

THE NATIONAL TREASURER OF THE PHILIPPINES, PETITIONER, VS. PAULINA PEREZ VDA. DE MEIMBAN AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 61023. August 22, 1984

Ponente: GUTIERREZ , JR., J.

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GUTIERREZ , JR., J.:

This petition seeks the reversal of the decision of the Court of Appeals (now Intermediate Appellate Court), dated June 16, 1982, which affirmed the decision of the Court of First Instance of Pangasinan ordering herein petitioner to pay the private respondent P50,000.00 as damages or compensation out of the Assurance Fund.

The facts as stated in the decision of the lower court are as follows:

"Filomena Primicias, during her lifetime, was the owner of a parcel of land situated in barrio San Vicente, Municipality of Alcala, Pangasinan, designated as Lot No. 2-C, Plan PSU-109394-Amd. 2, with an area of 613,916 square meters, and registered in her name under OCT 10318 (Exhibit B). On November 24, 1958, she executed a public document styled 'Donation Mortis Causa' (Exhibit A) over a 10-hectare portion of the said land located on the southeastern part thereof in favor of her daughter, plaintiff Paulina Perez, who accepted the donation in the same instrument. On November 26, 1958, the document was duly registered and annotated on the memorandum of encumbrances of OCT 10318.

"The records disclose that even prior to the execution of the aforesaid deed of donation, Filomena Primicias had sold to certain third parties several portions of Lot 2-C located along the southwestern part thereof. Lot 2-C was subsequently subdivided segregating the portions thus sold, as evidenced by subdivision plan PSU--52185 (Exhibit 4-C); and on March 28, 1963, the Register of Deeds of Pangasinan issued TCT 43170 (Exhibit 4) in the name of Filomena Primicias covering the remaining unsold portion of the said land, designated as Lot 2-C-16, with an area of 588,244 square meters. However, the Register of Deeds, through negligence or oversight, failed to carry over in TCT 43170 the plaintiff's deed of donation which had been annotated on OCT No. 10318.

"Thereafter Filomena Primicias obtained from defendant Peoples Bank and Trust Co. (PBTC) two loans in the amounts of P15,000.00 and P28,000.00 which were secured by Lot 2-C-16, as evidenced by the real estate mortgages dated April 8 and June 10, 1963, respectively (Exhibits 6 and 7). These mortgage deeds were duly registered and the corresponding memoranda thereof annotated on TCT No. 43170 on April 8 and June 10, 1963, respectively.

""Filomena Primicias died on June 15, 1965 leaving her said obligation unsettled. On July 15, 1968, PBTC instituted foreclosure proceedings, and in due course, the plaintiff, as one of the heirs of the deceased, was sent a copy of the notice of extra-judicial sale. Whereupon plaintiff made the necessary in-quiries in the Office of the Register of Deeds of Pangasinan and discovering that OCT No. 10318 has been cancelled and, in lieu thereof, TCT No. 43170 (or 43710) had been issued pursuant to the subdivision agreement entered into by Filomena Primicias and the transferees of portions of the original Lot 2-C; and that the inscription of her deed of donation mortis causa in OCT No. 10318 had not been carried over into TCT No. 43710. To protect her

interest, the plaintiff, on August 1, 1968, registered anew the deed of donation mortis causa (Exhibit C) and caused the entry of an adverse claim on said TCT.

"On August 7, 1968, the property was sold at public auction; and the PBTC, as highest bidder, was issued the corresponding Sheriff's Certificate of Sale (Exhibit 8).

"On June 17, 1969, plaintiff instituted the instant action against the PBTC and the Register of Deeds of Pangasinan, seeking partial annulment of the Sheriff's Certificate of Sale issued in favor of PBTC to the extent of the 10-hectare portion donated to her.

xxx xxx xxx

"After the trial, this Court thru the Presiding Judge of Branch V, rendered a decision in favor of the plaintiff and against the defendant bank, ordering the partial annulment of the Sheriff's Certificate of Sale dated August 7, 1968, executed in favor of PBTC to the extent of 10 hectares being claimed by plaintiff and ordering defendant PBTC to immediately segregate and reconvey to the plaintiff the said 10 hectares portion of Lot 2-C-16 in conformity and in accordance with the terms and conditions of the deed of donation inter vivos and, in the alternative ordering defendant PBTC, in the event that reconveyance thereof is not possible, to pay the plaintiff the sum of P10,000.00 representing the fair market value of her claims plus interest thereon computed at the rate of 6% per annum from the date of the filing of the complaint until finally paid and to pay the sum of P1,000.00 as attorney's fees and to pay the costs. (Idem. pp-5-6).

