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THE FORM OF DONATIONS *MORTIS CAUSA*

by *ALFONSO FELIX* *

Introductory Note[1]

Of the many established legal precepts roaming in our Civil Code, none has been taken more for granted than the proposition: a donation *mortis causa* must observe the formalities of a will for its validity.

The rule is a popular one. Our courts have always accepted it. Blinded by the floodlight of precedents, scholars hesitate to depart from the judicial acceptation. Professors consider it a settled doctrine for students to follow. And the norm is thus vested with an armor that has been made to appear strong by the indifference to re-examine its thickness.

Through the decades of our civil law, the rule has remained firm and unchallenged, until the recent case of *Heirs of Bonsato et al* v. *The Court of Appeals et al*[2] tore a gaping hole in its side.

The controversy involved two notarial deeds of donation executed by Felipe Bonsato in favor of his brother and his nephew, transferring to them several parcels of land but expressly reserving for himself, during his lifetime, the

* Associate Justice, Court of Appeals.

[1] Prepared by Federico B. Moreno, Ll.B. '52, Ateneo de Manila; Law Librarian and Legal Spanish Instructor, Ateneo de Manila. Also the translation of author's opinion which follows.

[2] 50 Off. Gaz. No. 8, p. 3568; 4 Ateneo Law Journal 50.

owner's share of the fruits or produce. The last paragraph of each deed provided that the donation would take effect after his death, so as to make the donees the absolute owners of the donated property, free from all liens and encumbrances.

The formalities observed by the deeds were those of valid, simple and ordinary donations.

Besides the factual issues of the donor's mental capacity and of the intervention of undue pressure and intimidation in the execution, the question of law raised by the parties concerned the nature of the donations.

The plaintiff maintained that they were *mortis causa* but void for lack of the requisite formalities. The defendants answered that they were *inter vivos*. The trial court resolved that they were conveyances *inter vivos*. The appeal, therefore, was grounded on the *mortis causa* character and on the fatal omission of the formalities required for testamentary dispositions.

The clangor of legal thoughts over the question erupted into a division of five in the Court of Appeals, the majority holding that the aforesaid donations were null and void because they were donations *mortis causa* and executed without testamentary formalities as prescribed by law. The minority claimed that they were *inter vivos* and voted for the affirmance of the lower court's decision.

There was, however, a brilliant commentary on Art. 620[4] of the old Civil Code, which pierced the shard of the firmly established precept on the forms of donations *mortis causa*. It was an attempt, startling and successful, by Justice Alfonso Felix of the minority, to unshackle donations *mortis causa* from the rigid formalities of a will.

On writ of *certiorari*, the Supreme Court held that the donations in question were *inter vivos*, in effect reversing the appellate court's opinion of the majority and upholding the minority's.

But while the high tribunal, through Justice J. B. L. Reyes, banished all clouds upon the standards to be used in determining the nature of donations, a sizeable patch

[3] CA—G. R. No. 5789-R.
[4] Reproduced in Art. 728, new Civil Code.

remained hovering over the formal aspects of a donation *mortis causa*.

Said the Supreme Court:

> Despite the widespread use of the term 'donations *mortis causa*,' it is well-established at present that the Civil Code of 1889, in its Art. 620, broke away from the Roman Law tradition, and followed the French doctrine that no one may both donate and retain ('Donnor et retenor ne vaut'), by merging the erstwhile donations *mortis causa* with the testamentary dispositions, thus suppressing said donations as an independent legal concept.
>
> "Art. 620. Donations which are to become effective upon the death of the donor partake of the nature of disposals of property by will and shall be governed by the rules established for testamentary successions."
>
> Commenting on this article, Mucius Scaevola[5] says:
>
> "No ha mucho formulabamos esta pregunta: Subsisten las donaciones *mortis causa* como institución independiente, con propia autonomía y propio campo jurisdiccional? La respuesta debe ser negativa.
>
> x x x
>
> "Las donaciones *mortis causa* se conservan en el Código como se conserva un cuerpo fósil en las vitrinas de un Museo. La asimilación entre las donaciones por causa de muerte y las transmisiones por testamento es perfecta."
>
> Manresa, in his Commentaries,[6] expresses the same opinion:
>
> "La disposición del Art. 620 significa, por lo tanto: 1.º, que han desaparecido las llamadas antes donaciones *mortis causa*, por lo que el Código no se ocupa de ellas en absoluto; 2.º, que toda disposición de bienes para después de la muerte sigue las reglas establecidas para la sucesión testamentaria."

