

## **SPECIAL TWENTIETH DIVISION**

**[ CA-G.R. CV NO. 04090, July 25, 2014 ]**

**ELIZANE W. JENSSEN, PLAINTIFF-APPELLEE, VS. TERESITA A. WAQUEZ, DEFENDANT-APPELLANT.**

### **DECISION**

**QUIJANO-PADILLA, J.:**

This is an appeal<sup>[1]</sup> from the Decision<sup>[2]</sup> dated August 5, 2011 of the Regional Trial Court (RTC), Branch 21, Mambusao, Capiz in Civil Case No. M-08-0275-09 for Revocation of Donation, Recovery of Possession and Damages. The assailed Decision declared the Deed of Donation dated October 19, 2005 executed by the plaintiff-appellee Elizane W. Jenssen in favor of defendant-appellant Teresita A. Waquez as revoked and consequently, ordered defendant-appellant Teresita to reconvey/return the possession of Lot No. 685 to plaintiff-appellee.

### **The Antecedents**

Initially, plaintiff-appellee filed a Complaint<sup>[3]</sup> for Revocation of Donation, Recovery of Possession and Damages against defendant-appellant. In the said Complaint, plaintiff-appellee alleged that on March 17, 1997, she bought Lot No. 685 (subject property) of Sapi-an Cadastre, situated in Barangay Canduman, Mandaue City, Cebu, with an area of 9,100 square meters, more or less, and covered by Tax Declaration No. 01-1229,<sup>[4]</sup> from Daisy O. Villanueva as evidenced by a Deed of Sale.<sup>[5]</sup> After the sale, plaintiff-appellee requested defendant-appellant to facilitate the titling of the subject property in the former's name. A few months later, defendant-appellant told plaintiff-appellee that the subject property cannot be titled in her name and upon the suggestion of the defendant-appellant the subject property was donated to the latter. Considering that they are sisters and out of pity, plaintiff-appellee acceded to defendant-appellant's request and a Deed of Donation<sup>[6]</sup> was then executed by plaintiff-appellee covering the subject property in favor of the defendant-appellant. After the donation was made, defendant-appellant manifested acts of ingratitude. On June 26, 2008, defendant-appellant filed an allegedly malicious criminal case of Grave Threats against the plaintiff-appellee in the Municipal Circuit Trial Court of Sigma, Capiz, docketed as Criminal Case No. 2952<sup>[7]</sup> and a criminal case of Other Forms of Trespass, docketed as Criminal Case No. 2953<sup>[8]</sup> against plaintiff-appellee's brother and nephews, whom the plaintiff-appellee commissioned to fence her property, Lot No. 684, with an area of 56, 310 square meters and covered by Katibayan ng Original na Titulo Blg. P-19365, in order to be secured from trespassers. Aside from the filing of these allegedly malicious and unfounded cases, plaintiff-appellee discovered that defendant-appellant, with the use of a forged Special Power of Attorney (SPA),<sup>[9]</sup> sold a portion of Lot No. 684 to the National Transmission Corporation (TRANSCO) without her consent, knowledge and authority.<sup>[10]</sup> According to plaintiff-appellee, the said SPA was fake

and a forged one for she did not execute nor sign the same as she was in Brazil at that time.<sup>[11]</sup> In this connection, plaintiff-appellee executed a Revocation of the Deed of Donation<sup>[12]</sup> dated August 12, 2008 in order to annul the donation made to defendant-appellant. And before filing the instant case, plaintiff-appellee exerted earnest efforts to settle this case amicably but all efforts were futile, thus, a certificate to file action<sup>[13]</sup> was issued by the barangay.<sup>[14]</sup>

In her Answer,<sup>[15]</sup> defendant-appellant admitted and acknowledged the existence of the Deed of Donation covering the subject property executed in her favor in consideration of the services rendered by defendant-appellant to her sister, the plaintiff-appellee. According to defendant-appellant, this donation was made by plaintiff-appellee because she had been administering the properties of the plaintiff-appellee for a long period of time without any compensation. Defendant-appellant denied any display of ingratitude committed by her towards her sister after the donation was made and in fact, they continued to be in good terms with each other. Defendant-appellant even helped in the titling of Lot No. 684 after the said donation. According to defendant-appellant, the filing of two criminal complaints against plaintiff-appellee and her brother and nephews cannot be considered acts of ingratitude as she was only protecting her rights and property from the unlawful acts of the plaintiff-appellee together with her brother and nephews. The case of Grave Threats allegedly stemmed out from the serious threats made by plaintiff-appellee to kill her when she refused to heed the plaintiff-appellee's demand to return Lot No. 685 without any reason at all. On the other hand, the case of Other Forms of Trespass filed against her brother and nephews stemmed from the fact that despite the existence of boundaries already in place between Lot Nos. 684 and 685, plaintiff-appellee with the employment of her brother and nephews, forced their way into the property of defendant-appellant or Lot No. 685, without her consent. Defendant-appellant maintained that the transaction with TRANSCO was with the full knowledge and consent of the plaintiff-appellee and that the SPA was valid and binding during the time of her transaction with TRANSCO and that she did not go beyond her authority. Defendant-appellant insisted that this case be dismissed asserting that there is no legal ground to revoke the donation and that the instant case was prematurely filed as the plaintiff-appellee did not exhaust earnest efforts in the barangay level to settle their differences.<sup>[16]</sup>

