



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

HEIRS OF FEDELINA SESTOSO G.R. No. 245469
ESTELLA represented by VIRGILIA
ESTELLA POLIQUIT, AMADEO Present:
ESTELLA, THELMA ESTELLA
ALVARADO, NELITA ESTELLA PERALTA, CJ.,
SUMAMPONG, and REBECCA *Chairperson*,
ESTELLA GUANCO represented by
OMAR E. GUANGCO and MILANI
E. GUANGCO, CAGUIOA,
Petitioners, CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

- versus -

JESUS MARLO O. ESTELLA,
RAMIL O. ESTELLA, AMALIA O.
ESTELLA and GLORIA O.
ESTELLA,
Respondents.

Promulgated:

DEC 09 2020

mtt/abw

X-----X

D E C I S I O N

CARANDANG, J.:

Before Us is a Petition for Review on *Certiorari*¹ assailing the Decision² dated June 19, 2018 and the Resolution³ dated January 21, 2019 of the Court of Appeals (CA) in CA-G.R. CEB CV No. 05971, which reversed

¹ *Rollo*, pp. 3-25.

² Penned by Associate Justice Gabriel T. Ingles, with the concurrence of Associate Justice Marilyn B. Lagura-Yap and Gabriel T. Robeniol; *id.* at 43-60.

³ *Id.* at 63-64.

the Decision⁴ dated March 27, 2015 of the Regional Trial Court (RTC) of Argao, Cebu, Branch 26 in Civil Case No. AV-1220, a Complaint⁵ for Declaration of Nullity of Dubious and Inofficious Deed of Donation *Mortis Causa*, Partition and Damages filed by petitioners against respondents.

Facts of the Case

Petitioners Virgilia E. Poliquit, Amadeo Estella, Thelma E. Alvarado and Nelita E. Sumampong together with the late Rebecca E. Guanco and Lamberto S. Estella, are the children of the late Fedelina Sestoso Estella (Fedelina) who was the daughter of Julian Sestoso (Julian) and Epifania Fegarido (Epifania). Respondents Jesus Marlo O. Estella, Ramil O. Estella, Amalia O. Estella and Gloria O. Estella are the children of Lamberto S. Estella.⁶

Records show that on August 10, 1976, Julian executed an instrument denominated as “*Donacion Mortis Causa Kon Hatag Nga Pagabalihon Sa Akong Kamatayon*.”⁷ The document was written entirely in the Cebuano language and stated that Julian donated to his grandson, Lamberto S. Estella (Lamberto), three parcels of land all located in the town of Boljoon, Cebu. The instrument is written in two pages. The first page contains the disposition, signature and thumb mark of the donor, the signature of the donee, the signatures and the Attestation Clause of the three witnesses – Pablo Romero, Samuel Mendez and Julian Uraga, which attestation clause was continued on the second page, also signed by the three attesting witness and also bearing the thumbmark of Julian, the donor. In the attestation clause, it was stated that Julian signed the instrument in the presence of the three attesting witnesses and of Lamberto and that the witnesses witnessed and signed the instrument in the presence of Julian and Lamberto and of one another.⁸

The instrument was duly notarized by Municipal Judge and Notary Public *Ex-Officio* Vedasto R. Niere with the notarial acknowledgment appearing on the second page thereof, as well as the signatures of the three instrumental witnesses. In essence, the instrument states that Julian’s donation was made in consideration of his love, affection and gratitude for his grandson, Lamberto, who has been taking care of him since all of his children were already dead.⁹

Seven days later or on August 17, 1976, Julian died. Several years later, on May 13, 1990, Lamberto also died and is succeeded by his children-herein respondents. In the year 2000, the tax declarations covering the three parcels of land in the name of Julian were canceled and new tax declarations were issued in the name of the Heirs of Lamberto Estella, to wit: Tax Declaration (Dec.) Nos. 23112 and 00385 covering parcel one, Tax Dec. Nos. 23113 and

⁴ Penned by Judge Maximo A. Perez; id. at 66-72.

