

## TWENTY-SECOND DIVISION

[ CA-G.R. CV NO. 03002-MIN, February 10, 2015 ]

**ALMA ARIAS-SAAVEDRA, PLAINTIFF-APPELLANT, VS. AL BASIR ABDUL, MARLYN ABDUL & SPS. ADELAIDA ALBERTA PUAY & DIONISIO PUAY & THE REGISTER OF DEEDS FOR THE PROVINCE OF DAVAO ORIENTAL, DEFENDANTS-APPELLEES.**

### D E C I S I O N

**PEREZ, J.:**

In a Decision<sup>[1]</sup> dated 13 January 2012, the Regional Trial Court (RTC) of Lupon, Davao Oriental, Branch 32 dismissed plaintiff-appellant's Complaint for Annulment of Deed of Donation, Deed of Sale, Reconveyance and/or Annulment of Title, Damages and Attorney's Fees in Civil Case No. 245-09 for lack of merit.

Thus, this appeal.

#### The Facts

Plaintiff-appellant Alma Arias-Saavedra (appellant), as the only child and heir of the late spouses Francisco and Honorata Arias, filed on 12 March 2009 a Complaint<sup>[2]</sup> for Annulment of Deed of Donation, Deed of Sale, Reconveyance and/or Annulment of Title, Damages and Attorney's Fees against defendants-appellees Spouses Al Basir Abdul and Marlyn Abdul, Spouses Adelaida Alberta Puay and Dionisio Puay, and the Register of Deeds as nominal party.

Appellant mainly alleged that she is the rightful owner of a parcel of land located at San Isidro, Davao Oriental covered by OCT No. P-10550 registered in the name of Honorata de Arias, by virtue of the Extra-Judicial Settlement with Deed of Donation<sup>[3]</sup> executed by her mother Honorata Alberta Arias (Honorata) in her favor. Thus, in her complaint, she sought to declare a second Deed of Donation<sup>[4]</sup> dated May 1999 executed by Honorata in favor of appellee Adelaida Puay (Adelaida) as null and void for being fictitious and for having been procured through fraud. Appellant argued that it was impossible for Honorata to donate the same parcel of land she had earlier donated to her considering that as early as 1994, Honorata had already divested herself of all interests in the subject property by donation in appellant's favor being the only child.

She further alleged that since Honorata reserved a life-long usufruct as a condition of the donation, Honorata requested her niece Adelaida sometime in August 1996 to administer the disputed property since Adelaida was a resident of Davao Oriental where the property was located by executing a Special Power of Attorney in favor of Adelaida. Honorata eventually terminated Adelaida's representation in her behalf by virtue of a Revocation of Power of Attorney<sup>[5]</sup> dated 21 March 1998.<sup>[6]</sup>

Appellant argued that Honorata could not have subsequently issued a second Deed of Donation as the latter had never revoked the earlier Deed of Donation she had executed in her favor. In the absence of revocation, appellant insists that the donation in her favor is valid, subsisting and had the legal effect of barring a subsequent donation.<sup>[7]</sup>

Moreover, appellant asserted that since the Deed of Donation dated May 1999 is null and void, the Deed of Absolute Sale<sup>[8]</sup> executed by appellee Adelaida in favor of appellee Spouses Al Basir Abdul and Marlyn Abdul is also null and void. Since Adelaida did not have any title or authority to alienate and/or dispose of the subject property, it follows that she cannot transmit any right to the Spouses Abdul.<sup>[9]</sup>

On the other hand, appellee Adelaida denied appellant's allegations by countering in the main that the Deed of Donation executed by Honorata in favor of Adelaida and the Deed of Absolute Sale in favor of Al Basir Abdul and Marlyn Abdul are valid, thus making the spouses Abdul buyers in good faith. They also claimed that appellant was not the daughter nor was she legally adopted by the spouses Francisco Arias and Honorata.<sup>[10]</sup>

For their part, appellee Spouses Abdul defended by asserting that they are buyers in good faith and that in buying the property from Adelaida for P800,000.00, they relied on representations by Adelaida that the late spouses Arias had no issue and Adelaida is the owner of the disputed property.<sup>11</sup>

On 19 March 2011, appellant filed a Motion to Declare Defendants in Default<sup>[12]</sup> for their failure to submit pre-trial briefs despite notice and for failure to appear during the scheduled pre-trial hearing. In an Order<sup>[13]</sup> dated 7 September 2010, the trial court declared the appellees in default. Appellees' motion for reconsideration was denied in an Order<sup>[14]</sup> dated 4 January 2011. Consequently, an ex-parte reception of evidence ensued on 24 August 2011, and appellant testified as the lone witness in support of her complaint.

