358 Phil. 797

THIRD DIVISION

[G.R. No. 110644, October 30, 1998]

THE HEIRS OF SALUD DIZON SALAMAT, REPRESENTED BY LUCIO SALAMAT AND DANILO SALAMAT, VALENTA DIZON GARCIA, REPRESENTED BY RAYMUNDO D. GARCIA, JR. AS ATTORNEY-IN-FACT, THE HEIRS OF ANSELMA REYES DIZON, REPRESENTED BY CATALINA DIZON ESPINOSA, PETITIONERS, VS. NATIVIDAD DIZON TAMAYO, THE HEIRS OF EDUARDO DIZON, REPRESENTED BY ANGELA R. DIZON, THE HEIRS OF GAUDENCIO DIZON, REPRESENTED BY MARIA DIZON JOCSON, RESPONDENTS.

D E C I S I O N

ROMERO, J.:

Before us is a petition for certiorari under Rule 45 of the Rules of Court seeking the reversal of the decision rendered by the Court of Appeals dated June 15, 1993.

Agustin Dizon died intestate on May 15, 1942 leaving behind his five children Eduardo, Gaudencio, Salud, Valenta and Natividad as surviving heirs. Among the properties left by the decedent was a parcel of land in Barrio San Nicolas, Hagonoy, Bulacan, with an area of 2,188 square meters covered by Original Certificate of Title No. 10384.[1]

On January 8, 1944, Eduardo sold his hereditary rights in the sum of P3,000 to his sister Salud Dizon Salamat. The sale was evidenced by a private document bearing the signatures of his sisters Valenta and Natividad as witnesses.[2]

On June 2, 1949, Gaudencio likewise sold his hereditary rights for the sum of P4,000 to his sister Salud. The sale was evidenced by a notarized document which bore the signature of Eduardo Dizon and a certain Angela Ramos as witnesses.[3] Gaudencio died on May 30, 1951 leaving his daughters Priscila D. Rivera and Maria D. Jocson as heirs.

Sometime in 1987, petitioners instituted an action for compulsory judicial partition of real properties registered in the name of Agustin Dizon with the Regional Trial Court, Branch 18 of Malolos, Bulacan. The action was prompted by the refusal of herein respondent Natividad Dizon Tamayo to agree to the formal distribution of the properties of deceased Agustin Dizon among his heirs. Respondent's refusal stemmed from her desire to keep for herself the parcel of land covered by OCT 10384 where she presently resides, claiming that her father donated it to her sometime in 1936 with the conformity of the other heirs. The subject property is also declared for taxation purposes under Tax Declaration No. 10376 in the name of respondent.

The trial court noted that the alleged endowment which was made orally by the

deceased Agustin Dizon to herein respondent partook of the nature of a donation which required the observance of certain formalities set by law. Nevertheless, the trial court rendered judgment in favor of respondent, the dispositive portion of which reads as follows:

> "WHEREFORE, finding that the partition of the estate of Agustin Dizon is in order, let a project of partition be drawn pursuant to Sec 2, Rule 69, Rules of Court assigning to each heir the specific share to which he is entitled taking into consideration the disposition made in favor of Salud Dizon Salamat and the adjudication of Lot 2557, Hagonoy Cadastre 304-D owned by Natividad Dizon Tamayo, together with the improvements thereon, in her favor and the house owned by Valenta Dizon Garcia, executing, if necessary, proper instruments of conveyance for confirmation and approval by the Court.
>
> Parties are enjoined to draw the prospect of partition as equitably and equally as possible with the least inconvenience and disruption of those in possession or in actual occupation of the property. Should the parties fail to come up with an acceptable project of partition, the Court will appoint commissioners as authorized by Sec. 3, Rule 69, Rules of Court, who will be guided by the dispositive portion hereof.
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> All costs and expenses incurred in connection with the partition are to be shared equally by the parties.
>
> SO ORDERED."

Petitioners contend that Lot 2557, Cad 304-D, described and covered by OCT 10384 in the name of the heirs of Agustin Dizon is part of the Dizon estate while respondent claims that her father donated it to her sometime in 1936 with the consent of her co-heirs. In support of her claim, respondent Natividad presented a private document of conformity which was allegedly signed and executed by her elder brother, Eduardo, in 1936.

Petitioners, however, question the authenticity of the document inasmuch as it is marred by the unexplained erasures and alterations.

The Court of Appeals, in affirming the decision of the RTC, stated that notwithstanding the unexplained erasures and alterations, a cursory reading of the signed statement of Eduardo Dizon, which execution is undisputed, showed that there was an oral donation of the litigated land from Agustin Dizon to Natividad Dizon Tamayo[4] in 1936.

The Court of Appeals further stated that the attestation by Eduardo, of the oral donation of the subject land made by his father to respondent Natividad, in 1936, coupled with the tax declaration and payment of taxes in respondent's name would show that the trial court did not err in ruling that the subject land should pertain to Natividad Tamayo as inheritance from her parents.

> We reverse.
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> Art 749 of the Civil Code reads:

> In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.
>
> The acceptance may be made in the same deed of donation or in a separate public document, unless it is done during the lifetime of the donor.
>
> If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form and this step shall be noted in both instruments.

It is clear from Article 749 that a transfer of real property from one person to another cannot take effect as a donation unless embodied in a public document.

The alleged donation in the case at bar was done orally and not executed in a public document. Moreover, the document which was presented by respondent in support of her claim that her father donated the subject parcel of land to her was a mere private document of conformity which was executed by her elder brother, Eduardo in 1956.[5] It may not be amiss to point out that the brothers Eduardo and Gaudencio had already ceded their hereditary interests to petitioner Salud Dizon Salamat even before 1950.

The Court of Appeals, however, placed much reliance on the said document and made the dubious observation that "x x x a cursory reading of the signed statement of Eduardo Dizon, which execution is undisputed, shows that there was an oral donation x x x."

Significantly, the document relied upon by the Court of Appeals could hardly satisfy the requirements of the rule on ancient documents on accounts of unexplained alterations.

An ancient document refers to a private document which is more than thirty (30) years old, produced from a custody in which it would naturally be found if genuine, and is unblemished by alterations or circumstances of suspicion.[6]

To repeat, the document which was allegedly executed by Eduardo was marred by unexplained erasures and alterations. While the document was originally penned in black ink, the number thirty-six (36) in blue ink was superimposed on the number fifty-six (56) to make it appear that the document was executed in 1936 instead of in 1956. Moreover, a signature was blotted out with a black pentel pen and the three other signatures[7] of the alleged witnesses to the execution of the document at the lower portion of the document were dated June 1, 1951. This could only mean that the witnesses attested to the veracity of the document 5 years earlier, if the document was executed in 1956 or 15 years later, if we are to give credence to respondent’s claim, that the document was executed in 1936. Curiously, two of the signatories, namely, Priscila D. Rivera and Maria D. Jocson signed the document as witnesses two days after the death of their father Gaudencio, who, as earlier mentioned, had already sold his hereditary rights to his elder sister Salud in 1949.