

NINETEENTH DIVISION

[CA-G.R. CV. NO. 03898, January 30, 2015]

HEIRS OF ASUNCION S. MELGAR, NAMELY: LAZARO DE LOS SANTOS, BENJAMIN DE LOS SANTOS, JR., CONCHITA LABASBAS, FELICIDAD ENCARNADO, PETITIONERS-APPELLANTS, VS. PIO ANTONIO M. BORREL, RESPONDENT-APPELLEE.

D E C I S I O N

LOPEZ, J.:

The Case

Before this Court is an appeal filed under Rule 41 of the 1997 Rules of Civil Procedure which seeks to reverse and set aside the Decision^[1] of the Regional Trial Court, Branch 36 of Carigara, Leyte, dated 8 October 2010, dismissing Petitioners-Appellants' Petition^[2] for lack of merit and its Order^[3], dated 28 January 2011, denying their twin motions labeled as Motion for Reconsideration and Motion for New Trial^[4].

FACTUAL ANTECEDENTS

The present case arose out of a dispute over several parcels of land owned by the late Asuncion S. Melgar which were donated to herein Respondent-Appellee by the former.

The late Asuncion S. Melgar (herein referred as "Asuncion") was married to Pio Melgar. She died on 17 January 1993, a widow and without any issue. At the time of her death, she left several personal and real properties including the parcels of land involved in the present controversy.

Petitioners-Appellants are the siblings of Asuncion except Conchita Labasbas. They claimed to be the heirs of Asuncion and as such, they are entitled to inherit her properties as the latter died without any issue.

On the other hand, Respondent-Appellee is the step-grandson of Asuncion and the donee of the fifteen (15) parcels of land subject matter of the present controversy which were donated to him by the former.

It appears that on 14 October 1992, Asuncion executed a Deed of Donation^[5] in favor of Respondent-Appellee involving fifteen (15) parcels of land. The latter accepted the donation and his acceptance was made in the same document. The deed was prepared and notarized by Atty. Napoleon F. Ronquillo, Sr. (herein referred as "Atty. Ronquillo").

More than ten (10) years after the execution of the deed of donation or on 26

November 2002, Petitioners-Appellants filed a Petition^[6] with the trial court for declaration of nullity of donation, injunction, with prayer for the issuance of a TRO and damages. They alleged that the deed of donation is fake, spurious and a falsity. Moreover, the late Asuncion Melgar never mentioned any donation made by the latter during her lifetime, according to Petitioners-Appellants. They added that the estate of Asuncion is currently under judicial settlement with the trial court and the fifteen (15) parcels of land subject matter of the deed of donation were included in the inventory of properties prepared by them.

On 27 January 2002, Respondent-Appellee filed his Answer with Counterclaim^[7]. He vehemently denies Petitioners-Appellants' allegation that the deed of donation is fake and spurious. He maintains that he is the lawful and legal owner of the subject properties which he acquired by virtue of a deed of donation executed by Asuncion and duly notarized by the late Atty. Ronquillo.

In their Pre-Trial Brief^[8], Petitioners-Appellants contended that upon their investigation they found out that Atty. Ronquillo, the lawyer who notarized the questioned deed of donation, was not duly commissioned to act as a notary public in the year 1992. Consequently, the donation was null and void since it was not made in a public instrument as mandated by law. The deed of donation remained a private instrument due to Atty. Ronquillo's lack of authority to perform notarial acts, they added.

Thereafter, trial on the merits ensued. Lazaro de los Santos testified for and in behalf of Petitioners-Appellants. The latter also presented Atty. Blanche Salino, Atty. Clinton Nuevo and Atty. Fidelina Grapilon, clerks of court of the different Regional Trial Court branches in Tacloban City, Ormoc City and Carigara, Leyte, respectively. Their testimonies were confined to the identification of the Certifications^[9] that they respectively issued to the effect that Atty. Ronquillo was not commissioned as a notary public in the year 1992. The testimonies of the other clerks of court who issued the same certifications were dispensed with upon agreement of both counsels.

On the other hand, Respondent-Appellee Pio Antonio Borrel testified for and in his behalf. He stated that he had no knowledge of Petitioners-Appellants' allegation that Atty. Ronquillo was not commissioned as a notary public at the time of the execution of the deed of donation. He added that, at that time, it was common knowledge in Carigara, Leyte that Atty. Ronquillo was performing the duties of a notary public.

Moreover, Respondent-Appellee declared that he was the one who took care of Asuncion while she was still alive until the latter's death since they were living together in the same house. At present, he is in possession of the subject parcels of land except for one parcel, he added.

On 8 October 2010, the trial court rendered the assailed Decision^[10] dismissing Petitioners-Appellants' petition. It ruled that the questioned deed of donation satisfies all the requirements of a valid donation as prescribed under Art. 749 of the Civil Code. It added that while Petitioners-Appellants questioned the signature of Asuncion appearing in the said deed of donation as a forgery, they however, failed to substantiate their allegation. In fact, no expert witness was presented to prove that the signature of Asuncion as appearing in the said deed was not really hers,

according to the trial court.

