

TRUSTEESHIP OF THE ESTATE OF BENIGNO DIAZ Y HEREDIA, DECEASED. BANK OF THE PHILIPPINE ISLANDS, TRUSTEE. SOLEDAD ROBLES, ET AL., PETITIONERS AND APPELLEES, VS. ISABEL MANAHAN DE ...

G.R. No. L-10111. August 31, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

Benigno Diaz y Heredia, in his will dated July 5, 1944, provided, among others, the following:

"B—Lego la renta liquida mensual, deducidos el amillaramiento y otros gastos indispensables para la conservacion de la finca situada en (Pagina Segunda) la calle Rosario Nos. 123, 125, 127 y 129 Binondo, Manila, la proporcion que me corresponde y la de mi esposa Da. Rafaela que representa, la mitad, a las siguientes personas:

'A Domingo Legarda—Veinte por ciento (20%)

Soledad Robles—Diez por ciento (10%)

Paz Legarda y Robles—Veinte por ciento (20%)

Pilar Legarda y Robles—Quince por ciento (15%)

Jose Legarda y Robles—Diez por ciento (10%)

Vicente Legarda y Robles—Diez por ciento (10%)

Angeles Legarda y Robles para su hija Leti—Cinco por ciento (5%)

y Colegio de la Consolaci6n de las M.M. Agustinas—Diez por ciento (10%)

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"Septimo.—Cualquier legatario que impugna sin exito la legalizacion de este testamento, o que no respete cualquiera disposicion del mismo una vez legalizado, perdera su derecho al legado y a cualquier beneficio a su favor. El legado y beneficios a su favor engrosaran el fondo de la testamentaria al principio y del fideicomiso despues."

In the will, a trust estate was created out of the properties not otherwise disposed of, of which the Bank of the Philippine Islands was designated as Trustee.

After the death of his wife, Da. Rafaela Mercado y Beleti on August 8, 1944, Diaz, then still living, caused the preparation of a codicil (to his will), dated September 29, 1944, providing, inter alia—

"10.o—Transcurridos diez o quince años despues de mi muerte todas mis propiedades, muebles e inmuebles, derechos y acciones, cuando asi convenga a los legatarios y los precios sean ventajosos, pueden proceder a la venta de todos, dando preferenda a los legatarios y de su importe total se deducieran mil pesos (P1,000.00)

para los cuatro hijos de mi difunto hermano Fabian, todos los gastos y reservando una cantidad suficiente y bien calculada para sufragar los gastos para otros diez años para las mandas y misas. El resto se distribuira a las siguientes personas que aun viven, o 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 M. Santiago—Diez por ciento (10%).

11.o—Es aplicable a este codicilo, mutatis mutandi, el Parrafo 7.o, Pag. 6 de mi testamento."

The testator died on November 7, 1944, and his will and the codicil were accordingly probated (in Sp. Proc. No. 894).

On November 1, 1949, the Bank of the Philippine Islands was appointed Trustee of the trust created by the testator in his will and codicil (in Sp. Proc. No. 9226, Trusteeship of Benigno Diaz), for the purpose of paying the monthly and yearly legacies of the legatees named therein, to which office it duly qualified.

Pursuant to the terms of the codicil, and 10 years having already elapsed from the testator's death on November 7, 1944, the Trustee, on January 13, 1955, petitioned the court, with the consent of all the legatees, for authority to sell all the properties and liquidate the estate. This petition was granted. Accordingly, the property located at Rosario, Binondo, Manila, was sold to legatee Isabel Manahan de Santiago on March 18, 1955.

Immediately thereafter, or on March 21 of the same year, legatees Soledad Robles and her children Pilar, Jose, Vicente and Angeles, all surnamed Legarda (her husband Domingo and daughter Paz died in 1945) filed a motion praying that the trustee be ordered to deliver to them, in accordance with the provisions of the will, 90 per cent of the rentals collected from the property in Rosario during the period of liquidation of the estate, that is, from January 13 to March 18, 1955 which the Trustee refused to deliver, the latter contending that upon the authorization by the court on January 19, 1955, of the sale of the properties, the trusteeship ceased already and the rentals collected thereafter not only from the Rosario property but also from all other properties of the estate, constitute the mass of the residuary estate to be distributed among the legatees in accordance with the terms of the codicil, i.e., only 30 per cent and not 90 per cent to the heirs of Domingo Legarda (*supra*).

