in value than that of the thing donated (Edgardo L. Paras, *Civil Code of the Philippines Annotated*, 11 ed., vol. 11, p. 726).

It is the finding of the trial court, which is not disputed by the parties, that the donation subject of this case is one with an onerous cause. It was made subject to the burden requiring the donee to construct a chapel, a nursery and a kindergarten school in the donated property within five years from execution of the deed of donation.

Under the old Civil Code, it is a settled rule that donations with an onerous cause are governed not by the law on donations but by the rules on contracts, as held in the cases of *Carlos v. Ramil*, L-6736, September 5, 1911, 20 Phil. 183, *Manalo vs. de Mesa*, L-9449, February 12, 1915, 29 Phil. 495. On the matter of prescription of actions for the revocation of onerous donation, it was held that the general rules on prescription applies. (*Parks v. Province of Tarlac*, *supra*). The same rules apply under the New Civil Code as provided in Article 733 thereof

which provides:

"Article 733. Donations with an onerous cause shall be governed by the rules on contracts, and remuneratory donations by the provisions of the present Title as regards that portion which exceeds the value of the burden imposed."

It is true that under Article 764 of the New Civil Code, actions for the revocation of a donation must be brought within four (4) years from the non-compliance of the conditions of the donation. However, it is Our opinion that said article does not apply to onerous donations in view of the specific provision of Article 733 providing that onerous donations are governed by the rules on contracts.

In the light of the above, the rules on contracts and the general rules on prescription and not the rules on donations are applicable in the case at bar.

Under Article 1306 of the New Civil Code, the parties to a contract have the right "to establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy." Paragraph 11 of the "Revival of Donation Intervivos, has provided that "violation of any of the conditions (herein) shall cause the automatic reversion of the donated area to the donor, his heirs, x x x, without the need of executing any other document for that purpose and without obligation on the part of the DONOR". Said stipulation not being contrary to law, morals, good customs, public order or public policy, is valid and binding upon the foundation who voluntarily consented thereto.

The validity of the stipulation in the contract providing for the automatic reversion of the donated property to the donor upon non-compliance cannot be doubted. It is in the nature of an agreement granting a party the right to rescind a contract unilaterally in case of breach, without need of going to court. Upon the happening of the resolutive condition of non-compliance with the conditions of the contract, the donation is automatically revoked without need of a judicial declaration to that effect. In the case of *University of the Philippines v. de los Angeles*, L-28602, September 29, 1970, 35 SCRA 102-107, it was held:

"x x x There is nothing in the law that prohibits the parties from entering into agreement that violation of the terms of the contract would cause cancellation thereof, even without court intervention. In other words, it is not always necessary for the injured party to resort to court for rescission of the contract. (*Froilan v. Pan Oriental Shipping Co., et al.*, L-11897, 31 October 1964, 12 SCRA 276)."

This was reiterated in the case of *Angeles v. Calasanz*, L-42283, March 18, 1985:

"Well settled is, however, the rule that a judicial action for the rescission of a contract is not necessary where the contract provides that it may be revoked and cancelled for violation of any of its terms and conditions (*Lopez v. Commissioner of Customs*, 37 SCRA 327, 334, and cases cited therein).

"Resort to judicial action for rescission is obviously not contemplated.... The validity of the stipulation can not be seriously disputed. It is in the nature of a facultative resolutive condition which in many cases has been upheld, by this court. (*Ponce Enrile v. Court of Appeals*, 29 SCRA 504)"

However, in the *University of the Philippines v. Angeles* case, (supra), it was held that in cases where one of the parties contests or denies the rescission, "only the final award of the court of competent jurisdiction can conclusively settle whether the resolution is proper or not". It was held, thus:

"x x x since in every case, where the extrajudicial resolution is contested, only the final award of the court of competent jurisdiction can conclusively settle whether the resolution was proper or not. It is in this sense that judicial action will be necessary as without it, the extrajudicial resolution will remain contestable and subject to judicial invalidation, unless attack thereon should become barred by acquiescence, estoppel or prescription."

It is clear, however, that judicial intervention is necessary not for purposes of obtaining a judicial declaration rescinding a contract already deemed rescinded by virtue of an agreement providing for rescission even without judicial intervention, but in order to determine whether or not the rescission was proper.

The case of *Parks v. Province of Tarlac*, supra, relied upon by the trial court, is not applicable in the case at bar. While the donation involved therein was also onerous, there was no agreement in the donation providing for automatic rescission, thus, the need for a judicial declaration revoking said donation.

The trial court was therefore not correct in holding that the complaint in the case at bar is barred by prescription under Article 764 of the New Civil Code because Article 764 does not apply to onerous donations.

As provided in the donation executed on April 9, 1971, compliance with the terms and conditions of the contract of donation, shall be made within five (5) years from its execution. The complaint which was filed on September 23, 1980 was then well within the ten (10) year prescriptive period to enforce a written contract (Article 1144(1), New Civil Code), counted from April 9, 1976.

Finally, considering that the allegations in the complaint on the matter of the donee's non-compliance with the conditions of the donation have been contested by private respondents who claimed that improvements more valuable than the donated property had been introduced, a judgment on the pleadings is not proper. Moreover, in the absence of a motion for judgment on the pleadings, the court cannot *motu proprio* render such judgment. Section 1 of Rule 19 provides: "Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading." (Emphasis Ours)

ACCORDINGLY, the petition is GRANTED. Civil Case No. 8624 is hereby ordered reinstated. Respondent judge is ordered to conduct a trial on the merits to determine the propriety of the revocation of the subject donation.

SO ORDERED.

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

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