

ROMARICO G. VITUG, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND ROWENA FAUSTINO-CORONA, RESPONDENTS.

G.R. NO. 82027. March 29, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This case is a chapter in an earlier suit decided by this Court[1] involving the probate of the two wills of the late Dolores Luchangco Vitug, who died in New York, U.S.A., on November 10, 1980, naming private respondent Rowena Faustino-Corona executrix. In our said decision, we upheld the appointment of Nenita Alonte as co-special administrator of Mrs. Vitug's estate with her (Mrs. Vitug's) widower, petitioner Romarico G. Vitug, pending probate.

On January 13, 1985, Romarico G. Vitug filed a motion asking for authority from the probate court to sell certain shares of stock and real properties belonging to the estate to cover allegedly his advances to the estate in the sum of P667,731.66, plus interests, which he claimed were personal funds. As found by the Court of Appeals,[2] the alleged advances consisted of P58,147.40 spent for the payment of estate tax, P518,834.27 as deficiency estate tax, and P90,749.99 as "increment thereto." [3] According to Mr. Vitug, he withdrew the sums of P518,834.27 and P90,749.99 from savings account No. 35342-038 of the Bank of America, Makati, Metro Manila.

On April 12, 1985, Rowena Corona opposed the motion to sell on the ground that the same funds withdrawn from savings account No. 35342-038 were conjugal partnership properties and part of the estate, and hence, there was allegedly no ground for reimbursement. She also sought his ouster for failure to include the sums in question for inventory and for "concealment of funds belonging to the estate." [4]

Vitug insists that the said funds are his exclusive property having acquired the same through a survivorship agreement executed with his late wife and the bank on June 19, 1970. The agreement provides:

We hereby agree with each other and with the BANK OF AMERICAN NATIONAL TRUST AND SAVINGS ASSOCIATION (hereinafter referred to as the BANK), that all money now or hereafter deposited by us or any or either of us with the BANK in our joint savings current account shall be the property of all or both of us and shall be payable to and collectible or withdrawable by either or any of us during our lifetime, and after the death of either or any of us shall belong to and be the sole property of the survivor or survivors, and shall be payable to and collectible or withdrawable by such survivor or survivors.

We further agree with each other and the BANK that the receipt or check of either, any or all of us during our lifetime, or the receipt or check of the survivor or survivors, for any payment or withdrawal made for our above-mentioned account shall be valid and sufficient release and discharge of the BANK for such payment or withdrawal. [5]

The trial court [6] upheld the validity of this agreement and granted "the motion to sell some of the estate of Dolores L. Vitug, the proceeds of which shall be used to pay the personal funds of Romarico Vitug in the total

sum of P667,731.66 x x x."[7]

On the other hand, the Court of Appeals, in the petition for certiorari filed by the herein private respondent, held that the above-quoted survivorship agreement constitutes a conveyance mortis causa which "did not comply with the formalities of a valid will as prescribed by Article 805 of the Civil Code,"[8] and secondly, assuming that it is a mere donation inter vivos, it is a prohibited donation under the provisions of Article 133 of the Civil Code.[9]

The dispositive portion of the decision of the Court of Appeals states:

WHEREFORE, the order of respondent Judge dated November 26, 1985 (Annex II, petition) is hereby set aside insofar as it granted private respondent's motion to sell certain properties of the estate of Dolores L. Vitug for reimbursement of his alleged advances to the estate, but the same order is sustained in all other respects. In addition, respondent Judge is directed to include provisionally the deposits in Savings Account No. 35342-038 with the Bank of America, Makati, in the inventory of actual properties possessed by the spouses at the time of the decedent's death. With costs against private respondent.[10]

In his petition, Vitug, the surviving spouse, assails the appellate court's ruling on the strength of our decisions in *Rivera v. People's Bank and Trust Co.*[11] and *Macam v. Gatmaitan*[12] in which we sustained the validity of "survivorship agreements" and considering them as aleatory contracts.[13]

The petition is meritorious.