Pre-trial conference was conducted and the parties submitted the following issues for resolution, to wit:

1. whether or not the Deed of Donation can be revoked;
2. whether or not the Deed of Donation dated October 19, 2005 was validly revoked in the Deed of Revocation dated August 12, 2008;
3. whether the prevailing parties are entitled to damages.<sup>[17]</sup>

Thereafter, trial on the merits ensued. On February 3, 2009, the RTC ordered the relocation survey of the subject property in order to clarify the actual area thereof which is the subject matter of the Deed of Donation.<sup>[18]</sup> On April 21, 2009, Engineer Deny Celorico submitted his Commissioner's Report.<sup>[19]</sup>

The evidence for the plaintiff-appellee, summarized by the RTC, is as follows:

"Engr. Deny Celorico testified on the result of the relocation survey he conducted over Lot 685. Said lot has an area of 4,701 square meters but it has no boundary marks with lot 684, the lot owned by the plaintiff.

Plaintiff Elizane W. Jenssen, testified by way of deposition on September 24, 2008 (Exh. P-1, p. 136). She alleged that on March 17, 1997, she bought a parcel of land from Daisy O. Villanueva denominated as Lot No. 685, Sigma Cadastre with an area of Nine Thousand One hundred (9,100) square meters situated at Poblacion, Sapián, Capiz (Exh. A, p 9). Since plaintiff was informed that the lot can not be titled in her name, plaintiff donated the same to the herein defendant who is her sister (Exh. B, p 10-11) on October 19, 2005. After the donation, defendant manifested act[s] of ingratitude by filing malicious criminal case of Grave Threats [against the plaintiff] (Exh. C, p 12) (Exh. C-1, p 13 – Affidavit of defendant) and Other Form of Trespass (Exh. D, p 15) against the plaintiff's brother and nephews. Plaintiff further discovered that the defendant sold a portion of Lot 684 to the National Transmission Corporation (TRANSCO) using a forged special power of attorney (Exh. E, p 19). On July 19, 2001, she was in Brazil and it would be impossible for her to sign said special power of attorney as evidenced by her passport (Exh. F, p 36) which was marked with a rubber stamp upon her arrival on April 18, 2001 (Exh. F-1) and her departure on May 14, 2001 (Exh. F-2). The defendant also threatened her to be killed and the incident was reported before the Punong Barangay of Poblacion, Sapián, Capiz (Exh. G, p 37). On August 5, 2008, she reported to the police authorities (Exh. H, p. 38) that she noticed two unidentified persons observing her room in their house the day before. Because of the acts of ingratitude committed by the defendant, plaintiff executed a Deed of Revocation (Exh. I, pp. 21-22) annulling said donation to the defendant. They brought the matter to their barangay for possible settlement but they never reached to [sic] an agreement (Exh. J, p. 20)."<sup>[20]</sup>

The evidence for the defendant-appellant, also summarized by the RTC, is as follows:

"The defendant in her answer admitted and acknowledged the existence of the Deed of Donation covering Lot 685 executed by the plaintiff in her favor. The donation was in consideration of her services to the plaintiff as administrator over the latter's property. The defendant testified that plaintiff sent to her by mail the Special Power of Attorney as evidence[d] by a mailing envelope (Exh. 8-8-A, pp. 94-95). The case she filed against the plaintiff for Grave Threats was dismissed while the case for Other Forms of Trespass[,] the accused were found guilty as per consolidated decision dated March 25, 2010 (Exh. 10, pp. 199-208). The case filed by her niece Nonalyn Waquez against the herein plaintiff and four other accused was also dismissed as per resolution dated July 15, 2010 (Exh. Q, pp. 213-222). On June 4, 2010, she again filed a case of Grave Threats against the plaintiff (Exh. S, p. 225). She acknowledged that she received the agricultural rentals and farm implement rentals of Luz Obligar, tenant of plaintiff, from the land of the plaintiff as evidenced by receipts (Exh. T-1 to T-16, pp. 229-237 as well as the rentals of tenant Carmelino Cerilo (Exh. U to U-11, pp. 238-249). The rentals of palay

were ordered to be sold by plaintiff and to pay the taxes and other expenses.”<sup>[21]</sup>