On April 11, 1955, appellees Soledad Robles and children filed a second motion likewise claiming 90 per cent of the rentals from the Rosario property from 1946 to 1949 which had not yet been paid to them. The Trustee Bank countered that said rentals were liable first to the payment of the expenses of the Testate Estate of Rafaela Mercado, the Testate Estate of Benigno Diaz, and the Trusteeship of Benigno Diaz before they could be distributed; that movants, having agreed not to collect the proceeds of their legacies from 1946 to 1949, they were estopped from claiming the same; and that the right to claim said legacies from 1946 to 1949, had already prescribed.

After due hearing on the matter, the court issued a resolution dated May 24, 1955, granting both motions and directing the Trustee to deliver to Soledad Robles and children, their shares in the rentals collected from the Rosario property, during both periods, from 1946 to 1949 and from January 19 to March 18, 1955, after deducting therefrom the real estate tax, the indispensable expenses for the conservation of the property, and the corresponding estate and inheritance taxes. From this resolution, the present appeal was interposed by legatees Isabel Manahan de Santiago, et al., who, in the distribution of the residuary estate, would get 50 per cent according to the codicil.

As may be seen from the provisions of the will quoted above, the legacies given to appellees Soledad Robles and her children were not made subject to any condition; hence, the right thereto passed to the said legatees upon the death of the testator^[1] on November 7, 1944. As the Rosario property (land only, the building having been

burned during the battle for liberation of Manila) was leased from November 4, 1946 to March 18, 1955, it follows that the legatees were entitled to their share of the rentals for the duration of the said period. Since they have already been paid their share from November, 1949 to January 19, 1955, the only question now to be resolved is whether said legatees-appellees may still demand their share of the rentals from November 4, 1946 to October, 1949, and from January 20 to March 18, 1955.

Against appellees' demand for the rentals during the period 1946-1949, appellants first set up the defense of prescription, alleging that, being money-claim, the claim should have been made within 4 years. And, as the demand was made only in 1955, it was argued the same was already barred.

The testator specifically provided in his will:

"G. * * *. La finca motivo del legado arriba descrito, deberan couservarse indefinidamente siempre que sea posible, pero en el imprescindible caso de ser necesario vender, el importe total de la venta debiera invertirse en la compra de otra finca de buenas condiciones que produzcan una renta segura igual o mas que la finca de la Calle Rosario. El deseo mio es que los legatarios sigan recibiendo sus legados. * * *."

And in his codicil, appears the following:

* * * En relacion con esta finca de la Calle Rosario repito que se conserva y no se venda mientras sea posible, pero en el caso imprescindible de realizar la venta, se procurara conseguir el mejor precio posible y que cuyo importe se invierta ya por intereses en un hipoteca segura y ventajosa o ya por alquileres de otra buena finca que se adquiera y que produzca una renta mayor. * * *."

From the above-quoted testamentary provisions, it seems clear that the testator intended the enjoyment by the legatees, of their respective legacies for the entire duration of the trust estate, even when the specified properties are sold, the proceeds of which have been directed to be invested in mortgages with interest, or in the purchase of other rental-bearing properties. The legacies should, therefore, be viewed as one whole, continuing obligation, to be carried out by the trustee. The fact that the rentals are to be delivered monthly, did not make each delivery a separate, distinct prestation, or render the obligation divisible, for to treat it as such, would destroy or alter the essence, of the legacy. Considering that the obligation terminated -upon the sale of the said property on March 18, 1955, the demand for the complete delivery of the inheritance made in April, 1955, has not yet prescribed. Besides, as contended by the appellees the claim is based upon a specific legacy contained in a probated will. Hence, it is an obligation based upon a judgment (the will becomes binding upon probate) and the prescription period is 10 years.

Appellants also contend that, having received their share in the rentals and agreed to the approval of the Trustee's statement of accounts, appellees are now estopped from claiming for additional share. This allegation was countered by appellees by claiming that they merely desisted from pressing the collection of their shares for 1946 to 1949, by reason of the Trustee's representation that the money would be needed for expense of administration, and assurance that they would be paid before the division of the residuary estate among the heirs. Clearly, the matter calls for a determination of whether or not such agreement took place— a question of fact which this. Court may not legally pass upon. And since the trial court inferentially rejected this contention of appellants and the latter, having appealed directly to us on purely legal issues, appellants should be deemed to have waived this defense.[2]

It was also alleged that the appellees' filing of an opposition to the probate of the will caused the forfeiture of their right to the legacies. This contention is similarly unmeritorious.