"However, on appeal by the defendant PBTC, the Court of Appeals reversed and set aside the decision of this Court in Civil Case No. U-2128 and, accordingly, dismissed the plaintiff's complaint. In reversing and setting aside the decision of Branch V of this Court in Civil Case No. U-2128, the Court of Appeals held that 'neither' the honest mistake and inadvertence of the Register of Deeds nor the absence of negligence on the part of the appellee (now plaintiff herein) could pre-judge the rights of appellant bank (PBTC) as an innocent mortgagee for value and that the remedy of the appellee was to go against the Assurance Fund as provided for by Section 101 of Act 496. x x x"

On the basis of the above findings of the appellate court, the trial court rendered a decision in favor of the private respondent and against herein petitioner, ordering the latter to pay the former out of the Assurance Fund, in the amount of P50,000.00 as damages or compensation.

On Appeal, the Court affirmed the findings of the lower court, hence, this petition.

Petitioner assigns the following errors:

I

WHETHER RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT THE DEED OF DONATION MORTIS CAUSA EXECUTED BY FILOMENA PRIMICIAS IN FAVOR OF PAULINA PEREZ VDA. DE MEIMBAN IS A DONATION INTER VIVOS, AND IN CONSIDERING THAT THERE WAS A VALID TRANSFER TO PAULINA PEREZ VDA. DE MEIMBAN WHO COULD RECOVER FROM THE ASSURANCE FUND.

II

WHETHER RESPONDENT COURT OF APPEALS ERRED IN NOT FINDING THE PRIVATE RESPONDENT NEGLIGENT FOR NOT SEGREGATING THE TEN-HECTARE PORTION OF THE LAND DONATED TO HER.

III

WHETHER RESPONDENT COURT OF APPEALS ERRED IN NOT CONSIDERING THE DEFENSE OF PRESCRIPTION.

IV

WHETHER THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THE ASSURANCE FUND LIABLE.

The principal issue to be determined in the present petition is the nature of the donation, whether it is a donation inter vivos or a donation mortis causa.

Whether a donation is inter vivos or mortis causa depends upon the nature of the disposition made. Did the donor intend to transfer the ownership of the property donated upon the execution of the donation? If this is so, as reflected from the provisions contained in the donation, then it is inter vivos; otherwise, it is merely mortis causa, or made to take-effect after death. (*Castro v. Court of Appeals*, 27 SCRA 1076, 1082, citing *Howard v. Padilla and Court of Appeals*, G.R. Nos. L-7064 and L-7098, April 22, 1955).

According to the petitioner, the donation in question is mortis causa since it is clear from the provisions thereof that ownership and control of the donated property would be transferred to the private respondent only upon the death of the donor. This being so, therefore the deed of donation should have complied with the formalities of a will in order to become valid.

The donation provides:

"That for and in consideration of the love and affection which the DONOR has for the DONEE, the said Donor by these presents does hereby give, transfer, and convey unto the DONEE, her heirs and assigns a portion of ONE HUNDRED THOUSAND (100,000) SQUARE METERS, on the southwestern part Pro-indiviso of the above described property. (The portion herein donated is within Lot 2-B of the proposed amendment Plan Subdivision of Lots Nos. I and 2, Psu-109393), with all the buildings and improvements thereon, to become effective upon the death of the DONOR." (Italics supplied).

It is crystal clear from the above-quoted deed of donation that the donor did not intend to transfer the ownership much less, the possession of the donated property to the donee until after the former's death as evidenced not only by the caption of the deed but more importantly, by what was expressly provided in the donation itself. That the donor retained the ownership of the property was furthermore established by the fact that the donor, after executing the above deed, mortgaged the same to the PBTC and until her death, did not try to fulfill her obligation to the latter in order to free the property from the mortgage lien.

As the donation is in the nature of a mortis causa disposition, the formalities of a will should have been complied with under Article 728 of the Civil Code, otherwise, the donation is void and would produce no effect. As we have held in *Alejandro v. Geraldez* (78 SCRA 245, 253), "If the donation is made in contemplation of the donor's death, meaning that the full or naked owner-ship of the donated properties will pass to the donee because of the donor's death, then it is at that time that the donation takes effect, and it is a donation mortis causa which should be embodied in a last will and testament. (Citing *Bonsato v. Court of Appeals*, 95 Phil. 481)."

The donation in the case at bar was only embodied in a public instrument and was not executed in accordance with the formalities of a will. Therefore, it could not have transferred ownership of the disputed property to the private respondent and its subsequent annotation of adverse claim in Transfer Certificate of Title No. 43710 did not produce any effect whatsoever. Consequently, the private respondent cannot claim the property, especially

after the same had been foreclosed and sold at public auction in favor of PBTC. Necessarily therefore, no damages can also be awarded to said respondent from the Assurance Fund since as far as the law is concerned, no donation existed which the Register of Deeds failed to annotate on the new title of the property.

Inasmuch as all the other issues raised by herein petitioner are anchored on the vital question of whether the donation is inter vivos or mortis causa, we deem it unnecessary to pass upon these other issues.

WHEREFORE, the petition is GRANTED and the decisions of the Court of Appeals dated June 16, 1982 and the Court of First Instance dated July 3, 1980 are hereby REVERSED and SET ASIDE. The complaint filed against the petitioner is DISMISSED. No costs.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Relova, and De la Fuente, JJ., concur.

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