The conveyance in question is not, first or all, one of mortis causa, which should be embodied in a will. A will has been defined as "a personal, solemn, revocable and free act by which a capacitated person disposes of his property and rights and declares or complies with duties to take effect after his death." [14] In other words, the bequest or device must pertain to the testator.[15] In this case, the monies subject of savings account No. 35342-038 were in the nature of conjugal funds. In the case relied on, *Rivera v. People's Bank and Trust Co.*, [16] we rejected claims that a survivorship agreement purports to deliver one party's separate properties in favor of the other, but simply, their joint holdings:

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xxx Such conclusion is evidently predicated on the assumption that Stephenson was the exclusive owner of the funds deposited in the bank, which assumption was in turn based on the facts (1) that the account was originally opened in the name of Stephenson alone and (2) that Ana River "served only as housemaid of the deceased." But it not infrequently happens that a person deposits money in the bank in the name of another; and in the instant case it also appears that Ana Rivera served her master for about nineteen years without actually receiving her salary from him. The fact that subsequently Stephenson transferred the account to the name of himself and/or Ana Rivera and executed with the latter the survivorship agreement in question although there was no relation of kinship between them but only that of master and servant, nullifies the assumption that Stephenson was the exclusive owner of the bank account. In the absence, then, of clear proof to the contrary, we must give full faith and credit to the certificate of deposit which recites in effect that the funds in question belonged to Edgar Stephenson and Ana Rivera; that they were joint (and several) owners thereof; and that either of them could withdraw any part or the whole of said account during the lifetime of both, and the balance, if any, upon the death of either, belonged to the survivor.[17]

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In *Macam v. Gatmaitan*, [18] it was held:

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This Court is of the opinion that Exhibit C, is an aleatory contract whereby, according to article 1790 of the Civil Code, one of the parties or both reciprocally bind themselves to give or do something as an equivalent for

that which the other party is to give or do in case of the occurrence of an event which is uncertain or will happen at an indeterminate time. As already stated, Leonarda was the owner of the house and Juana of the Buick automobile and most of the furniture. By virtue of Exhibit C, Juana would become the owner of the house in case Leonarda died first, and Leonarda would become the owner of the automobile and the furniture if Juana were to die first. In this manner Leonarda and Juana reciprocally assigned their respective property to one another conditioned upon who might die first, the time of death determining the event upon which the acquisition of such right by the one or the other depended. This contract, as any other contract, is binding upon the parties thereto. Inasmuch as Leonarda had died before Juana, the latter thereupon acquired the ownership of the house, in the same manner as Leonarda would have acquired the ownership of the automobile and of the furniture if Juana had died first.[19]

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There is no showing that the funds exclusively belonged to one party, and hence it must be presumed to be conjugal, having been acquired during the existence of the marital relations.[20]

Neither is the survivorship agreement a donation inter vivos, for obvious reasons, because it was to take effect after the death of one party. Secondly, it is not a donation between the spouses because it involved no conveyance of a spouse's own properties to the other.

It is also our opinion that the agreement involves no modification of the conjugal partnership, as held by the Court of Appeals,[21] by "mere stipulation,"[22] and that it is no "cloak"[23] to circumvent the law on conjugal property relations. Certainly, the spouses are not prohibited by law to invest conjugal property, say, by way of a joint and several bank account, more commonly denominated in banking parlance as an "and/or" account. In the case at bar, when the spouses Vitug opened savings account No. 35342-038, they merely put what rightfully belonged to them in a money-making venture. They did not dispose of it in favor of the other which would have arguably been sanctionable as a prohibited donation. And since the funds were conjugal, it can not be said that one spouse could have pressured the other in placing his or her deposits in the money pool.