On 13 January 2012, the Regional Trial Court rendered the appealed Decision dismissing appellant's complaint, after finding that the revocation of the special of power of attorney in Adelaida's favor did not prevent the subsequent donation to the latter, that appellant failed to prove fraud and Adelaida has the better right because she was first in possession of the disputed property based on Article 1544 in relation to Article 744 of the Civil Code.

Appellant's motion for reconsideration primarily based on her claim of legitime as only child and heir was denied by the Court in an Order<sup>[15]</sup> dated 5 July 2012.

Aggrieved, appellant raises before Us the following assignment of errors:

THE HONORABLE COURT ERRED IN DISMISSING THE COMPLAINT AND HOLDING THAT THE SUBSEQUENT DEED OF DONATION IN FAVOR OF ADELAIDA WAS VALID RELYING SOLELY THAT THE REVOCATION OF THE POWER OF ATTORNEY CANNOT BE USED TO INVALIDATE THE EXECUTION OF A SUBSEQUENT DEED OF DONATION AND THAT

PLAINTIFF-APPELLANT'S EVIDENCE FELL SHORT IN ESTABLISHING FRAUD AS TO THE EXECUTION OF THE SECOND DONATION;

THE HONORABLE COURT ERRED IN APPLYING ARTICLE 744 AND ARTICLE 1544 OF THE NEW CIVIL CODE RELATIVE TO DOUBLE DONATION AND HOLDING THAT DEFENDANT ADELAIDA SHOULD BE ADJUDGED AS FIRST IN POSSESSION SINCE BEFORE PLAINTIFF-APPELLANT COULD HAVE DISCOVERED THE EXISTENCE OF THE SUBSEQUENT DONATION, DEFENDANT ADELAIDA ALREADY CONVEYED THE SUBJECT PROPERTY TO DEFENDANTS AL BASIR ABDUL AND MARLYN ABDUL; AND

THE HONORABLE COURT ERRED IN HOLDING THAT IT CANNOT PASS UPON THE ISSUE OF PLAINTIFF-APPELLANT'S LEGITIME SINCE THE DEFENDANTS IN THEIR ANSWER WITH COUNTERCLAIM AND CROSSCLAIM THEY ALLEGED THAT PLAINTIFF-APPELLANT IS NOT A LEGITIMATE DESCENDANT OF THE LATE HONORATA ARIAS AND FRANCISCO ARIAS.

#### The Court's Ruling

The appeal is meritorious.

#### ***Donation inter vivos executed by Honorata in favor of appellant, valid and subsisting***

The facts are essentially not disputed in so far as the execution by the late Honorata of two different deeds of donation in favor of appellant and subsequently in favor of appellee Adelaida.

A review of the applicable law convinces this Court to uphold the validity of the Donation *inter vivos* executed by Honorata in favor of her daughter by virtue of the Extra-Judicial Settlement with Deed of Donation executed between Honorata and appellant on August 23, 1994 *vis-à-vis* appellee Adelaida who anchors her claim on the subsequent Deed of Donation executed by Honorata in her favor in May 1999.

Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another who accepts it.<sup>[16]</sup> Since the donation in this case was one made *inter vivos*, it was immediately operative and final.<sup>[17]</sup> As a mode of acquiring and transferring ownership, it results in an effective transfer of title over the property from the donor to the donee and the donation is perfected from the moment the donor knows of the acceptance by the donee. And once a donation is accepted, the donee becomes the absolute owner of the property donated.<sup>[18]</sup>

At the time the Extra Judicial Settlement with Deed of Donation was executed on August 23, 1994, appellant became the absolute owner of the subject property covered by OCT No. P-10550, with the named owner Honorata expressly reserving only a usufruct of the property as her means of support while she lives. When Honorata made a later donation in favor of Adelaida, she had no more title or interests in the property to convey to Adelaida for, by then, she had no more rights to dispose or transfer. Evidently, she could not give what she no longer had. *Nemo dat quod non habet.*<sup>[19]</sup>

The application by the court *a quo* of the rules on double donation, pertaining to Article 744 in relation to Article 1544,<sup>[20]</sup> is erroneous. The Extra Judicial Settlement with Deed of Donation, duly notarized and published,<sup>[21]</sup> coupled with appellant's acceptance, unconditionally made effective the donation of the subject property by Honorata in appellant's favor.

