

**TRUSTEESHIP OF THE MINORS BENIGNO, ANGELA AND ANTONIO, ALL SURNAMED PEREZ Y TUASON. PHILIPPINE NATIONAL BANK, JUDICIAL GUARDIAN OF BENIGNO ANTONIO M. PEREZ, JUDICIAL GUARDIAN AN...***G. R. No. L-16708. October 31, 1962*

Ponente: CONCEPCION, J.

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This is an appeal by writ of error from an order of the Court of First Instance of Rizal denying a motion of appellant, Antonio M. Perez, as judicial guardian of his children, the minors Benigno, Angela, and Antonio, all surnamed Perez y Tuason.

In pursuance of the provisions of the will of the late Angela S. Tuason—which was probated in Special Proceedings No. 585 of said Court—appellee J. Antonio Araneta was, on March 24, 1950, appointed, in Special Proceedings No. Q-73 of the same Court, as trustee of the property bequeathed by the deceased to some of her heirs, including her grandchildren, the aforementioned minors. On October 5, 1950, appellee moved for the approval of his accounts and the fixing of his compensation as such trustee. Appellant's wife, Angela I. Tuason, hereafter referred to as Mrs. Perez, as well as the mother and guardian, at the time, of said minors, objected thereto and urged the court to remove appellee as trustee and appoint the Philippine Trust in his place and to revoke, not only a certain sale made by him, but, also, an order of the court, dated March 24, 1950, granting him the power to sell trust properties without special judicial authorization therefor. Subsequently, appellant joined his wife in seeking this relief. After appropriate proceedings, said Court issued, on December 23, 1950, an order approving said accounts, deferring action on the compensation of the trustee, modifying in part said order of March 24, 1950, and denying the motion of Mrs. Perez. The pertinent part of the aforementioned order of December 23, 1950, reads as follows:

"It being established that the trust was expressly created by the deceased, we shall now examine whether the trustee comes under the active supervision of the Court and whether our order of March 24, 1950, granting to said trustee authority to sell the trustees without the need of Judicial authorization is erroneous or not. The Court accepts the view urged by the trustee that only when the testator 'has omitted in his will to appoint a trustee' may the Court appoint one. This is in accordance with Section 2, Rule 99, of the Rules of Court. When an express trust has been created, the powers of the trustee shall be determined by the trust instrument itself. In this particular case, the trustee J. Antonio Araneta was given 'amplios poderes de vender los mismos'. The testatrix emphasizes her desire that the trustee shall have ample powers when in another part of her will she states that the powers of said trustee shall be 'los poderes mas amplios permitidos por la ley'. There is nothing against the law for a trustor to grant to the trustee ample powers, and when the deceased Angela S. Tuason granted said powers to the trustee, she emphasized her intention that in the exercise of said powers by the trustee, there should be no court supervision.

'By the terms of trust, it may be left to the discretion of the trustee whether or not to exercise a power, or where

he is directed to exercise the power, the time and manner of its exercise may be left to his discretion. To the extent to which the trustee has discretion, the Court will not control his exercise as long as he does not exceed the limits of the discretion conferred upon him. The court will not substitute its own judgment for his \* \* \*. The cases are numerous in which it has been held that where discretion is conferred upon the trustee with respect to the exercise of a power, the Court will not interfere with him in his exercise or failure to exercise the power so long as he is not guilty of an abuse of discretion. (Scott on Trusts, Vol. 2, Sec. 187).

"Such being the case, there is no reason for the court to intervene in the execution by the trustee of the powers granted to him by the trustor. We conclude, therefore, that our order of March 24, 1950 granting authority to the trustee J. Antonio Araneta to sell the trust res without judicial authority is correct.

"for the purpose, however, of safe guarding the interest of the beneficiaries of this trust voice said is hereby amended as follows:

(a) That the bond of the trustee is hereby increased from P10,000.00 to P30,000.00 and the premium for the bond (P30,000.00) shall be for the account of the trust;

(b) That the Trustee may sell, encumber or otherwise dispose of any of the trust res without the need of judicial authorization; provided, that if the amount involved exceeds P30,000.00, the trustee shall notify the natural guardians or the judicial guardian in case there be one appointed by the Court of the beneficiaries ten (10) days before the proposed sale or encumbrance is executed, and in case the amount involved be P30,000.00 or less, the trustee shall advise said guardians within ten (10) days after executing a deed of sale or encumbrance.

"WHEREFORE, (1) the accounts filed by the trustee as per Annexes A, B, and C attached to his motion of October 5, 1950 are hereby approved; (2) the petition of trustee to fix his compensation is hereby deferred until such time as he shall present it again; (3) the petition filed by the parents of the minors for the removal of the trustee J. Antonio Araneta is hereby denied. Likewise, their petition that the Philippine Trust Co. or Atty. Frank W. Brady be appointed co-trustee is denied; (4) the petition that the sale of the bed in favor of Antonio Tuason, Jr. be revoked is hereby denied; and (5) the petition that the order of this court, dated March 24, 1950, giving the trustee power to sell without the need of judicial authorization be revoked is also hereby denied."