⁵ Id. at 95-102.

⁶ Id. at 5-6.

⁷ Id. at 105-106.

⁸ Id.

⁹ Id.

08082 covering parcel two and Tax Dec. Nos. 23116 and 06289 covering parcel three. The cancellation of the old tax declaration and the issuance of the new ones were based on the *Donacion Mortis Causa* executed by Julian.¹⁰

Aggrieved that Julian left all his properties to just one grandchild, herein petitioners, the brothers and sisters of Lamberto, filed a Complaint¹¹ for Declaration of Nullity of Dubious and Inofficious Deed of Donation *Mortis Causa*, Partition of Properties and Damages. They claimed that they are the children of Fedelina, who is the daughter of Julian and Epifania. They sought to declare the Deed of Donation *Mortis Causa* as null and void for being fraudulent and of dubious authenticity; the subject lots are the conjugal property of Julian and Epifania and are now co-owned by the heirs of their daughter Fedelina.¹²

Petitioners prayed for the following reliefs in their complaint: (1) that the Deed of Donation *Mortis Causa* be declared null and void and without legal force and effect for being fraudulent and of dubious authenticity unauthorized by the other co-owners of the subject properties and for being inofficious which prejudiced the legitimate of compulsory heirs; (2) that the three lots be adjudged as co-owned by spouses Julian and Epifania; (3) that the three parcels of land be partitioned and distributed among the eight children and heirs of Fedelina, excluding Mario Estella who died without any issue; (4) that the Provincial Assessor Cebu be ordered to cancel Tax. Dec. Nos. 23112 and 00385, Tax Dec. Nos. 23113 and 08082 and Tax Dec. Nos. 23116 and 06289 for being without legal basis; and (5) that respondents be ordered to pay petitioners reimbursement for attorney's fees in the amount of ₱50,000.00 and litigation expenses in the sum of ₱30,000.00 and to pay the costs.¹³

In their Answer,¹⁴ respondents raised the following affirmative and special defenses, to wit: (1) not having been joined in lawful wedlock, Julian and Epifania were not spouses; (2) the real properties in question were inherited by Julian from his mother, and were not acquired during the purported marriage to Epifania; and (3) the execution of the deed of donation by Julian in favor of Lamberto is not tainted by any vice of consent or other irregularities.¹⁵

At the pre-trial, the issues were reduced to the following: (1) whether the deed of donation executed by Julian in favor of Lamberto on August 10, 1976 is valid; and (2) if the deed of donation is valid, whether the deed of donation is inofficious under Article 752 of the Civil Code. The issue that Julian and Epifania were not legal spouses was not anymore raised.¹⁶

¹⁰ Id. at 46.

¹¹ Id. at 95-102.

¹² Id. at 96-100.

¹³ Id. at 100-101.

¹⁴ Id. at 123-125.

¹⁵ Id. at 123-124.

¹⁶ Id. at 47.

9

During trial, Nelita Estella Sumampong testified that her parents, Fedelina and Dionesio Estella, had nine children, namely: Rebecca, Cesar, Virgilia, Mario, Amando, Benedicto, Thelma, Nelita and Lamberto. Only six are living and three are already dead. Jesus, Mario and Ramil are the children of her elder brother, Lamberto Estella. Her mother died on February 22, 1975. That the three parcels of land involved in this case which are now in the name of Lamberto were acquired by Julian and his wife Epifania during their marriage but she does not know when Epifania died. She confirmed that based on Tax Declaration Nos. 01-1206690, 0898 and 01-1206690, the owner of the said properties is only Julian. She further stated that aside from the Baptismal Certificate of Fedelina showing that Julian and Epifania were married, she does not have a copy of the Marriage Certificate between Julian and Epifania.¹⁷