On Petitioners-Appellants' allegation that the notary public who notarized the deed of donation was not duly commissioned to perform notarial acts, the trial court ruled that under the old notarial law enforced at the time of the execution of the deed of donation, a notarial commission can be obtained from the Regional Trial Court of the Province or City where the applicant seeks to discharge his functions. Once commissioned, the applicant may discharge his functions within the province and the cities within that province. Thus, the certifications presented by Petitioners-Appellants to the effect that Atty. Ronquillo was not duly commissioned as a notary public in the year 1992 are inconclusive as it was possible for Atty. Ronquillo to have applied for a notarial commission in any of the many Regional Trial Court branches within the province of Leyte, according to the trial court.

Not satisfied, Petitioners-Appellants filed a Motion for Reconsideration and Motion for New Trial^[11] of the trial court's decision on 3 December 2010. In an Order^[12] dated 28 January 2011, the trial court denied Petitioners-Appellants' motion.

Aggrieved, Petitioners-Appellants interposed the present appeal. On 21 November 2011, they filed their Appellants Brief^[13] raising several assignments of error which can be summarized into one pivotal issue, to wit:

WHETHER OR NOT THE QUESTIONED DEED OF DONATION DATED 14 OCTOBER 1992 IS VALID.

RULING

We **DENY** the present appeal for lack of merit.

Petitioners-Appellants, in their brief, reiterated that the deed of donation executed by the late Asuncion Melgar in favor of Respondent-Appellee is a nullity as it was not carried out in accordance with the mandatory requirements prescribed under Article 749 of the Civil Code, particularly on the requirement that the donation of an immovable must be made in a public instrument. They mainly anchored their argument on the supposed lack of authority on the part of Atty. Ronquillo, the lawyer who notarized the deed of donation, to perform notarial acts. To bolster their claim, they presented several certifications from the clerks of court of the different Regional Trial Court branches in the province of Leyte to the effect that Atty. Ronquillo was not duly commissioned as a notary public in the year 1992. However, they did not mention if all the branches of all the Regional Trial Courts in the province of Leyte issued the same certification.

They argued that Article 749 of the Civil Code mandates that the donation of an immovable must be made in a public instrument and a public instrument is one that is authenticated by a duly commissioned notary public. Since Atty. Ronquillo was not duly commissioned to perform notarial acts, the deed of donation remained a private instrument. Thus, the donation is null and void as it was not made in a public instrument pursuant to the aforementioned provision.

On the other hand, Respondent-Appellee filed his Appellees Brief^[14] on 27 January 2012. He countered that notwithstanding the certifications presented by Petitioners-

Appellants, these do not categorically prove that Atty. Ronquillo was not duly commissioned as a notary public. In fact, Atty. Blanche Salino, one of the clerks of court who issued the said certifications, testified that she cannot categorically conclude whether a commission was issued to Atty. Ronquillo since no available record of any notarial commission issued in the years 1991 and 1992 existed in their office, Respondent-Appellee added. He asserts that the donation is valid as it was made in a public instrument and as such, it enjoys the presumption of regularity.

Upon a careful consideration of all the evidence and the testimonies of witnesses presented by both parties, this Court finds the present appeal without merit.

At the outset, it has not escaped Our attention that the Petitioners-Appellants (herein referred to as "Plaintiffs-Appellants") appear to have erroneously categorized their petition (should read as "Complaint") with the trial court as a special civil action. However, as the trial court correctly remarked, this is erroneous since Special Civil Actions pertain only to those actions defined under Rules 62 up to 71 of the Rules of Court. Plaintiffs-Appellants' cause of action cannot be the proper subject of a Special Civil Action. Nonetheless, settled is the rule that the designation or caption is not controlling as it is not even an indispensable part of the complaint; the allegations of the complaint control.^[15] Plaintiffs-Appellants' allegations indicate that the present action is an ordinary civil action thus, it should be treated as such.

Coming now to the crux of the present controversy, We are confronted with the issue on whether or not the subject deed of donation is valid. We are convinced that the deed of donation executed by Asuncion is valid for the reasons discussed below.

A donation is defined as an act of liberality whereby a person disposes gratuitously a thing or right in favor of another, who accepts it.^[16] As a mode of acquiring ownership, donation results in an effective transfer of title over the property from the donor to the donee.^[17] It is perfected from the moment the donor knows of the acceptance by the donee,^[18] provided the donee is not disqualified or prohibited by law from accepting the donation. Once the donation is accepted, it is generally considered irrevocable, and the donee becomes the absolute owner of the property.^[19] The acceptance, to be valid, must be made during the lifetime of both the donor and the donee.^[20] It may be made in the same deed or in a separate public document,^[21] and the donor must know the acceptance by the donee.

Moreover, the donation of real property, which is a solemn contract, is void without the formalities provided under Article 749 of the Civil Code of the Philippines. Article 749 of the Civil Code states:

Art. 749. 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, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be