A reconsideration of this order having been denied, Mr. & Mrs. Perez filed with the Supreme Court a petition—G.R. No. L-6182 thereof—for certiorari, with preliminary injunction, to annul said orders of March 24 and December 23, 1950. A writ of preliminary injunction was issued by this Court soon thereafter. In a decision promulgated on April 13, 1955, we denied said petition and dissolved said writ of preliminary injunction.

In pursuance of the aforementioned orders of March 24 and December 23, 1950, appellee wrote on June 23, 1959, to appellant, as the then judicial guardian of said minors, a letter informing him of a proposed sale to Ortigas & Co., Ltd., of several lots under trusteeship, located in Marikina, Rizal, and aggregating 42.6091 hectares, at the rate of P2.93 a square meter. We quote from said communication:

"Pursuant to the order of the Court of First Instance of Quezon City in trusteeship proceeding No. Q-73, I wish to advise you that ten (10) days after your receipt of this letter, I, in my capacity as trustee in said proceeding, shall execute a deed of sale with mortgage in favor of Ortigas & Company, Limited Partnership, the following lots located at Marikina which form part of the trust estate:

T.C.T. No.  
(Rizal)

Lot No.

**P.S.D.**

Area Sg. M.

22395

49-C-3-A-3-C-1-A-2.....

29965

249

"

49-C-3-A-3-C-2-A-2-B.....

"

138,682

"

49-C-3-A-3-C-1-A-1.....

"

273

"

49-C-3-A-3-C-2-A-2-A.....

"

159,054

"

49-C-3-A-3-C-2-A-7.....

18247

21,089

22396

49-C-3-A-3-C-3-A-3-1-4.....

29965

24,040

"

49-C-3-A-3-C-3-A-3-A-4-A-1.....

"

7,968

"

49-C-3-A-3-C-3-A-3-A-4-A-3.....

"

74,736

"The price is P1,250,000.00 payable under the following conditions:

- Upon acceptance of the proposal, the sum of P20,000.00.
- Upon signing the deed of sale with mortgage, the sum of P300,000.00.
- The balance shall be paid within a period of one and a half- years, with interest at 6% per annum.
- The property must be sold free from all liens and encumbrances, particularly a guarantee that there are no squatters.
- Broker's commission shall be for buyer's account."

Three (3) days later, appellant informed appellee by letter (Exhibit C) of his ((appellant's) objections to the proposed sale. Moreover, on July 1, 1959 appellant filed, in the trusteeship proceedings, a motion praying for a writ of preliminary injunction to restrain appellee from proceeding with the sale. Subsequently, the Philippine National Bank, as guardian of the estate of Benigno Perez y Tuason, one of the heirs of Angela I. Tuason, deceased, adopted said motion of appellant herein as its own. At the instance of appellant, a notice of lis pendens was, on July 29, 1959 annotated on the original certificates of title to the property in question.

After due hearing, the lower court issued an order, dated October 15, 1959, denying appellant's motion and petition for a writ of preliminary injunction. Hence, this appeal by Antonio M. Perez. The Philippine National Bank has not joined him in the appeal. Subsequently, appellee effected the sale aforementioned to Ortigas & Co., Ltd.

The main issues are: (1) whether or not the sum of P2.93 per square meter agreed upon with Ortigas & Co., Ltd., is the fair market value of the property aforementioned; and (2) whether the sale thereof would be injurious to the interest of the beneficiaries or cestui que trust.

With respect to the first issue, appellant maintains that the fair market value of the property above referred to is P5.00 a square meter, as stated in the report (Exhibit E) of his realty estate expert, Mr. A. Varias. It appears from this report, that the conclusion therein reached by Mr. A. Varias is based upon (a) some offers to sell properties located in the vicinity of the one involved in this<sup>1</sup> case; and (b) certain sales of real estate specified in the report.

However, offers to sell are not competent evidence of the fair market value of a property. Said offers to sell are no better than offers to buy, which have been held to be inadmissible as proof of said value. (*City of Manila vs. Estrada*, 25 Phil., 208; *Manila Railroad Co. vs. Aguilar*, 35 Phil., 118; *City of Davao vs. Dumbao*, L-3741, May 28, 1952.) Indeed,

"\* \* \* To imagine a sale without a buyer would be absurd, for if there is no buyer the commodity would bring nothing, \* \* \*.