Respondent Jesus Marlo Estella testified that he is one of the defendants in this case. He knows petitioners Virgilia, Amadeo, Thelma, Nelita and Rebecca as they are the sisters of his father, Lamberto. Julian was his great grandfather, as his father Lamberto, is one of the children of Fedelina, Julian's daughter. He, at ten years of age, was present when his grandfather Julian executed a deed of donation over the three parcels of land in favor of his father, Lamberto. One month before his death on May 13, 1990, Lamberto turned over to him the original copy of the Deed of Donation. He claimed that the execution of the deed of donation by Julian in favor of Lamberto is not tainted with any vice of consent or other irregularities.¹⁸

Ruling of the Regional Trial Court

In a Decision¹⁹ dated March 27, 2015, the RTC ruled in favor of petitioners and declared the Deed of Donation *Mortis Causa* executed by Julian in favor of Lamberto as null and void. The dispositive portion of the decision states, to wit:

WHEREFORE, premises considered, a Decision is hereby rendered in favor of the plaintiffs and against the defendants by declaring, as follows:

- (1) The Deed of Donation Mortis Causa executed by Julian Sestoso on August 10, 1976 in favor of Lamberto Estella is hereby declared null and void;
- (2) The following three (3) parcels of land covered by Tax Declaration No. 0112 00385, Tax Declaration No. 0112 08082 and Tax Declaration No. 0112 06289, all situated in Boljoon, Cebu, are hereby adjudged as conjugal partnership of gains of Spouses Julian Sestoso and Epifania Fegarido which became co-ownership properties of the following heirs of their daughter Fedelina Sestoso de Estella: Rebecca,

¹⁷ Id. at 66-67.

¹⁸ Id. at 67-68.

¹⁹ Supra note 4.

Cesar, Lamberto, Benedicta, Thelma, Virgilia, Amadeo and Nelita, all surnamed Estella; and

(3) The Provincial Assessor of Cebu is directed to cancel Tax Declaration Nos. 23112, 00385, 23117, 08082, 23116 and 06289, all covering parcels of land in Boljoon, Cebu, within thirty (30) days from the finality of this Decision.

SO ORDERED.²⁰

In nullifying the Deed of Donation *Mortis Causa*, the trial court held that the attestation clause of the document does not state the number of pages used upon which the will is written. For failure to comply with the formalities prescribed by law for the validity of wills, the donation was declared void and produced no effect. The trial court further ruled that the three parcels of land are part of the conjugal partnership of gains of Julian and Epifania and therefore became co-owned properties of the heirs of their daughter Fedelina, namely: Rebecca, Cesar, Lamberto, Benedicta, Thelma, Virgilia, Amadeo and Nelita, all surnamed Estella, excluding Mario Estella who died without any issue. Hence, the trial court ruled that the parcels of land should be partitioned among the aforementioned eight children of Fedelina. The trial court also directed the Provincial Assessor of Cebu to cancel Tax Dec. Nos. 23112, 00385, 23113, 08082, 23116, and 06289 issued in the name of the heirs of Lamberto.²¹

Respondents moved for reconsideration²² but was denied by the RTC in an Order²³ dated August 14, 2015.

Hence, respondents filed an appeal²⁴ before the CA. They claimed that the RTC erred in ruling that the donation *mortis causa* executed by Julian was null and void.²⁵

Ruling of the Court of Appeals

On June 19, 2018, the CA issued a Decision²⁶ granting the appeal and reversing the decision of the trial court. The decretal portion of which states:

WHEREFORE, the appeal is GRANTED. The Decision dated March 27, 2015 rendered by the Regional Trial Court of Argao, Cebu, Branch 26 in Civil Case No. AV-1220 is REVERSED. Accordingly, the Complaint in Civil Case No. AV-1220 is ordered dismissed.

SO ORDERED.²⁷ (Emphasis omitted)

²⁰ *Rollo*, p. 72.

²¹ Id. at 71.

²² Id. at 73-82.

