

G.R. No. L-10164

[G.R. No. L-10164. February 28, 1958]

**TRUSTEESHIP OF THE ESTATE OF THE DECEASED BENIGNO DIAZ Y HEREDIA.
BANK OF THE PHILIPPINE ISLANDS, TRUSTEE.**

**IÑIGO ARGUELLES, PETITIONER-APPELLANT, VS. MILAGROS BELEN DE
OLAGUERA, OPPOSITOR-APPELLEE.**

D E C I S I O N

REYES, A., J.:

This is an appeal from an order of the Court of First Instance of Manila.

The facts are not in dispute. Benigno Diaz, a widower residing in said city, died on November 7, 1944, leaving a will and a codicil, which were admitted to probate shortly after his death. The codicil contained, among other things, the following provisions:

“9.o-En caso de muerte de alguno o de todos los legatarios nombrados por mi, seran beneficiarios o sea pasaran los legados a favor solamente de los descendientes y ascendientes legitimos, pero no a los viudos conyuges.

“10.o-Transcurridos diez o quince años despues de mi muerte todas mis propiedades, muebles or inmuebles, derechos y acciones, cuando asi convenga a los legatarios y los precios sean ventajosos, pueden proceder a la vent a de todos dando preferemcia a los legatarios y de su importe total se deduciran mil pesos (P1,000.00) para las cuatro hijos de mi difunto liermano Fabian, todos los gastos y reservando una cantidad suficiente y bien calculada para sufragar los gastos para otros dies ailos para las mandas y misas. El resto se distribuira a las siguientes personas que aun viven, 0 a sus descendientes legitimos:

“A Isabel M. de Santiago-cincuenta por ciento (50%) Los hijos de Domingo Legarda-treinta por ciento (30%) Filomena Diaz - diez por ciento (10%) Nestor H. Santiago-diez por ciento (10%)”

The proceedings for the administration of the estate of Benigno Diaz were closed in 1950 and the estate was there- after put under the administration of the Bank of the Philippine Islands as trustee for the benefit of the legatees. Early in 1955, the trustee bank, with the approval of the court, sold some properties belonging to the estate as Authorized in paragraph 10th of the codicil and thereafter sought court authority to distribute the net proceeds of the sale among the various legatees named, among them Filomena Diaz. As the latter was already dead - she died February 8, 1954, survived by her second husband Iñigo Arguelles and two children by her first marriage named Onesima Belen and Milagros Belen de Olaguera - the trustee proposed to pay to her children the share that would have corresponded to her had she been living. That share amounted to P14,836.57, being 10% of the sum to be distributed.

Notified of the proposed distribution, Filomena’s second husband Inigo Arguelles, who had. been appointed by the court special administrator of her estate, laid claim to the said sum of P14,836.57 and asked that it be paid to the estate of the deceased Filomena instead of to her children. In view of this claim, the court in its resolution of March 28, 1955 approved the distribution proposed but ordered that “the 10% which corresponds to the deceased Filomena Diaz x x x be retained pending resolution of the question of to whom it should be delivered.”

On August 3, 1955, Iñigo Arguelles petitioned the court to have the said 10% share delivered to him as special administrator of Filomena’s estate. The petition was opposed by Filomena’s daughter Milagros Belen de Olaguera who, on her part, prayed that the share be delivered to her and to her sister Onesima Belen. Resolving the conflict, the court in its order of September 16, 1955, declared:

“That the share of Filomena Diaz in the residue of the proceeds of the sale of the properties covered by paragraph 10 of the codicil aforementioned does not and should not form part of her estate; it pertains to her legitimate

descendants; and

“That the aforesaid share of Filomena Diaz should be distributed not only between her children, Milagros Belen de Olaguera and Onesima D. Belan, but also

among her other legitimate descendants, if any, for ‘descendientes’ include not only children but also grandchildren, great-grandchildren, etc.; and in this connection, it is not amiss to observe that one may be a descendant.” and yet not be an heir, and vice versa; one may be an heir and yet not be a descendant.”

From the above resolution, Iñigo Arguelles appealed directly to this Court, the questions involved being purely legal.

The main question for determination is whether the share in dispute should belong to the estate of the deceased Filomena Diaz or to her descendants.

The terms of the codicil are clear enough. It provides for the sale of the properties of the estate of the testator after the lapse of ten or fifteen years after his death and for the distribution of the net proceeds of the sale, or rather what remained thereof after deducting certain amounts, among various persons named or described “que aun viven, o a sus descendientes legitimos”. Needless to say, the phrase “que aun viven” can only refer to persons still living at the time of the distribution. Paragraph 10th of the codicil should be construed in connection with its paragraph 9th, which provides that in case of death of any legatee, the corresponding legacy should pass to the legatee’s legitimate descendants and ascendants but not to their surviving spouses. To adjudge to the estate of Filomena Diaz the share of the proceeds of the sale which would have corresponded to her if she had lived would violate the wish of the testator as expressed in said paragraph 9th because it would enable Filomena’s surviving spouse, as a forced heir, to participate in said share once it is incorporated in her estate.

Appellant claims that Filomena Diaz succeeded to the inheritance from the moment of the testator’s death thereby acquiring a right to the legacy which she could transmit to her heirs upon her death. The legacy, however, refers to the balance of the proceeds of the sale of the testator’s estate after deducting

what might be required for certain purposes. That sale, as provided in the codicil, was to take place only after ten or fifteen years from the testator's death. Needless to say, the balance of the proceeds of such sale can only be determined and distributed after the sale, and as already stated It is evident from the provision of the codicil that the testator intended to bequeath said balance to the legatees named therein who may still be living at the time of the distribution.

Appellant also claims that the share in dispute should be distributed only among Filomena's children and not among all her descendants, irrespective of degree, as ordered by the lower court. We fail to see what possible interest appellant could have in that matter. Objection thereto should come from the children of Filomena. But it does not appear that they have questioned the order appealed from.

Wherefore, the order appealed from is affirmed, with costs against the appellant.

Paras, C.J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ.,
concur.