

EDUVIGIS J. CRUZ, PETITIONER, VS. COURT OF APPEALS, ET AL., RESPONDENTS.

G.R. No. 58671. November 22, 1985

Ponente: PLANA, J.

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PLANA, J.:

This is a petition for review of the decision of the defunct Court of Appeals dated August 20, 1981 in CA-G.R. No. 65338-R reversing that of the Court of First Instance of Rizal, and dismissing petitioner's complaint for revocation of donation against herein private respondents Teresita, Lydia and Cecilia, all surnamed De Leon.

In 1973, Eduvigis J. Cruz, a childless widow, donated a 235.5 sq.m. residential lot in San Isidro, Taytay, Rizal together with the two-door apartment erected thereon to her grandnieces, private respondents herein, in a deed of donation entitled "Kasulatan Sa Kaloobpala". The property was accordingly transferred to the names of private respondents.

In 1974, Eduvigis Cruz judicially adopted Cresencia Ocreto, a minor, after which she extrajudicially tried to revoke the donation, but the donees resisted, alleging that —

(a) the property in question was co-owned by Eduvigis Cruz and her brother, the late Maximo Cruz, grandfather of the donees, hence the latter own 1/2 of the property by inheritance; and

(b) Eduvigis Cruz owns another property, an agricultural land of more than two hectares situated in Barrio Dolores, Taytay, Rizal, hence the donation did not impair the presumptive legitime of the adopted child.

In 1975, petitioner filed a complaint against the donees for revocation of donation in the Court of First Instance of Rizal (Civil Case No. 21049), invoking Article 760, paragraph 3 of the New Civil Code, which reads:

Art. 760. Every donation inter vivos, made by a person having no children or descendants, legitimate or legitimated by subsequent marriage, or illegitimate, may be revoked or reduced as provided in the next article, by the happening of any of these events:

xxx xxx xxx

(3) If the donor should subsequently adopt a minor child.

After trial, the trial court rendered a decision revoking the donation. It did not find merit in defendants' claim that the lot was co-owned by donor and her deceased brother, Maximo Cruz, because the donor's ownership was deemed admitted by the donees by accepting the deed of donation. It also rejected defendants' argument that the donation did not impair the legitime, saying that said claim was "beside the point" and did not limit plaintiff's right under Art. 760 of the Civil Code.

On appeal, the Court of Appeals reversed the trial court and dismissed the complaint. It found that —

(a) the trial Court took into consideration only Article 760 of the Civil Code and ignored Article 761 which states: "In the cases referred to in the preceding article, the donation shall be revoked or reduced insofar as it

exceeds the portion that may be freely disposed of by will, taking into account the whole estate of the donor at the time of the birth, appearance or adoption of a child.

(b) Eduvigis Cruz owns another lot in Dolores, Taytay, Rizal, although the subject of a pending litigation, valued at P273,420.00 in 1977.

(c) The donated lot did not belong entirely to Eduvigis as $\frac{1}{2}$ thereof belonged to her brother Maximo Cruz, grandfather of defendants. In 1974 it had a total market value of P17,000. One-half thereof was P8,500. Adding thereto a P50,000 value of the apartment house constructed thereon, the total value of the donation would still be within the free portion of donor's estate and therefore would not impair the legitime of the adopted child.

(d) In an action for revocation of donation, the donor has the burden to show that the donation has impaired the legitime of the subsequent child; but in this case, Eduvigis did not even allege it in her complaint.

In the instant petition for review, petitioner imputes to the appellate court alleged errors which boil down to the question as to whether under the facts as established and the law, the decision under review correctly dismissed the complaint to annul the subject donation. We hold that it did.

In the case of the subsequent adoption of a minor by one who had previously donated some or all of his properties to another, the donor may sue for the annulment or reduction of the donation within four years from the date of adoption, if the donation impairs the legitime of the adopted, taking into account the whole estate of the donor at the time of the adoption of the child. (Civil Code, Articles 760, 761 and 763.) Of course, the burden of proof is on the plaintiff-donor, who must allege and establish the requirements prescribed by law, on the basis of which annulment or reduction of the donation can be adjudged.

Unfortunately, in the case at bar, the complaint for annulment does not allege that the subject donation impairs the legitime of the adopted child. Indeed it contains no indication at all of the total assets of the donor.

Nor is there proof of impairment of legitime. On the contrary, there is un rebutted evidence that the donor has another piece of land (27,342 sq.m.) situated in Dolores, Taytay, Rizal worth P273,420.00 in 1977, although then subject to litigation.

The legal situation of petitioner-donor, as plaintiff, is made worse by the factual finding of the Court of Appeals that the grandfather of the donees was the owner pro indiviso of one-half of the donated land, the effect of which is to reduce the value of the donation which can then more easily be taken from the portion of the estate within the free disposal of petitioner.

WHEREFORE, the decision under review is affirmed.

SO ORDERED.

Teehankee, (Chairman), Gutierrez, Jr., De La Fuente, and Patajo, JJ., concur.

Melencio-Herrera and Relova, JJ., on leave.

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