²³ Id. at 153.

²⁴ Id. at 156.

²⁵ Id.

²⁶ Supra note 2.

²⁷ *Rollo*, p. 60.

The CA found that Julian's bequest in favor of his grandson Lamberto was a donation *inter vivos* despite its title and designation, due to the following reasons: (1) it does not impose any condition that the title or ownership to the three parcels of land shall only be transferred after the death of the donor; (2) there is nothing in the instrument which states that the donor intends to retain ownership of the three parcels of land while still alive; (3) neither did the donor impose as condition that the transfer should be revocable before the donor's death, as in fact, the instrument itself contains the written acceptance of the donee, Lamberto; and (4) the instrument does not contain a provision that the transfer shall be void if the donor should survive the donee.²⁸

The CA added that even if the court were to declare Julian's bequest to be a true donation *mortis causa*, its validity would still be upheld since it substantially complied with the formalities required in the execution of a will. The appellate court further held while the attestation clause does not state the number of sheets or pages upon which the will is written, however, the last part of the body of the will contains a statement that indicates the number of pages upon which the will was written as exception to the rigid requirements in the execution of wills.²⁹

Petitioner's Arguments

Hence, petitioners filed the present petition. Petitioners assert that the donation executed by Julian is a donation *mortis causa*, not a donation *inter vivos* since the donation is to be effective only upon the death of Julian and the transfer of ownership of the three parcels of land will pass to Lamberto only upon the death of Julian. Petitioners also argued that the donation is void for failure to comply with the requirements for the validity of its execution particularly on the attestation clause and that it is inofficious since it prejudiced the legitimate of petitioners.³⁰

Specifically, petitioners claim that the CA did not rule in accordance with the prevailing law and jurisprudence when: (1) it ruled that the *Donacion Mortis Causa Kon Hataq nga Pagabalhinon sa Akong Kamatayon* is a donation *inter vivos* despite its juridical nature of passing title to Lamberto only upon Julian's death;³¹ (2) it validated the *Donacion Mortis Causa Kon Hataq nga Pagabalhinon sa Akong Kamatayon* as a donation *inter vivos* despite the lack of acceptance by the purported donee and the reservation by the donor of sufficient means to support himself;³² (3) it discounted the marriage and co-ownership between Julian and Epifania;³³ and (4) when it dismissed the complaint in Civil Case No. AV-1220 without regard to

²⁸ Id. at 53-54.

²⁹ Id. at 55-58.

³⁰ Id. at 14-20.

³¹ Id. at 12.

³² Id. at 20.

³³ Id. at 21-22.

9

petitioners' assertion that the donation made by Julian to Lamberto was inofficious because it prejudiced the legitime of the petitioners.³⁴

Respondent's Comment

In their Comment,³⁵ respondents maintain that the CA was correct in holding that the instrument was a donation *inter vivos* because it does not impose any condition that the title or ownership to the three parcels of land shall only be transferred after the death of the donor; there is nothing in the instrument which states that the donor intends to retain ownership of the three parcels of land while still alive; neither did not the donor impose as condition that the transfer should be revocable before the donor's death; and that the instrument does not contain a provision that the transfer shall be void if the donor should survive the donee.³⁶ Respondents also aver that the CA did not err when it reversed the ruling of the RTC and upheld the validity of the donation in favor of Lamberto.³⁷

Issues

The issues raised in this petition boil down to two primordial issues, to wit: (1) whether the *Donacion Mortis Causa Kon Hatac nga Pagabalhinon sa akong Kamatayon* is a donation *mortis causa* or a donation *inter vivos*; and (2) whether the donation is inofficious.

Ruling of the Court

The petition is partly meritorious.

First, We determine whether the *Donacion Mortis Causa Kon Hatac nga Pagabalihon sa akong Kamatayon*³⁸ executed by Julian in favor of his grandson, Lamberto, is a donacion *mortis causa* as ruled by the trial court or a donation *inter vivos* as held by the appellate court. The distinction between a transfer *inter vivos* and *mortis causa* is important as the validity or revocation of the donation depends upon its nature.