True it may be, that under the will, the unsuccessful opposition, by any legatee, to the probate of the will and non-compliance with its provisions after the probate shall cause the forfeiture of his right thereunder. It is also

true that appellees' counsel filed an opposition to the probate of the will on January 24, 1946. However, the same was withdrawn by the appellees themselves personally soon thereafter, or on March 1, 1946, and the will was finally probated on April 1, 1948. Appellees having voluntarily desisted from their opposition long before the probate of the will and, apparently, even before presentation of evidence on the part of the proponent, such an opposition could not have been the opposition contemplated in the will, as otherwise the provision prohibiting opposition would be null and void.

The ruling of the court a quo, subjecting the legacies to the payment only of real estate tax, necessary expenses for conservation of the property, and for estate and inheritance taxes, was also assailed on the invoked ground that the legacies, under Section 1, Rule 91, of the Rules of Court, should be distributed after deducting therefrom the corresponding share in the charges, taxes, and expenses of administration.

The will, it must be remembered, imposed on the legatees merely the payment of the real estate tax and expenses for the preservation of the Rosario property, and no other. On the other hand, said will and the codicil thereto, respectively, provide:

"Sexta.—Todas las demas propiedades, derechos y acciones que no aparecen dispuestas en este mi testamento y ultima voluntad, o que yo adquiera en lo futuro, estaran a cargo del fideicomisario por mis encargos y lo que pueda quedarse de los frutos, en beneficio de los legatarios mencionados por mi este mi testamento, en partes iguales, o de sus respectivos herederos por stirpes, despues de deducir los gastos de la administracion."

"3.º—Es mi deaseo que, con la intervencion del Sr. Vicente Santiago, todos los intereses y otros ingresos de la testamentaria of fideicomiso despues de deducir los gastos imprescindibles se distribuye el 31 de Diciembre de cada año a las siguientes personas:

* * * * *

La distribucion que precede es completamente independiente de las pensioner de la renta de la finca en la Calle Rosario y se hara despues de separar un fondo de reserva para los gastos de impuesto y gastos de conservacion de las fincas, en particular de la Calle Rosario." (*Italics supplied.*)

It is evident therefrom that the testator intended the expenses incidental to the execution of his will to be defrayed and deductible from the residuary estate, excluding the rents from the Rosario property. On this point, the Rules of Court provide:

"Sec. 2. —Part of estate, from which debts paid where provision made by will. —If the testator makes provision by his will, or designates the estate to be appropriated for the payment of his debts, the expenses of administration, or the family expenses, they shall be paid according to the provisions of the will; but if the provision made by the will or the estate appropriated, is not sufficient for that purpose, such part of the estate of the testator, real or personal, as is not disposed of by the will, if any, shall be appropriated for that purpose." (Rule 89.)

There is nothing on record to show that the provisions made by the testator in the will are inadequate to cover the expenses of administration. On the contrary, it appears that as of the date of the filing of appellees' demand, there were still properties of the estate yet unsold. In the absence of valid and cogent reasons, the provision of the will as to how the expenses would be satisfied must be respected.

In the belief that the court's order of January 19, 1955, allowing the sale of the properties of the estate, had the effect of terminating the trust and putting an end to the legatees' right to the fruits of the Rosario property, appellants contend that appellees' claim over rentals terminated on said date, hence, appellees are not entitled to the rentals from January 20 to March 18, 1955, date when the Rosario property was actually sold. This is equally without merit. The trust has been created to carry out the dispositions made in the will, principally the payment of

the legacies. The codicil provides that after the lapse of ten or fifteen years (sic) from the date of the testator's death (November 7, 1944), the properties may be sold upon agreement of all the legatees and the proceeds of the sale, after deducting certain amounts, are to be distributed In the manner indicated therein. The approval of the petition to sell did not automatically terminate the trusteeship, nor did it constitute full accomplishment of the trust. It was only after the actual sale of the properties on March 18, 1955, and the distribution of the proceeds directed by the testator that the trust could be considered as accomplished and terminated. Consequently, the appellees are entitled to their share of the rentals during the liquidation of the trusteeship from January 20 to March 18, 1955.

Wherefore, in view of the foregoing considerations, the resolution appealed from, is hereby affirmed, in toto with costs against the appellants. So ordered.

Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Gutierrez David, and Dizon, JJ., concur.
Paras, C.J., and Padilla, J., took no part.

[1]Article 881, Old Civil Code; Chingen vs. Arguelles, 7 Phil., 296. [2] Jacinto vs. Jacinto, 105 Phil., 1218; 56 Off. Gaz. [52] 7942; Flores vs. Hasina, 94 Phil., 327; 50 Off. Gaz., [8] 1073; Portea vs. Pabellon, 84 Phil., 298; 47 Off. Gaz., 655; Millar vs. Nadres, 74 Phil., 307.

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