When the trial court considered Adelaida to have the better right because she was first in possession, it mistakenly equated the contract of donation with the ordinary contract of sale and misapplied Article 1544.

It is worthy to cite herein the concurring opinion of Justice Vitug in the case of *Hemedes v. CA*,<sup>[22]</sup> which pertinently set aside the application of the rule on double sales in an ordinary donation, as in the instant case. He particularly noted that donation is a mode of acquiring and transmitting ownership and thus, the donor must be the owner or have a real right of the property at the time of the donation for it to be effective. He stated:

...a donation would not be legally feasible if the donor has neither ownership nor real right that he can transmit to the donee. Unlike an ordinary contract, a donation, under Article 712, in relation to Article 725 of the Civil Code is also a **mode of acquiring and transmitting ownership and other real rights** by an act of liberality whereby a person disposes gratuitously that ownership or real right in favor of another who accepts it. It would be an inefficacious process if the donor would have nothing to convey at the time it is made.

Article 744 of the Civil Code states that the "donation of the same thing to two or more different donees shall be governed by the provisions concerning the sale of the same thing to two or more persons," **i.e.**, by Article 1544 of the same Code, as if so saying that there can be a case of "double donations" to different donees with opposing interest. Article 744 is a **new** provision, having no counterpart in the old Civil Code, **that must have been added unguardedly**. Being a mode of acquiring and transmitting ownership or other real rights, a donation once perfected would deny the valid execution of a subsequent inconsistent donation (unless perhaps if the prior donation has provided a suspensive condition which still pends when the later donation is made).

In sales, Article 1544, providing for the rules to resolve the conflicting rights of two or more buyers, is appropriate since the law does not prohibit but, in fact, sanctions the **perfection** of a sale by a non-owner, such as the sale of future things or a short sale, for it is only at the **consummation stage** of the sale, *i.e.*, delivery of the thing sold, that ownership would be deemed transmitted to the buyer. In the meanwhile, a subsequent sale to another of the same thing by the same seller can still be a legal possibility. This rule on double sales finds no relevance in an ordinary donation where the law requires the donor to have ownership of the thing or the real right he donates at the time of its perfection (see Article 750, Civil Code) since a donation constitutes a mode, not just a title in an acquisition and transmission of ownership.

Article 712 of the Civil Code provides for the recognized modes of acquiring ownership –

Article 712. Ownership is acquired by occupation and by intellectual creation.

Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition.

They may also be acquired by means of prescription.

Donation as a mode of acquiring ownership and transferring real rights in real property is distinguished from ordinary contracts such as a contract of sale which requires delivery in order to transfer ownership. Thus, under the law on sales, the execution of a contract of sale over real property does not by itself transfer the title and rights of the transferor until after actual or constructive delivery of the object of the transaction such that until such delivery only a right to compel the transferor to transfer and deliver to the transferee adheres to the latter. In *Alcantara-Daus v. de Leon*,<sup>[23]</sup> the Supreme Court, espousing that sale merely involves title and not a mode that transfers ownership, held:

While a contract of sale is perfected by mere consent, ownership of the thing sold is acquired only upon its delivery to the buyer. Upon the perfection of the sale, the seller assumes the obligation to transfer ownership and to deliver the thing sold, but the real right of ownership is transferred only “by tradition” or delivery thereof to the buyer.

Donation, unlike a contract of sale, immediately transfers ownership of the realty or interests therein upon acceptance of the donation.<sup>[24]</sup> Otherwise stated, upon acceptance by the donee, the donor is thus immediately relieved of any rights and interests that have been donated to the former and may recover them only upon a valid revocation of the donation.

Thus, it bears reiterating that Honorata could not have donated the same property she had earlier donated to appellant because ownership thereof has already been vested in appellant upon her acceptance of the donation. Thus, it is clearly error for the court *a quo* to adjudge Adelaida to have a better right simply because she was first in possession of the subject property as shown by her conveyance of the subject property to her co-appellees, spouses Abdul, before appellant discovered the existence of the second donation.

The other errors assigned by appellant need not occupy this Court’s further attention.

We agree with the trial court’s ruling that the revocation of the power of attorney granted to Adelaida does not or cannot invalidate the execution of the subsequent deed of donation in the latter’s favor, and that the appellant’s evidence fell short in proving fraud as to the execution of the second donation. That said however, the second donation still cannot prevail over the first donation in favor of appellant which as discussed is effective and final from the time the Extra Judicial Settlement with Deed of Donation was accepted by appellant.