For reference, the pertinent portion of the deed is hereby quoted:

9

Nga ako, JULIAN V. SESTOSO, 76 katuig ang panuigon, balo, us aka Filipino ug molupyo sa Poblacion, lungsod sa Boljoon, lalawigas sa Sugbu, Filipinas, hingpit pa ang kabuto ug igong salabutan, pinaagi ning maong kalig-onan akong ipahayag nga samtang ang akong mga anak pulos patay na ug walay laing naggalam kanako kon dili ang akong apo nga si LAMBERTO S. ESTELLA, 38 katuig ang panuigon, minyo kang Bienvenida Olmillo, akong ibilin ug ihatag samong (sa maong) LAMBERTO S.

³⁴ Id. at 20.

³⁵ Id. at 220-231.

³⁶ Id. at 223.

³⁷ Id. at 227.

³⁸ Id. at 105-106.

ESTELLA ug sa iyang mga somosonod ang akong mga kabtangan, yuta ug balay nga mao kining mosonod:

x x x x³⁹

An assiduous review of the subject instrument would show that deed executed by Julian is a donation *mortis causa*. In a donation *mortis causa*, the right of disposition is not transferred to the donee while the donor is still alive. The following ruling of the Court in *Alejandro v. Judge Geraldez*⁴⁰ is illuminating:

If the donation is made in contemplation of the donor's death, meaning that the full or naked ownership of the donated properties will pass to the donee only because of the donor's death, then it is at that time that the donation takes effect, and it is a donation *mortis causa* which should be embodied in a last will and testament.

But if the donation takes effect during the donor's lifetime, or independently of the donor's death, meaning that the full or naked ownership (*nuda proprietas*) of the donated properties passes to the donee during the donor's lifetime, not by reason of his death but because of the deed of donation, then the donation is *inter vivos*.⁴¹

Donation *inter vivos* differs from donation *mortis causa* in that in donation *inter vivos*, the donation takes effect during the donor's lifetime or independently of the donor's death and must be executed and accepted with the formalities prescribed by Articles 748 and 749 of the Civil Code. However, if the donation is made in contemplation of the donor's death, meaning that full or naked ownership will pass to the donee only upon the donor's death, then, it is a donation *mortis causa*, which should be embodied in a last will and testament.⁴²

Notably, the phrase in the title “*Kon Hatag Nga Pagabalihon Sa Akong Kamatayon*” literally means “Donation or gift that will be transferred upon my death.” In their Comment,⁴³ respondents do not refute that the phrase “*hatag nga pagabalihon sa akong kamatayon*” when translated means “transferred upon my death.”⁴⁴ This only means that Julian intended to transfer the ownership of the subject properties to Lamberto upon his death and not during his lifetime. The CA erroneously interpreted the phrase “*ibilin and ihatag*” as “*to leave and give now*,” (present tense)⁴⁵ since such phrase may also be interpreted to mean “*to leave and give*” (future tense). What must be taken into consideration are the circumstances surrounding its execution and the clear intention of Julian. The phrase “upon my death” clearly confirms

³⁹ Id. at 105.

⁴⁰ 168 Phil. 404 (1977).

⁴¹ Id. at 415-416.

⁴² Id. at 415.

⁴³ *Rollo*, pp. 220-231.

⁴⁴ Id. at 227.

⁴⁵ Supra note 2 at 53.

the nature of the donation as *mortis causa*. It is evident that the donation was made to take effect after the death of Julian and not during his lifetime. Moreover, contrary to the findings of the CA, the donation has no acceptance clause. The phrase, “*Ako, si Lamberto S. Estella, ang maong nahasulat sa itaas magpasalamat ako ug dako*”⁴⁶ when translated means that Lamberto’s is grateful to his grandfather, and there was no express statement of acceptance.