[5] Código Civil, Vol. XI, 2a parte, pp. 573, 575.
[6] Vol. V, 5th Ed., p. 83.

And Castán, in his Derecho Civil[7] reiterates:

> "(b) *Subsisten hoy en nuestro derecho las* donaciones *mortis causa?* De lo que acabamos de decir se desprende que las donaciones *mortis causa* han perdido en el Código Civil su carácter distintiva y su naturaleza y hay que consideralas hoy como una institución suprimida, refundida en el legado x x x La tesis de la desaparición de las donaciones *mortis causa* en nuestro Código Civil, acusada ya precedentemente por el proyecto de 1851 puede decirse que constituye una *communis opinio* entre nuestros expositores, incluso los mas recientes."
>
> We have insisted on this phase of the legal theory in order to emphasize that the term 'donations *mortis causa*' as commonly employed is merely a convenient name to designate those dispositions of property that are void when made in the form of donations.

True, the poniard struck by the commentary of Justice Felix may have been removed by the court of last resort. The blow,[8] however, has cut deep and wide open an avenue for the incursion of legal studies of the once ironclad doctrine.

The axiom of law still stands. But the exposed wound has left it vulnerable.

The Opinion

The majority of the Court sustains the affirmative, alleging as ground that the deeds of donation *mortis causa* have to be executed with the formalities of a will. It is true that in the case of *Tuason et al* v. *Posadas,*[9] involving

[7] Vol. VI, 7th Ed. (1953), p. 176.

[8] The act was premeditated, as may be gleaned from his decision in the case of *Arceo v. Arceo et al.* (50 Off. Gaz. No. 2, p. 685, 689) wherein he said: "Although the writer of this decision has particular views regarding the construction of article 620 of the old Civil Code with reference to the formalities that are to be followed in cases of donation *mortis causa,* yet this court cannot overlook the doctrines laid down by the Highest Tribunal of the land x x x."

[9] 54 Phil. 289.

assessment of taxes, the Supreme Court, by way of *obiter,* said that "donations *mortis causa* cannot be made without the formalities of a will," the *obiter* cited in the case of *Cariño* v. *Abaya,*[10] but upon examining Art. 620 of our Civil Code, which was given as the basis of such declaration, we do not find anything that will support it.

Said Art. 620 merely says that:

> Donations which are to become effective upon the death of the donor partake of the nature of disposals of property by will and shall be governed by the rules established for testamentary successions.

At the beginning[11] of this opinion, we marked out certain disquisitions[12] by Muscius Scaevola on the *nature* of donations *mortis causa* and their identity and assimilation with the legacy.

> No ha mucho formulábamos esta pregunta: Subsisten las donaciones 'mortis causa' como institución independiente, con propia autonomía y propio campo jurisdiccional? La repuesta debe ser negativa.
>
> x x x
>
> Una institución que se adapta por modo tan completo a otra; que llega a regirse por sus mismos preceptos; que por efecto de esta adaptación sólo se percibe la diferencia en el nombre con que se la distingue, y que, sin embargo, la naturaleza de dichas dos instituciones, lejos de ser idéntica, sólo hállase enlazada por algunos puntos de semejanza, o, si se quiere, de identidad! No hay aquí, como deciamos antes, algo que trasciende a antimonia?
>
> x x x
>
> Las donaciones *mortis causa* se conservan en el Código como se conserva un cuerpo fósil en las vitrinas de un Museo. La asimilación entre las donaciones por causa de muerte y las transmi-

[10] 70 Phil. 182.

[11] The opinion reproduced here is part of the author's dissent in the *Bonsato* case.

[12] II—Segunda Parte, de la obra de *Muscius Scaevola* sobre el Código Civil, p. 573, 575, 579-580.

siones por testamento es perfecta. Carecen aquéllas, como en otro lugar de este comentario hemos expuesto, de órbita propia. No es ya una institución autónoma. Ha perdido su nacionalidad, y hoy constituye un pequeño reino federado del vasto imperio de las sucesiones testamentarias. Por esto las palabras del artículo 620 hay que interpretarlas según su significado gramatical, porque tal como se encuentran escritas traducen con exactitud el pensamiento de los autores del Código. *Allí donde la donación Mortis Causa abarque la universalidad de los bienes sin determinación de los objetos ni de su valor, allí ve el legislador Español y allí deben ser los llamados por su ministerio social a aplicar las leyes, una institución hereditaria, por cuya virtud se transmite la personalidad del donador con todos sus derechos y todos sus deberes.* Si algún recelo pudiera despertar la cavilación respecto de esta tesis, al parecer tan atrevida y en puridad tan sencilla e inofensiva, creemos que bastará para disiparlo la cita del art. 668, perfectamente aplicable al tema que estamos desarrollando.

