

SECOND DIVISION

[G.R. No. 187056, September 20, 2010]

JARABINI G. DEL ROSARIO, PETITIONER, VS. ASUNCION G. FERRER, SUBSTITUTED BY HER HEIRS, VICENTE, PILAR, ANGELITO, FELIXBERTO, JR., ALL SURNAMED G. FERRER, AND MIGUELA FERRER ALTEZA, RESPONDENTS.

DECISION

ABAD, J.:

This case pertains to a gift, otherwise denominated as a donation *mortis causa*, which in reality is a donation *inter vivos* made effective upon its execution by the donors and acceptance thereof by the donees, and immediately transmitting ownership of the donated property to the latter, thus precluding a subsequent assignment thereof by one of the donors.

The Facts and the Case

On August 27, 1968 the spouses Leopoldo and Guadalupe Gonzales executed a document entitled "Donation *Mortis Causa*"^[1] in favor of their two children, Asuncion and Emiliano, and their granddaughter, Jarabini (daughter of their predeceased son, Zoilo) covering the spouses' 126-square meter lot and the house on it in Pandacan, Manila^[2] in equal shares. The deed of donation reads:

It is our will that this Donation *Mortis Causa* shall be irrevocable and shall be respected by the surviving spouse.

It is our will that Jarabini Gonzales-del Rosario and Emiliano Gonzales will continue to occupy the portions now occupied by them.

It is further our will that this DONATION *MORTIS CAUSA* shall not in any way affect any other distribution of other properties belonging to any of us donors whether testate or intestate and where ever situated.

It is our further will that any one surviving spouse reserves the right, ownership, possession and administration of this property herein donated and accepted and this Disposition and Donation shall be operative and effective upon the death of the DONORS.^[3]

Although denominated as a donation *mortis causa*, which in law is the equivalent of a will, the deed had no attestation clause and was witnessed by only two persons.

The named donees, however, signified their acceptance of the donation on the face of the document.

Guadalupe, the donor wife, died in September 1968. A few months later or on December 19, 1968, Leopoldo, the donor husband, executed a deed of assignment of his rights and interests in subject property to their daughter Asuncion. Leopoldo died in June 1972.

In 1998 Jarabini filed a "petition for the probate of the August 27, 1968 deed of donation *mortis causa*" before the Regional Trial Court (RTC) of Manila in Sp. Proc. 98-90589.^[4] Asuncion opposed the petition, invoking his father Leopoldo's assignment of his rights and interests in the property to her.

After trial, the RTC rendered a decision dated June 20, 2003,^[5] finding that the donation was in fact one made *inter vivos*, the donors' intention being to transfer title over the property to the donees during the donors' lifetime, given its irrevocability. Consequently, said the RTC, Leopoldo's subsequent assignment of his rights and interest in the property was void since he had nothing to assign. The RTC thus directed the registration of the property in the name of the donees in equal shares.^[6]

On Asuncion's appeal to the Court of Appeals (CA), the latter rendered a decision on December 23, 2008,^[7] reversing that of the RTC. The CA held that Jarabini cannot, through her petition for the probate of the deed of donation *mortis causa*, collaterally attack Leopoldo's deed of assignment in Asuncion's favor. The CA further held that, since no proceeding exists for the allowance of what Jarabini claimed was actually a donation *inter vivos*, the RTC erred in deciding the case the way it did. Finally, the CA held that the donation, being one given *mortis causa*, did not comply with the requirements of a notarial will,^[8] rendering the same void. Following the CA's denial of Jarabini's motion for reconsideration,^[9] she filed the present petition with this Court.

Issue Presented

The key issue in this case is whether or not the spouses Leopoldo and Guadalupe's donation to Asuncion, Emiliano, and Jarabini was a donation *mortis causa*, as it was denominated, or in fact a donation *inter vivos*.

The Court's Ruling

That the document in question in this case was captioned "Donation *Mortis Causa*" is not controlling. This Court has held that, if a donation by its terms is *inter vivos*, this character is not altered by the fact that the donor styles it *mortis causa*.^[10]

In *Austria-Magat v. Court of Appeals*,^[11] the Court held that "irrevocability" is a quality absolutely incompatible with the idea of conveyances *mortis causa*, where "revocability" is precisely the essence of the act. A donation *mortis causa* has the following characteristics: