

FELIX DANGUILAN, PETITIONER, VS. INTERMEDIATE APPELLATE COURT, APOLONIA MELAD, ASSISTED BY HER HUSBAND, JOSE TAGACAY, RESPONDENTS.

G.R. No. 69970, November 28, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

The subject of this dispute is the two lots owned by Domingo Melad which is claimed by both the petitioner and the respondent. The trial court believed the petitioner but the respondent court, on appeal, upheld the respondent. The case is now before us for a resolution of the issues once and for all.

On January 29, 1962, the respondent filed a complaint against the petitioner in the then Court of First Instance of Cagayan for recovery of a farm lot and a residential lot which she claimed she had purchased from Domingo Melad in 1943 and were now being unlawfully withheld by the defendant.[1] In his answer, the petitioner denied the allegation and averred that he was the owner of the said lots of which he had been in open, continuous, and adverse possession, having acquired them from Domingo Melad in 1941 and 1943.[2] The case was dismissed for failure to prosecute but was refiled in 1967.[3]

At the trial, the plaintiff presented a deed of sale dated December 4, 1943, purportedly signed by Domingo Melad and duly notarized, which conveyed the said properties to her for the sum of P80.00.[4] She said the amount was earned by her mother as a worker at the Tabacalera factory. She claimed to be the illegitimate daughter of Domingo Melad, with whom she and her mother were living when he died in 1945. She moved out of the farm only when in 1946 Felix Danguilan approached her and asked permission to cultivate the land and to stay therein. She had agreed on condition that he would deliver part of the harvest from the farm to her, which he did from that year to 1958. The deliveries having stopped, she then consulted the municipal judge who advised her to file the complaint against Danguilan. The plaintiff's mother, her only other witness, corroborated this testimony.[5]

For his part, the defendant testified that he was the husband of Isidra Melad, Domingo's niece, whom he and his wife Juana Malupang had taken into their home as their ward as they had no children of their own. He and his wife lived with the couple in their house on the residential lot and helped Domingo with the cultivation of the farm. Domingo Melad signed in 1941 a private instrument in which he gave the defendant the farm and in 1943 another private instrument in which he also gave him the residential lot, on the understanding that the latter would take care of the grantor and would bury him upon his death.[6] Danguilan presented three other witnesses[7] to corroborate his statements and to prove that he had been living in the land since his marriage to Isidra and had remained in possession thereof after Domingo Melad's death in 1945. Two of said witnesses declared that neither the plaintiff nor her Mother lived in the land with Domingo Melad.[8]

The decision of the trial court was based mainly on the issue of possession. Weighing the evidence presented by the parties, the judge[9] held that the defendant was more believable and that the plaintiff's evidence was "unpersuasive and unconvincing." It was held that the plaintiff's own declaration that she moved out of the

property in 1946 and left it in the possession of the defendant was contradictory to her claim of ownership. She was also inconsistent when she testified first that the defendant was her tenant and later in rebuttal that he was her administrator. The decision concluded that where there was doubt as to the ownership of the property, the presumption was in favor of the one actually occupying the same, which in this case was the defendant.[10]

The review by the respondent court[11] of this decision was manifestly less than thorough. For the most part it merely affirmed the factual findings of the trial court except for an irrelevant modification, and it was only toward the end that it went to and resolved what it considered the lone decisive issue.

The respondent court held that Exhibits 2-b and 3-a, by virtue of which Domingo Melad had conveyed the two parcels of land to the petitioner, were null and void. The reason was that they were donations of real property and as such should have been effected through a public instrument. It then set aside the appealed decision and declared the respondents the true and lawful owners of the disputed property.

The said exhibits read as follows:

"EXHIBIT 2-b is quoted as follows:[12]

'I, DOMINGO MELAD of legal age, married, do hereby, declare in this receipt the truth of my giving to Felix Danguilan, my agricultural land located at Barrio Fugu-Macusi, Penablanca, Province of Cagayan, Philippine Islands; that this land is registered under my name; that I hereby declare and bind myself that there is no one to whom I will deliver this land except to him as he will be the one responsible for me in the event that I will die and also for all other things needed and necessary for me, he will be responsible because of this land I am giving to him; that it is true that I have nieces and nephews but they are not living with us and there is no one to whom I will give my land except to Felix Danguilan for he lives with me and this is the length - 175 m. and the width is 150 m.

'IN WITNESS HEREOF, I hereby sign my name below and also those present in the execution of this receipt this 14th day of September 1941.

'Penablanca, Cagayan, September 14, 1941.