The validity of the contract seems debatable by reason of its "survivor-take-all" feature, but in reality, that contract imposed a mere obligation with a term, the term being death. Such agreements are permitted by the Civil Code.[24]

Under Article 2010 of the Code:

ART. 2010. By an aleatory contract, one of the parties or both reciprocally bind themselves to give or to do something in consideration of what the other shall give or do upon the happening of an event which is uncertain, or which is to occur at an indeterminate time.

Under the aforequoted provision, the fulfillment of an aleatory contract depends on either the happening of an event which is (1)"uncertain," or (2) "which is to occur at an indeterminate time." A survivorship agreement, the sale of a sweepstake ticket, a transaction stipulating on the value of currency, and insurance have been held to fall under the first category, while a contract for life annuity or pension under Article 2021, et sequenta, has been categorized under the second.[25] In either case, the element of risk is present. In the case at bar, the risk was the death of one party and survivorship of the other.

However, as we have warned:

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But although the survivorship agreement is per se not contrary to law its operation or effect may be violative of the law. For instance, if it be shown in a given case that such agreement is a mere cloak to hide an inofficious

donation, to transfer property in fraud of creditors, or to defeat the legitime of a forced heir, it may be assailed and annulled upon such grounds. No such vice has been imputed and established against the agreement involved in this case.[26]

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There is no demonstration here that the survivorship agreement had been executed for such unlawful purposes, or as held by the respondent court, in order to frustrate our laws on wills, donations, and conjugal partnership.

The conclusion is accordingly unavoidable that Mrs. Vitug having predeceased her husband, the latter has acquired upon her death a vested right over the amounts under savings account No. 35342-038 of the Bank of America. Insofar as the respondent court ordered their inclusion in the inventory of assets left by Mrs. Vitug, we hold that the court was in error. Being the separate property of petitioner, it forms no more part of the estate of the deceased.

WHEREFORE, the decision of the respondent appellate court, dated June 29, 1987, and its resolution, dated February 9, 1988, are SET ASIDE.

No costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Corona v. Court of Appeals, No. 59821, August 30, 1982, 116 SCRA 316.

[2] Kapunan, Santiago, M., J., ponente; Puno, Reynato S. and Marigomen, Alfredo, JJ., concurring.

[3] Rollo, 21.

[4] Id., 22.

[5] Id.

[6] Judge (now Justice of the Court of Appeals) Asaali S. Isnani, presiding.

[7] Rollo, 23.

[8] Id., 26.

[9] Now, Article 87 of the Family Code.

[10] Rollo, 28-29.

[11] 73 Phil. 546 (1942).

[12] 64 Phil. 187 (1937).

[13] CIVIL CODE, Art. 2010.

[14] III TOLENTINO, CIVIL CODE OF THE PHILIPPINES 26 (1973 ed.), citing 1 GOMEZ 53.

[15] See CIVIL CODE, supra., arts. 793, 794, 930.

[16] Supra.

[17] Supra., 547.

[18] Supra.

[19] Supra., 190-191.

[20] CIVIL CODE, supra, art. 160.

[21] In the words of the Appellate Court: "Since private respondent and his late wife did not enter into a marriage settlement before marriage, their property relationship was that of conjugal partnership governed by the Civil Code. The system of conjugal partnership prohibits, as already mentioned, donation between the spouses during the marriage, except that which takes effect after the death of the donor, in which case, the donation shall comply with the formalities of a will (Arts. 133, 728, 805). To allow the prohibited donation by giving it a cloak of aleatory contract would sanction a (modification) of a marriage settlement during marriage by a mere stipulation. As mandated by Art. 52, the nature, consequences and incidents of marriage, which is not a mere contract but an inviolable social institution are governed by law, and not subject to stipulation."

[22] id.

[23] Id.

[24] CIVIL CODE, supra., art. 1193.

[25] V. PARAS, CIVIL CODE OF THE PHILIPPINES, 782 (1986 ed.)

[26] Rivera, supra, 548.

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