### **The Ruling of the RTC**

On August 5, 2011, the RTC issued its Decision<sup>[22]</sup> in favor of plaintiff-appellee. The dispositive portion of said Decision reads:

WHEREFORE, foregoing considered, judgment is hereby rendered in favor of the plaintiff and against the defendant:

1. declaring the Deed of Donation of Lot 685 in favor of the defendant as hereby revoked and of no legal effect;
2. ordering the defendant to reconvey/return the possession of Lot 685 in favor of the plaintiff, and
3. ordering the defendant to pay the plaintiff the amount of P10,000.00 as attorney's fees and costs of litigation.<sup>[23]</sup>

Aggrieved, defendant-appellant appealed before Us assigning the following errors:

#### **I.**

**THE COURT A-QUO [SIC] ERRED IN NOT HOLDING THAT THE CRIME OR THE ACT OF GRAVE THREATS WHICH WAS THE CRIME [SIC] FILED BY THE DEFENDANT-APPELLANT (DONEE) AGAINST THE PLAINTIFF-APPELLEE (DONOR) IN CRIMINAL CASE NO. 2952 HAS BEEN COMMITTED AGAINST THE DONEE, HERSELF, HENCE, THE DEED OF DONATION (EXHIBIT “B”) CANNOT BE REVOKED ON THE GROUND OF INGRATITUDE IN VIEW OF THE PROVISIONS OR [OF] PARAGRAPH (2) OF ARTICLE 765 OF THE CIVIL CODE.**

#### **II.**

**THE COURT A-QUO [SIC] ERRED IN ORDERING THE DEFENDANT-APPELLANT TO PAY THE PLAINTIFF-APPELLEE THE AMOUNT OF P10,000.00 AS ATTORNEY'S FEES AND COST OF LITIGATION.**

#### **III.**

**THE COURT A-QUO [SIC] ERRED IN ORDERING DEFENDANT-APPELLANT TO RECONVEY/RETURN THE POSSESSION OF LOT 685 IN FAVOR OF THE PLAINTIFF-APPELLEE.**

#### **IV.**

**THE COURT A-QUO [SIC] ERRED IN ORDERING THE REVOCATION OF THE DEED OF DONATION OF LOT 685 IN FAVOR OF THE DEFENDANT-APPELLANT.**

#### **V.**

**THE COURT A-QUO [SIC] ERRED IN NOT DISMISSING THE COMPLAINT FOR FAILURE OF THE PLAINTIFF-APPELLEE TO PROVE THAT SHE EXERTED EARNEST EFFORTS TOWARDS A COMPROMISE, THE PRESENT CASE BEING BETWEEN SISTERS (RULES 16, SECTION 1[J], 1997 RULES OF CIVIL PROCEDURE).**

**VI.**

**THE COURT A-QUO [SIC] ERRED IN NOT AWARDING DAMAGES FOR ATTORNEY'S FEES AND LITIGATION EXPENSES IN FAVOR OF THE DEFENDANT-APPELLANT.**<sup>[24]</sup>

**This Court's Ruling**

The instant appeal lacks merit.

The foregoing issues being interrelated, they will be discussed jointly hereunder.

***Trial Court's Findings Of Facts Are Accorded Due Respect On Appeal***

Defendant-appellant's arguments rest on the oft-repeated pronouncement that the conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence as well as observe the demeanor of the witnesses while testifying.<sup>[25]</sup>

The rule that the trial court's findings of facts are accorded due respect on appeal is not without exceptions. It is not applicable where there are strong and cogent reasons as when the trial court's findings are not supported by the evidence or when the trial court failed to consider material facts which would have led to a conclusion different from what was stated in its judgment or when the trial court's decision was attended by grave abuse of discretion amounting to lack of jurisdiction.<sup>[26]</sup>

Unfortunately for the defendant-appellant, however, We have made a close hard look into the bases for the trial court's decision and found none of the foregoing exceptions as obtaining herein to warrant a re-examination or reversal of the trial court's finding.

We affirm the decision of the RTC based on the foregoing reasons:

*First*, the RTC was correct in holding that the crime of Grave Threats, docketed as Criminal Case No. 2952, filed by defendant-appellant against the plaintiff-appellee is an act of ingratitude which would merit the revocation of the donation.

A donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it.<sup>[27]</sup> On the part of the donor, it is an exercise of one's generosity. However, on several occasions, instead of being accorded recognition and appreciation for this act of beneficence, the donor ends up as a victim of greed and ingratitude.<sup>[28]</sup> This was the fate that befell upon the plaintiff-appellee constraining her to cause the revocation of the donation that she