

**PARTENZA LUCERNA VDA. DE TUPAS, PETITIONER-APPELLANT, VS.
BRANCH XLIII OF THE HON. REGIONAL TRIAL COURT OF NEGROS
OCCIDENTAL, RESPONDENT, AND TUPAS FOUNDATION, INC.,
PRIVATE RES...**

G.R. No. 65800. October 03, 1986

Ponente: NARVASA, J.

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NARVASA, J.:

Involved in this appeal is the question of whether or not a donation inter vivos by a donor now deceased is inofficious and should be reduced at the instance of the donor's widow.

Epifanio R. Tupas died on August 20, 1978 in Bacolod City, childless, leaving his widow, Partenza Lucerna, as his only surviving compulsory heir. He also left a will dated May 18, 1976, which was admitted to probate on September 30, 1980 in Special Proceedings No. 13994 of the Court of First Instance of Negros Occidental. Among the assets listed in his will were lots Nos. 837, 838 and 839 of the Sagay Cadastre, admittedly his private capital. However, at the time of his death, these lots were no longer owned by him, he having donated them the year before (on August 2, 1977) to the Tupas Foundation, Inc., which had thereafter obtained title to said lots.

Claiming that said donation had left her practically destitute of any inheritance, Tupas' widow brought suit against Tupas Foundation, Inc. in the same Court of First Instance of Negros Occidental (docketed as Civil Case No. 16089) to have the donation declared inofficious insofar as it prejudiced her legitime, therefore reducible "x x x by one-half or such proportion as x x x (might be deemed) justified x x x" and "x x x the resulting deduction x x x" restored and conveyed or delivered to her. The complaint also prayed for attorney's fees and such other relief as might be proper.

The Trial Court did not see things her way. Upon the facts above stated, on which the parties stipulated[1], said Court dismissed the complaint for lack of merit, rejecting her claim on several grounds, viz.:

"x x x (1) Article 900 relied upon by plaintiff is not applicable because the properties which were disposed of by way of donation one year before the death of Epifanio Tupas were no longer part of his hereditary estate at the time of his death on August 20, 1978; (2) the donated properties were Epifanio's capital or separate estate; and (3) Tupas Foundation, Inc. being a stranger and not a compulsory heir, the donation inter vivos made in its favor was not subject to collation under Art. 1061, C.C." [2]

The Trial Court is in error on all counts and must be reversed.

A person's prerogative to make donations is subject to certain limitations, one of which is that he cannot give by donation more than he can give by will (Art. 752, Civil Code)[3]. If he does, so much of what is donated as exceeds what he can give by will is deemed inofficious and the donation is reducible to the extent of such excess, though without prejudice to its taking effect in the donor's lifetime or the donee's appropriating the fruits of the thing donated (Art. 771, Civil Code). Such a donation is, moreover, collationable, that is, its value is imputable

into the hereditary estate of the donor at the time of his death for the purpose of determining the legitime of the forced or compulsory heirs and the freely disposable portion of the estate. This is true as well of donations to strangers as of gifts to compulsory heirs, although the language of Article 1061 of the Civil Code would seem to limit collation to the latter class of donations. And this has been held to be a long-established rule in *Liguez vs. Honorable Court of Appeals, et al.*,^[4] where this Court said:

"x x x Hence, the forced heirs are entitled to have the donation set aside in so far as inofficious: i.e., in excess of the portion of free disposal (Civil Code of 1889, Articles 636, 645), computed as provided in Articles 818 and 819, and bearing in mind that 'collationable gifts' under Article 818 should include gifts made not only in favor of the forced heirs, but even those made in favor of strangers, as decided by the Supreme Court of Spain in its decisions of 4 May 1899 and 16 June 1902. So that in computing the legitimes, the value of the property donated to herein appellant, Conchita Liguez, should be considered part of the donor's estate. Once again, only the court of origin has the requisite data to determine whether the donation is inofficious or not."^[5]

The fact, therefore, that the donated property no longer actually formed part of the estate of the donor at the time of his death cannot be asserted to prevent its being brought to collation. Indeed, it is an obvious proposition that collation contemplates and particularly applies to gifts *inter vivos*^[6]. The further fact that the lots donated were admittedly capital separate property of the donor is of no moment, because a claim of inofficiousness does not assert that the donor gave what was not his, but that he gave more than what was within his power to give.

Since it is clear that the questioned donation is collationable and that, having been made to a stranger (to the donor) it is, by law^[7] chargeable to the freely disposable portion of the donor's estate, to be reduced insofar as inofficious, i.e., it exceeds said portion and thus impairs the legitime of the compulsory heirs, in order to find out whether it is inofficious or not, recourse must be had to the rules established by the Civil Code for the determination of the legitime and, by extension, of the disposable portion. These rules are set forth in Articles 908, 909 and 910 of the Code, on the basis of which the following step-by-step procedure has been correctly outlined:

(1)

determination of the value of the property which remains at the time of the testator's death;

(2)

determination of the obligations, debts, and charges which have to be paid out or deducted from the value of the property thus left;

(3)

the determination of the difference between the assets and the liabilities, giving rise to the hereditary estate;

(4)

the addition to the net value thus found, of the value, at the time they were made, of donations subject to collation; and

(5)

the determination of the amount of the legitimes by getting from the total thus found the portion that the law provides as the legitime of each respective compulsory heir.^[8]

Deducting the legitimes from the net value of the hereditary estate leaves the freely disposable portion by which the donation in question here must be measured. If the value of the donation at the time it was made does not

exceed that difference, then it must be allowed to stand. But if it does, the donation is inofficious as to the excess and must be reduced by the amount of said excess. In this case, if any excess be shown, it shall be returned or reverted to the petitioner-appellant as the sole compulsory heir of the deceased Epifanio R. Tupas.

For obvious reasons, this determination cannot now be made, as it requires appreciation of data not before this Court and may necessitate the production of evidence in the Court a quo.

WHEREFORE, the appealed decision is reversed and petitioner-appellant Partenza Lucerna Vda. de Tupas is adjudged entitled to so much of the donated property in question, as may be found in excess of the freely disposable portion of the estate of Epifanio B. Tupas, determined in the manner above-indicated. Let the case be remanded to the Trial Court for further appropriate proceedings in accordance with this decision.

SO ORDERED.

Yap (Chairman), Melencio-Herrera, Cruz, and Feliciano, JJ., concur.

[1] Decision in Civil Case No. 16089, p. 81 record, referring to a pre-trial order dated November 3, 1981

[2] Decision, Civil Case No. 16089, supra

[3] Other limitations are set out in Articles 750 and 751, Civil Code

[4] 102 Phil. 577, 586

[5] Articles cited are of the Old Civil Code. Articles 818 and 819 were rewritten, with some changes, into the present Code as Articles 908 and 909

[6] Articles 1061-1069, Civil Code

[7] Article 909, second and third paragraphs, and Article 911, No. (1), Civil Code

[8] Caguioa, Comments & Cases on Civil Law, 3rd (1970) Ed., Vol. III, pp. 280-281; Tolentino, Civil Code of the Philippines 1979 ed., Vol. III, p. 341

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