Considering that the subject instrument is a donation *mortis causa*, the same partake of the nature of testamentary provisions and as such, said instrument must be executed in accordance with the requisites on solemnities of wills and testaments under Articles 805 and 806 of the Civil Code, to wit:

Article 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.

Article. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court.
(Emphasis supplied)

In the present case, the trial court ruled that the donation of Julian to Lamberto was in the nature of a donation *mortis causa* but since it failed to comply with the formalities prescribed by law for the validity of wills, the donation is void.⁴⁷ On the contrary, We find that the donation *mortis causa*

⁴⁶ Acceptance Clause of *Donacion Mortis Causa Kon Hatag Nga Pagabilihon Sa Akong Kamatayon; rollo*, p. 91.

⁴⁷ Supra note 4 at 70.

has substantially complied with the formalities required by law for the validity of a will.

Under Articles 805 and 806 of the Civil Code, the requirements for the validity of a will are as follows: (1) subscribed by the testator or his agent in his presence and by his express direction at the end thereof, in the presence of the witnesses; (2) attested and subscribed by at least three credible witnesses in the presence of the testator and of one another; (3) the testator, or his agent, must sign every page, except the last, on the left margin in the presence of the witnesses; (4) the witnesses must sign every page, except the last, on the left margin in the presence of the testator and of one another; (5) all pages numbered correlatively in letters on the upper part of each page; (6) attestation clause, stating: (a) the number of pages of the will; (b) the fact that the testator or his agent under his express direction signed the will and every page thereof, in the presence of the witnesses; and (c) the fact that the witnesses witnessed and signed the will and every page thereof in the presence of the testator and one another; and (7) acknowledgment before a notary public.⁴⁸

All these requirements have been followed and complied with in the execution of the donation *mortis causa*, except the number of pages of the will. The first page contains the disposition, signature and thumb mark of Julian, the testator, the signatures and the Attestation Clause of the three witnesses – Pablo Romero, Samuel Mendez and Julian Uraga – which attestation clause was continued on the second page, also signed by the three attesting witness and also bearing the thumbmark of Julian, the testator. In the attestation clause, it was stated that Julian signed the instrument in the presence of the three attesting witnesses and of Lamberto and that the witnesses witnessed and signed the instrument in the presence of Julian and Lamberto and of one another.⁴⁹ The petitioners did not raise as issue the compliance of these requirements for the validity of a will. Although a further examination of the document in question reveals that the attestation clause indeed failed to state the number of pages upon which the will is written, however, the number of pages was stated in one portion of the donation *mortis causa*, particularly the notarial acknowledgment of Judge Vedasto Niere wherein it was specified that the instrument is composed of two pages, the Acknowledgment included. In the case of *Mitra v. Sablan-Guevarra*,⁵⁰ the Court upheld the validity of the instrument even though there was omission of the number of pages in the attestation clause, since such was supplied by the Acknowledgment portion of the will itself without the need to resort to extrinsic evidence.⁵¹ Applying the same ruling to this case, We find that the questioned instrument substantially complied with the formal requirements of a donation *mortis causa*.

Nevertheless, even if We find that the questioned “*Donacion Mortis Causa Kon Hatag Nga Pagabalihon Sa Akong Kamatayon*” substantially

⁴⁸ See *Jotting and Jurisprudence in Civil Law*; Balane, Succession, 2016 Ed., pp. 64-65.

⁴⁹ *Donacion Mortis Causa Kon Hatag Nga Pagabilihon*; *rollo*, pp. 91-92.

⁵⁰ 830 Phil. 277 (2018).