(SGD.) DOMINGO MELAD

'W I T N E S S E S :

- (T.M.) ISIDRO MELAD

- (SGD.) FELIX DANGUILAN

- (T.M.) ILLEGIBLE"

EXHIBIT 3-a is quoted as follows:[13]

'I, DOMINGO MELAD, a resident of Centro, Penablanca, Province of Cagayan, do hereby swear and declare the truth that I have delivered my residential lot at Centro Penablanca, Cagayan, to Felix Danguilan, my son-in-law because I have no child; that I have thought of giving him my land because he will be the one to take care of SHELTERING me or bury me when I die and this is why I have thought of executing this document; that the boundaries of this lot is on the east, Cresencio Danguilan; on the north, Arellano Street; on the south by Pastor Lagundi and on the west, Pablo Pelagio and the area of this lot is 35 meters going south; width and length beginning west to east is 40 meters.

'IN WITNESS HEREOF, I hereby sign this receipt this 18th day of December 1943.

(SGD.) DOMINGO MELAD

‘WITNESSES :

(SGD.) ILLEGIBLE

(SGD.) DANIEL ARAO'''

It is our view, considering the language of the two instruments, that Domingo Melad did intend to donate the properties to the petitioner, as the private respondent contends. We do not think, however, that the donee was moved by pure liberality. While truly donations, the conveyances were onerous donations as the properties were given to the petitioner in exchange for his obligation to take care of the donee for the rest of his life and provide for his burial. Hence, it was not covered by the rule in Article 749 of the Civil Code requiring donations of real properties to be effected through a public instrument. The case at bar comes squarely under the doctrine laid down in *Manalo v. De Mesa*,^[14] where the Court held:

"There can be no doubt that the donation in question was made for a valuable consideration, since the donors made it conditional upon the donees' bearing the expenses that might be occasioned by the death and burial of the donor Placida Manalo, a condition and obligation which the donee Gregorio de Mesa carried out in his own behalf and for his wife Leoncia Manalo; therefore, in order to determine whether or not said donation is valid and effective it should be sufficient to demonstrate that, as a contract, it embraces the conditions the law requires and is valid and effective; although not recorded in a public instrument."

The private respondent argues that as there was no equivalence between the value of the lands donated and the services for which they were being exchanged, the two transactions should be considered pure or gratuitous donations of real rights, hence, they should have been effected through a public instrument and not mere private writings. However, no evidence has been adduced to support her contention that the values exchanged were disproportionate or unequal.

On the other hand, both the trial court and the respondent court have affirmed the factual allegation that the petitioner did take care of Domingo Melad and later arranged for his burial in accordance with the condition imposed by the donor. It is alleged and not denied that he died when he was almost one hundred years old,^[15] which would mean that the petitioner farmed the land practically by himself and so provided for the donee (and his wife) during the latter part of Domingo Melad's life. We may assume that there was a fair exchange between the donor and the donee that made the transaction an onerous donation.

Regarding the private respondent's claim that she had purchased the properties by virtue of a deed of sale, the respondent court had only the following to say: "Exhibit 'E' taken together with the documentary and oral evidence shows that the preponderance of evidence is in favor of the appellants." This was, we think, a rather superficial way of resolving such a basic and important issue.

The deed of sale was allegedly executed when the respondent was only three years old and the consideration was supposedly paid by her mother, Maria Yedan, from her earnings as a wage worker in a factory.^[16] This was itself a suspicious circumstance; one may well wonder why the transfer was not made to the mother herself, who was after all the one paying for the lands. The sale was made out in favor of Apolonia Melad although she had been using the surname Yedan, her mother's surname, before that instrument was signed and in fact even after she got married.^[17] The averment was also made that the contract was simulated and prepared after Domingo Melad's death in 1945.^[18] It was also alleged that even after the supposed execution of the said contract, the respondent considered Domingo Melad the owner of the properties and that she had never occupied the same.^[19]

Considering these serious challenges, the appellate court could have devoted a little more time to examining Exhibit "E" and the circumstances surrounding its execution before pronouncing its validity in the manner

described above. While it is true that the due execution of a public instrument is presumed, the presumption is disputable and will yield to contradictory evidence, which in this case was not refuted.

At any rate, even assuming the validity of the deed of sale, the record shows that the private respondent did not take possession of the disputed properties and indeed waited until 1962 to file this action for recovery of the lands from the petitioner. If she did have possession, she transferred the same to the petitioner in 1946, by her own sworn admission, and moved out to another lot belonging to her step-brother.[20] Her claim that the petitioner was her tenant (later changed to administrator) was disbelieved by the trial court, and properly so, for its inconsistency. In short, she failed to show that she consummated the contract of sale by actual delivery of the properties to her and her actual possession thereof in concept of purchaser-owner.

As was held in *Garchitorena v. Almeda*: [21]

"Since in this jurisdiction it is a fundamental and elementary principle that ownership does not pass by mere stipulation but only by delivery (Civil Code, Art. 1095; *Fidelity and Surety Co. v. Wilson*, 8 Phil. 51), and the execution of a public document does not constitute sufficient delivery where the property involved is in the actual and adverse possession of third persons (*Addison vs. Felix*, 38 Phil. 404; *Masallo vs. Cesar*, 39 Phil. 134), it becomes incontestable that even if included in the contract, the ownership of the property in dispute did not pass thereby to Mariano Garchitorena. Not having become the owner for lack of delivery, Mariano Garchitorena cannot presume to recover the property from its present possessors. His action, therefore, is not one of revindication, but one against his vendor for specific performance of the sale to him."