"In discussing the term 'market value' the author of a well-known treaties on the subject of damages observes that to make a market there must be both buying and selling; and the 'market value' says he, is that 'reasonable sum which the property would bring on a fair sale by a man willing but not obliged to sell to a man willing but not obliged to buy'. (Sedgewick on Damages, sec. 245; cited in *Compagnie Franco-Indo Chinoise vs. Deutsch-Australiache*, 39 Phil., 474.)"

The aforementioned report relies, also, upon the sale of a Lot of 9,679 square meters at P5.70 a square meter, and two (2) sales each of a lot of 20,000 square meters, and a sale of a lot of 281,452 square meters, at P4.00 a square meter. These transactions can not serve as basis for the determination of the value of the property in dispute, for the lands involved in the former are much smaller than the latter, the area of which is 426,091 square meters, and it is a matter of common knowledge that the price becomes lesser as the size of the property sold becomes bigger.

Moreover, the lands covered by said transactions do not appear to be in the vicinity of the property in litigation. What is more, no effort has been made to prove that the nature and condition of the former are analogous, or, at least, comparable to those of the latter. In *Manila Railroad Co. vs. Mitchell* (49 Phil., 801), this Court held:

"\* \* \* The exhibits were clearly inadmissible in evidence and properly rejected by the (lower) court. In order that such evidence may be admitted, it is necessary that the properties sold be in the immediate neighborhood or within the zone of the commercial activity with which the condemned property is identified." (Italics supplied.)

Upon the other hand, it appears that in 1955 the Universal Textile Mills bought a lot of 110,004 square meters near the trust properties in question at P2.50 a square meter, whereas a land of 213,458 square meters, situated in the same neighborhood, was, in 1956, acquired by the Manila Bay Spinning Mill, at P1.50 a square meter. Again, prior to the sale of said trust properties to Ortigas & Co., Ltd. offers to purchase the same were made by United Laboratories, Inc. and one Mr. Philipps at P2.50 and P2.70, respectively, a square meter. It would, thus appear, that the price of P2.93 a square meter agreed upon with Ortigas & Co., Ltd., is fairly representative of the market value of said land, and this is borne out by the testimony of Arturo Ruis and Lauro Marquez, the real estate brokers who took the witness stand for herein appellee.

It is next urged that the sale of the property in question is not only unnecessary, but, also, injurious to the minors represented by appellant herein, by reason of possible devaluation and high income taxes. This pretense is predicated, however, upon sheer speculation. Furthermore, the last will and testament of Angela S. Tuason, in pursuance of which the trust was established, provides that:

"Cuarta.—Instituyo como mis unicos herederos a mis mencionados tres hijos, a razon de una novena parte del caudal hereditario que dejare para cada uno de ellos. Lego a mi hi jo Antonio otra porcion equivalente a dos novenas partes del caudal hereditario. Lego asi mismo a mis nietos que fueren hijos de mi hija Nieves, otra porcion equivalente a dos novenas partes del caudal hereditario. Y finalmente lego a mis nietos que fueren hijos de mi hija Angela otra porcion equivalente a dos novenas partes del caudal hereditario. Dichos tres legados, sin embargo, estan sujetos a la manda que se menciona en el parrafo siguiente. Los dos legados a favor de mis mencionados nietos seran administrados por mi Albacea, J. Antonio Araneta (y en defecto de este, su hermano, Salvador Araneta), con amplios poderes de vender los mismos y con su producto adquirir otros bienes, y con derecho a cobrar por su administracion, honorario razonables. Los poderes de dicho administrador seran los de un trustee con los poderes mas amplios permitidos por la ley. Debera, sin emlegatarios que fueren mayores de edad y a los tutores de los que fueren menores de edad. Y asimismo, debera hacerles entrega de la participacion que a cada legatario corresponda en las rentas netas de la administracion. La administracion sobre un grupo cesara cuando todos mis nietos de dicho grupo llegaren a su mayoria de edad, y una mayoria de los mismos acordaren la terminacion de la administracion. Por nietos, debe entenderse no solamente a los nietos varones sino tambien a los nietos mujeres."

Referring to this provision of said will, we had occasion to say in G. R. No. L-6182:

"\* \* \* throughout clause 4 of the will, one can see that the testatrix placed implicit confidence and trust in Araneta whom she designated as trustee, and for him to continue for a long time, not only until the minor children of Angela S. Tuason, including those yet unborn, attained the age of majority but only when a majority of them decided to end the trust."

In short, the trustor had such faith and confidence in appellee that she relied fully upon his judgment and discretion. The exercise thereof by appellee should not be disturbed, therefore, except upon clear proof of fraud or bad faith, or unless the transaction in question is manifestly prejudicial to the interest of the minors aforementioned. Such is not the situation obtaining in the present case.

Wherefore, the orders appealed from are hereby affirmed, with costs against the appellant. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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