⁵¹ *Id.* at 288.

complied with the formal requirements for the validity of a donation *mortis causa*. We find merit in petitioners' contention that it was inofficious. A donation is inofficious if it impairs the legitime of compulsory heirs. Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs.⁵² Article 887 of the New Civil Code enumerates the compulsory heirs whose legitime must not be impaired, thus:

Article 887. The following are compulsory heirs:

- (1) **Legitimate children and descendants, with respect to their legitimate parents and ascendants;**
 - (2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;
 - (3) The widow or widower;
 - (4) Acknowledged natural children, and natural children by legal fiction;
 - (5) Other illegitimate children referred to in Art. 287.
- x x x x (Emphasis supplied)

Corollary thereto, Article 888 of the Civil Code provides that:

Article 888. The legitime of legitimate children and descendants consists of **one-half the hereditary estate** of the father and of the mother.

The latter may free dispose of the remaining half, subject to the rights of illegitimate children and of the surviving spouse as hereinafter provided. (Emphasis supplied)

Epifania predeceased Julian. When Julian died on August 17, 1976, he was survived by his grandchildren, namely, Rebecca, Cesar, Lamberto, Benedicta, Thelma, Virgilia, Amadeo, Nelita, and Mario Estella. His only daughter, Fedelina, predeceased him and had died in 1975.⁵³ Under the second paragraph of Article 856 of the Civil Code,⁵⁴ a compulsory heir who dies before the testator, shall transmit no right to his own heirs except in cases expressly provided. The exception referred to is the right of representation. Consequently, the right to the legitime is transmitted to the representatives of the compulsory heirs. Hence, Fedelina's right to the legitime of Julian's properties is transmitted to her children who shall inherit from Julian, by right of representation.

Under the present law, the legitime of legitimate children and descendants consists of one-half of the hereditary estate of their legitimate parents or ascendants, while the other half is at the latter's disposal. This half

⁵² Article 886. Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs.

⁵³ *Rollo*, pp. 66-67.

⁵⁴ Article 856. x x x

A compulsory heir who dies before the testator, a person incapacitated to succeed, and one who renounces the inheritance, shall transmit no right to his own heirs except in cases expressly provided for in this Code.

for free disposal may be given by the testator to his legitimate children or descendants or to any other person not disqualified by law to inherit from him, subject to the rights of the surviving spouses and illegitimate children. Hence, based on the foregoing, Julian is only allowed to freely dispose one-half of his estate and give it to Lamberto. The remaining half is the legitime of his legitimate children and descendants which he cannot freely dispose. Since the donation *mortis causa* of the three properties of Julian impaired the legitime of petitioners who are legitimate descendants of Julian, the same must be reduced.

Article 907 of the Civil Codes states that "*[t]estamentary dispositions that impair or diminish the legitime of the compulsory heirs shall be reduced on petition of the same, insofar as they may be inofficious or excessive.*" Evidently, if the testator disposed of his estate in a manner that impaired or diminished the legitime of compulsory heirs, the latter may petition to demand that those dispositions be reduced or abated to the extent that they may be inofficious or excessive. Herein petitioners, who are legitimate descendants of Julian, being the children of his daughter Fedelina, are compulsory heirs of Julian and are entitled to the one-half portion of his estate.

Consequently, the Donation *Mortis Causa* executed by Julian in favor of Lamberto should be reduced insofar as the one-half portion of the three parcels of land, which prejudiced the legitime of Julian's legitimate descendants. The said one-half portion shall pertain to the eight children of Fedelina, namely: Rebecca, Cesar, Lamberto, Benedicta, Thelma, Virgilia, Amadeo and Nelita, excluding Mario who has died without any issue. The donation of the one-half of the three parcels of land made by Julian in favor of Lamberto remains a valid and lawful disposition of Julian's free portion of his property which he can freely dispose of. However, since Lamberto is also a compulsory heir entitled to one-eighth of the one-half portion which represents the legitime of the compulsory heirs, the deed of donation *mortis causa* shall be reduced only insofar as the seven-eighths of the one-half of the three parcels of land previously owned by Julian and the respondents are hereby ordered to reconvey the said portion to petitioners.

