

MACARIA CASTILLO ET AL., PLAINTIFFS AND APPELLEES, VS. URBANO CASTILLO AND MARIA QUIZON, DEFENDANTS AND APPELLANTS.*G.R. No. 7050. November 05, 1912*

Ponente: ARELLANO, C.J.

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The subject of this suit is a parcel of agricultural land, situated in barrio of Galamayano, municipality of San Jose, Province of Batangas, of area such as is usually required for sowing thirty gantas of seed-rice, described and identified by boundaries. It is taken for granted that land belonged to Simona Madlangbayan, who died seven years ago. At the present time it is in the exclusive possession of one of the latter' Urbano Castillo, while there are other descendants of hers who have same right, to wit: A daughter and some grandchildren of the deceased brother of full blood of Urbano Castillo, named Pio Castillo; the daughter of a sister of full blood of the same defendant, named Alfonsa, like deceased; and a daughter of a half-brother of the said Urbano Castillo, named Estefano Libingting, also deceased. The descendants of these three family branches claim to be entitled to share with Urbano Ca the ownership of the land in question, as being the only property Simon Madlangbayan had left at her death. Hence, the demand for a division, which is the object of this suit, although Alfonsa Castillo's daughter f a defendant therein merely by default.

The defendant Urbano Castillo, as the sole possessor of the land, endeavored to prove that his mother, Simona Madlangbayan, had other property which during her life-time she disposed of to the benefit of so of the plaintiffs; but the lower court held that this allegation had no proven, and such conclusion must be affirmed as it is well-founded and in no wise erroneous.

In the judgment rendered the claim made by the plaintiffs was recognized be valid and the property of joint-owner- ship was ordered to be divided into four parts: One, for Macaria Castillo and her nephews and nieces, Juan, Clemente, Pedro, Lope, Tomasa, and Maria, all surname Cadano; another, for Juliana Libingting; another, for Maria Quizon; and fourth, for the defendant Urbano Castillo.

The latter entered an exception to this judgment, moved for a rehearing, excepted to the ruling denying the same, and filed a bill of exceptions, however, was held on file until the conclusion of the trial and during t progress of the proceedings had for the division, award of shares and liquidation of fruits, which operations were all effected through commissioners and as a result thereof the court ordered: (1) That each coparcener be delivered the part of the property shown on the rough sketch made by the commissioners, to belong to him or her; (2) that Urbano Castillo pay to each coparcener, as reimbursement of fruits, P78.18; and that the expense of partition be borne pro rata by all the interested parties.

When, after all this procedure, the case was brought before us on appeal through the proper bill of exceptions, the judgment was not impugned oh account of the form of division therein ordered, but merely because of t following assignments of error:

- Because the personality of the plaintiffs was recognized, and the amendment of the answer, impugning such personality, was disallowed.

- Because the instrument of gift was held to be false, and the gift and void.

- Because an indemnity for the fruits was awarded.

With respect to the first assignment of error, it is not a principle by law that heirs of legal age may not demand the division of a real property, left them by their predecessor-in-interest and held by a co without first initiating special intestate proceedings during which an administrator is to be appointed, who alone is vested with the personality claim the property that belongs to the succession. On the contrary, such are expressly authorized to do so, unless, for the reason of there being unpaid debts, judicial intervention becomes necessary, which was not alleged as a special defense in this suit.

As much for the preceding reasons as because there was not included in bill of exceptions the question relative to the opportune or inopportune motion presented for an amendment of the answer to the complaint, and which was denied by the lower court, such assignment of error, alleged in this instance, can neither be considered nor decided.

With reference to the second alleged error, the document declared in the judgment appealed from to be false, null and void, is one of gift which the appellant avers was executed in his behalf by his predecessor-in-interest. The finding of falsity, contained in the judgment of the lower court and based on various facts discussed by him in detail, can not be brought up in this appeal except as a question of fact, with regard to which no new matter may be introduced inasmuch as no error of fact was alleged to have been committed in weighing the evidence; and the cogent presumption of law, which can not easily be destroyed except by strong contrary evidence - the only reason advanced by the appellant-reinforces the old public instruments executed in conformity with the Notarial Law, repealed) before a notary public, by reason of their insertion in the proper notarial registry and the personal attestation made by that official the proceedings and the contents of the instrument - characteristic features not enjoyed by a private instrument which, executed on one date, like the one in question (January 20, 1902), appears to have been ratified on another (November 15, 1905), before a notary, but with no further authorization the part of this official other than such act of affirmation.

And even though the said instrument were not false, the trial court declared it to be void and ineffective. The alleged gift was in fact null and void, according to the provisions of articles 629 and 633 of the Civil Code its acceptance by the donee was in no manner expressed in the instrument nor was the pretended gift consummated pursuant to the provision contained in article 623 of the same code.

The appellant argues that the acceptance in writing of the gift in question was not necessary, as it was made for a valuable consideration, and should be subject to the legal provisions governing contracts. If this allegation was really made, it was one of those mentioned in article 619 of the aforesaid code, as being a gift "which imposes upon the donee a burden inferior to the value of the gift," for Simona Madlangbayan apparently stated in the said instrument that she delivered the land to Urbano Cast order that he defray the expenses of her subsistence and burial, "and in perchance anything should remain from the price of the land, the surplus the said expenses (?) is granted to him by me." A gift of this kind is not in fact a gift for a valuable consideration, but is remuneratory or compensatory, made for the purpose of remunerating or compensating a charge, burden or condition imposed upon the donee, inferior to the value of the gift which, therefore, may very properly be termed to be conditional,

and article 622, invoked by the appellant himself, very clearly prescribes that "gifts for valuable consideration shall be governed by provisions of this title with regard to the part exceeding the value of the charge imposed," to say nothing of the finding of the trial court that the said instrument was false as shown by the evidence and in accordance with which the defendant did not fulfill the conditions mentioned, since he did not defray the expenses for the subsistence and burial of Simona Madlangbayan.

With regard to the third assignment of error, the appellant contends that reimbursement of fruits should have been awarded the plaintiffs, as no demand for the same was made in the complaint and he was unable to prepare evidence in the matter. The procedure had after the plaintiffs found to be entitled to the right of co-ownership, was in all respects in accord with the provisions of section 191 of the Code of Civil Procedure and so well prepared was the appellant in the second part of the trial, the presentation of evidence, that he stated himself "I do not even to cross-examine" (his brief, p. 10).

The judgment appealed from is affirmed, with the costs of this instance against the appellant. So ordered.

Torres, Mapa, Johnson, Carson, and Trent, JJ., concur.

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