Dice dicho art. 668 que el testador puede disponer de sus bienes a título de herencia o de legado. Y añade en el párrafo inmediato:

> "En la duda, aunque el testador no haya usado materialmente la palabra *heredero*, si su voluntad está clara *acerca de este concepto*, valdrá la disposición como hecha a título universal o de herencia."

Of course, we do not deny that the donations *mortis causa* partake of the nature of disposals of property by will. But this does not mean that such donations must of necessity be executed with the formalities and solemnities of a will. It is sufficient that in cases of immovable property the deeds conform to the formalities prescribed by law for the transmission of real property.

Art. 620 of our Civil Code does not require that the formalities prescribed for wills be complied with. The rules established for testamentary succession, by which donations *mortis causa* are governed, do not refer in any manner to wills but to the other rules scattered in the Civil Code, among which may be cited the one set out in the decision of the Supreme Court of Spain of April 9, 1942,

emphasized by the majority decision itself, which is that established in Art. 766, providing that:

> A voluntary heir who dies before the testator x x x shall transmit no rights to his heirs.

Many other provisions of the Code can be cited as the precepts to which the rules mentioned in Art. 620 refer. To interpret this article in the manner desired by the majority of the Court (in the present case) would foment the unusual circumstance of a useless duplication in the execution, whether of the deed of donation *mortis causa* or of the legacy which may comprehend the same properties.

If the donation *mortis causa,* to be effective, has to comply with the formalities and requisites for the promulgation of the last will, there would be no need to execute a will later on, unless it is to revoke the donation, or better still, there would be no reason to make a will from the very beginning.

The inclusion in the Code of the provisions referring to donations *mortis causa* as one of the modes of transmitting property to take effect after the death of its owner would be redundant and completely superfluous. There would have been no need of implying some difference between such donations and the legacy, with which the former may be compared and identified, the distinction being none other than that which concerns the formal aspect of the conveyancing necessary to their respective executions.

In brief, neither Art. 620 nor any other article of the old Civil Code requires that donations *mortis causa* be executed with the same solemnities prescribed for wills.

There is further, as wisely observed by Justice Emilio Peña, the decision of our Supreme Court in the case of *Gonzalo David* v. *Carlos M. Sison,*[13] which did not consider ineffective a donation declared to be *mortis causa,* holding:

> Although we arrived at the conclusion that the donation in question is a donation *mortis causa,* we are not inclined to support petitioner's contention that, in the present case, the donated properties

[13] 76 Phil. 418, 423.

should be included in the inventory of the estate and should follow the same proceedings as if they were not donated at all, it appearing that the donated properties (which, by the way, were the object of an extrajudicial partition between the donees) are not necessary to answer for the obligations left by the deceased, there being enough properties not included in the donation to answer for said obligations.

COMMENT

INSURANCE LAW AND PROCEDURE: THE ADMISSIBILITY OF PAROL EVIDENCE IN AN ACTION ON A POLICY

by *NORBERTO E. MARCHADESCH Jr.**

Introduction: The Case Against Small Print Insurers.[1]

John Alan Appleman, an eminent authority on insurance law and practice, and past president of the Federation of Insurance Counsel of America, recounts this typical incident about an accident and health policy holder who thought she had complete coverage against all kinds of diseases and accidents, or at least a reasonable protection therefrom:

"In her Texas home Lunnie Boney took a bath. It had fatal consequences—but it won Lunnie immortality in the law books.

"Lunnie had a gas hot-water heater in the bathroom. When she came out of the bathroom she complained of feeling ill, and blamed fumes from the heater. She died about an hour later."

Of course, it was expected that the company which had insured her would have to pay since this was a clear case of death from an accident.

But sadly, the reverse was true—because, as Mr. Ap-

* A.B., Ateneo de Manila, 1951; Ll.B., Ateneo de Manila, 1954.

[1] The incidents herein related are taken from an article *"Health and Accident Insurance Policies—How Much Can You Rely On Them?"* by John Alan Appleman, on pp. 23-26 of the *Reader's Digest* issue of *September, 1953.*