IN THE MATTER OF THE TRUSTEESHIP OF MINORS BENIGNO, ANGELA., AND ANTONIO, ALL SURNAMED PEREZ Y TUASON. J. ANTONIO ARANETA, PETITIONER-APPELLEE, VS. ANTONIO PEREZ, JUDICIAL GUARD...

G. R. No. L-18872. June 15, 1966

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This appeal was originally taken to the Court of Appeals, and subsequently certified to Us for the reason that it Involves a purely legal question. The order appealed from was issued by the Court of First Instance of Rizal on April 4, 1957 in trusteeship proceeding No. Q-73.

The trust was established pursuant to the will of the late Angela S. Tuason, particularly the clause which reads as follows:

> "CUARTO. - Instituyo como mis unicos herederos a mis mencionados tres hijos, a razon de una novena parte del caudal heredltarlo que dejaxe para cada uno de ellos. Lego a mi hijo Antonio otra porcion equivalente a dos novenas partes del caudal hereditario. Y flnalmente lego a mis nietos que fueren hijos de mi hija Angela otra porcion equivalente a dos novenas partes del caudal bereditario. Dicbos tres legados sin embargo, estan sujetos a la maoda que se menciona en el parrafo siguieate. Los dos legados a favor de mis menclonados nietofi seran dndnlstxados por mi albacea, J. Antonio Araneta (y en defecto de eate, su hemaano, Salvador Araneta), con araplios poderes de vender los mismos y con su producto adquirir otros bienes, y con derecho a cobrarpor su administracion, bonorarios razonables. Los poderes de dicho administrador seran los de un trustee con los poderes mas amplios permitidos por la ley. Debera, sin embargo, rendir trlmestralmente, cuenta de su administracion a los legatarios que fueren mayores de edad y a los tutores de los que fueren menores de edad. Y asimismo, debera hacerles entrega de la particlpacion que a cada legatario corresponda en las rentas netas de la administracion. La administracion sobre un grupo cesari cuando todos mis nietos de dlcho grupo llegaren a su mayoria de edad, y una mayoria de los mismos acordaren la termlnacion de la administracion. For nietos, debe enterderse no solamente a los nietos varones sino tambien a los nietos mujeres."

Appellee J. Antonio Araneta was appointed trustee on March 24, 1950 and he qualified on the following May 5 when he took his oath of office. The beneficiaries of the trust are Benigno, Angela and Antonio, all surnamed Perez y Tuason, the last two being represented by appellant Antonio Perez, who is their father and judicial guardian.

In the order appealed from the lower court approved, upon petition of the trustee, a deed of donation executed by him on April 30, 1955 in favor of the City of Manila covering a lot pertaining to the trusteeship, with an area of 853.1 square meters. Such approval was given over the opposition of appellant Antonio Peres. As found by the lower court, the said lot was being used as a street and had been so used since prior to its acquisition by the late Angela S. Tuason. The street leads to other lots also pertaining to the trusteeship with an area of 8,176.6 square meters, and it is through the said street that the tenants occupying those other lots pass in going to and from their

respective houses. On the lot in question the trustee had been paying a realty tax of P100.00 yearly.

The lower court also found that the lots aforementioned would be converted into a residential subdivision and that for the purpose the corresponding plan has been prepared; that the lot donated to the City of Manila appears on the plan to be included among the areas covered by the street lay-outs as required by law; and that the donation would save the trusteeship the amount of the realty tax and relieve it from the duty of maintaining the lot in usable condition as a street. There can be no dispute therefore that the donation was beneficial to the trusteeship, not to say necessary under the law if the planned residential subdivision is to be realized.

Appellant does not deny the beneficial aspects of the donation. But he maintains that it is invalid on the ground that under Article 736 of the Civil Code "guardians and trustees cannot donate the properties entrusted to them". It should be remembered that this article is a new provision of the Civil Code, which took effect only on August 30, 1950 (Rep. Act No. 386) and does not apply retroactively to the testamentary trust established upon the death of Angela S. Tuason on March 20, 1948, taking into account Articles 2253 and 2255, which provide against such retrospective operation on acts or events that took place under former laws. There being nothing in the old Civil Code which prohibits a trustee from donating properties under trusteeship, and considering that the powers given to herein appellee as trustee are of a plenary character, subject only to the limitation that they should be permissible under the law; considering further that when the testatrix conferred such powers she must have had in mind the law that was In force at the time; and considering finally that after all a trust is created for the benefit of the cestuis que trust and that in this particular case the acts of the trustee are subject to the supervision of the Court, We see no reason why the donation In question should not be allowed.

The new Civil Code, in prohibiting a trustee from donating properties entrusted to him does so for the protection of the trust beneficiaries and evidently contemplates gifts of pure beneficence, that la, those which are supported by no other cause than the liberality of the donor. But when the donation, as in the present instance, is clearly in their interest, to say it cannot be done would be contrary to the spirit and intent of the law.

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

Concepcion, C. J., Reyes, Barrera, Dizon, Regala, Bengzon, Zaldivar and Sanchez, JJ., concur.

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