Hence, petitioners and respondents are directed to conduct a partition of the three subject properties in accordance with the aforementioned sharing of Julian's properties, with petitioners owning **7/8 of the 1/2 (or 7/16 of the whole)** of each of the three parcels of land while respondents own the **other half** of the three parcel of land and an additional **1/8 portion of the other 1/2 (or a total of 9/16 of the whole)** of the three parcels of land, as Lamberto's share in the legitime. The Provincial Assessor of Cebu is hereby ordered to cancel the issuance of Tax Dec. Nos. 23112 and 00385, Tax Dec. Nos. 23113 and 08082 and Tax Dec. Nos. 23116 and 06289 in the names of the heirs of Lamberto. The parties can partition these parcels of land, voluntarily or judicially.



WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated June 19, 2018 and the Resolution dated January 21, 2019 of the Court of Appeals in CA-G.R. CEB CV. No. 05971 are **MODIFIED**. The *Donacion Mortis Causa Kon Hatag Nga Pagabalhinon sa Akong Kamatayon* executed by Julian Sestoso in favor of Lamberto Estella is declared **VALID** as to the one-half (1/2) free portion of Julian's properties. The disposition of the other one-half (1/2) of the estate of decedent Julian Sestoso which impaired the legitimate of his compulsory heirs, namely, Rebecca, Cesar, Benedicta, Thelma, Virgilia, Amadeo, and Nelita, all surnamed Estella, who inherited from him by right of representation, is declared **INOFFICIOUS**.

Respondents Jesus Marlo O. Estella, Ramil O. Estella, Amalia O. Estella, and Gloria O. Estella are **ORDERED** to reconvey to petitioners seven-eighths (7/8) portion of the one-half (or 7/16 of the whole) of the three parcels of land donated by Julian Sestoso to Lamberto Estella. The parties are likewise **ORDERED** to conduct a partition of the three properties to determine the portion pertaining to Rebecca, Cesar, Benedicta, Thelma, Virgilia, Amadeo, and Nelita, all surnamed Estella and the portion pertaining to respondents.

The Provincial Assessor of Cebu is hereby **ORDERED** to cancel Tax Declaration Nos. 23112 and 00385, Tax Declaration Nos. 23113 and 08082, and Tax Declaration Nos. 23116 and 06289 in the names of the heirs of Lamberto Estella. The parties can partition the three parcels of land voluntarily or judicially.

SO ORDERED.



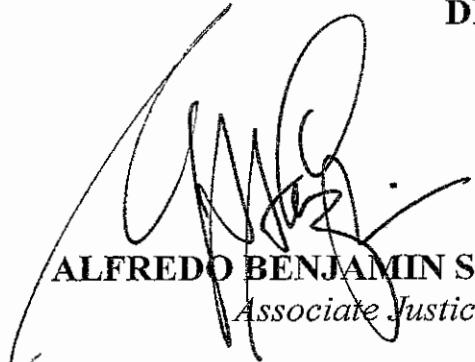
ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:



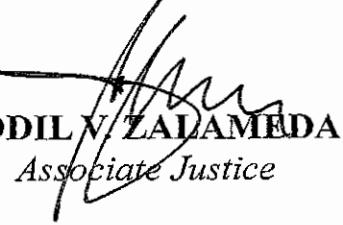
DIOSDADO M. PERALTA

Chief Justice



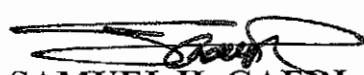
ALFREDO BENJAMIN S. CAGUIOA

Associate Justice



RODIL V. ZAJAMEDA

Associate Justice

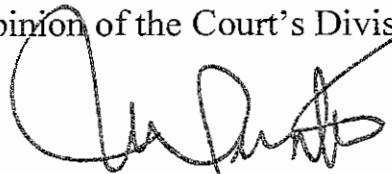


SAMUEL H. GAERLAN

Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA

Chief Justice