In the *aforecited* case of *Fidelity and Deposit Co. v. Wilson*, [22] Justice Mapa declared for the Court:

"Therefore, in our Civil Code it is a fundamental principle in all matters of contracts and a well-known doctrine of law that 'non mudis pactis, sed traditione dominia rerum transferuntur.' In conformity with said doctrine as established in paragraph 2 of article 609 of said code; that 'the ownership and other property rights are acquired and transmitted by law, by gift, by testate or intestate succession, and, in consequence of certain contracts, by tradition.' And as the logical application of this disposition article 1095 prescribes the following: 'A creditor has the rights to the fruits of a thing from the time the obligation to deliver it arises. However, he shall not acquire a real right' (and the ownership is surely such) 'until the property has been delivered to him.'

"In accordance with such disposition and provisions the delivery of a thing constitutes a necessary and indispensable requisite for the purpose of acquiring the ownership of the same by virtue of a contract. As Manresa states in his Commentaries on the Civil Code, volume 10, pages 339 and 340: 'Our law does not admit the doctrine of the transfer of property by mere consent but limits the effect of the agreement to the due execution of the contract. x x x The ownership, the property right, is only derived from the delivery of a thing x x x.'"

As for the argument that symbolic delivery was effected through the deed of sale, which was a public instrument, the Court has held:

"The Code imposes upon the vendor the obligation to deliver the thing sold. The thing is considered to be delivered when it is placed 'in the hands and possession of the vendee.' (Civil Code, art. 1462). It is true that the same article declares that the execution of a public instrument is equivalent to the delivery of the thing which is the object of the contract, but, in order that this symbolic delivery may produce the effect of tradition, it is necessary that the vendor shall have had such control over the thing sold that, at the moment of the sale, its material delivery could have been made. It is not enough to confer upon the purchaser the ownership and the right of possession. The thing sold must be placed in his control. When there is no impediment whatever to prevent the thing sold passing into the tenancy of the purchaser by the sole will of the vendor, symbolic delivery through the execution of a public instrument is sufficient. But if, notwithstanding the execution of the instrument, the purchaser cannot have the enjoyment and material tenancy of the thing and make use of it

himself or through another in his name, because such tenancy and enjoyment are opposed by the interposition of another will, then fiction yields to reality - the delivery has not been effected." [23]

There is no dispute that it is the petitioner and not the private respondent who is in actual possession of the litigated properties. Even if the respective claims of the parties were both to be discarded as being inherently weak, the decision should still incline in favor of the petitioner pursuant to the doctrine announced in *Santos & Espinosa v. Estejada*, [24] where the Court announced:

"If the claim of both the plaintiff and the defendant are weak, judgment must be for the defendant, for the latter being in possession is presumed to be the owner, and cannot be obliged to show or prove a better right."

WHEREFORE, the decision of the respondent court is SET ASIDE and that of the trial court REINSTATED, with costs against the private respondent. It is so ordered.

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

[1] Exh. "I" (Orig. Records, p. 11).

[2] Exh. "G" (Orig. Records, p. 7).

[3] Exh. "J" (Orig. Records, p. 13).

[4] Exh. "E" (Orig. Records, p. 5).

[5] TSN, April 25, 1972, pp. 57-58, 70.

[6] TSN, Dec. 7, 1943, pp. 1-9.

[7] Juanito Marallag, Narciso Fuggan and Abelardo Calebago.

[8] TSN, March 29, 1973 (J. Marallag), pp. 76, 78, 80; Oct. 26, 1973, p. 35 (N. Fuggan)

[9] Hon. Bonifacio A. Caceda.

[10] Trial Court's Decision, pp. 9-11 (Orig. Records, pp. 140-142).

[11] Through Justice Marcelino R. Veloso, with the concurrence of Justices Porfirio V. Sison, Abdulwahid A. Bidin and Desiderio P. Jurado.

[12] Orig. Records, p. 17.

[13] *Ibid.*, p. 19.

[14] 29 Phil. 495.

[15] TSN, Nov. 29, 1973 (J. Marallag), p. 78; Sept. 13, 1974 (A. Calebago), p. 4.

[16] TSN, April 6, 1972, pp. 18 & 20.

[17] *Ibid.*, pp. 15-16.

[18] Memorandum of Petitioner, p. 18.

[19] *Ibid.*, pp. 18-22.

[20] TSN, April 6, 1972, p. 47.

[21] 48 O.G. 3432.

[22] 8 Phil. 51

[23] Addison v. Felix and Tioco, 38 Phil. 404.

[24] 26 Phil. 399.

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