

MIGUEL PALAD, ET AL., PLAINTIFFS AND APPELLANTS, VICTORIA QUEANO, ET AL., INTERVENORS-APPELLEES, VS. THE GOVERNOR OF QUEZON PROVINCE AND THE MUNICIPALITY OF TAYABAS, QUEZON, DEF...*G.R. No. L-24302. August 18, 1972*

Ponente: MAKASIAR, J.

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Plaintiffs-appellants appealed on January 15, 1965 from the decision dated November 28, 1964 of the Court of First Instance of Quezon, dismissing their complaint as well as the complaint in intervention.

In their complaint dated April 20, 1958 against the governor of Quezon province and the municipality of Tayabas, plaintiffs-appellants Miguel Palad, Fe Palad, Victoria Queano, Jose Palomera, Concepcion Palomera, Edgardo Obciana, Galo Nosce, Celso Zafranco and Ernesto Zafranco alleged that they are the remaining immediate heirs and/or successors-in-interest of the deceased Luis Palad, they being the grandchildren of Policarpio Palad and Victor Palad, both deceased brothers of the late Luis Palad; that the defendant provincial governor is the trustee and/or administrator and the defendant municipality of Tayabas the beneficiary of Lots Nos. 3464 and 3469 respectively covered by O.C.T. No. 6448 and O.C.T. No. 6656 situated in Barrio Colongcolong (now Talawtalaw), Lucena, Quezon; that the purpose of the trusteeship of the aforesaid lots as constituted by the last will and testament of the deceased Luis Palad dated January 25, 1892 and duly protocolized on July 27, 1897, was to erect or establish a high school in the town of Tayabas out of the income of the aforesaid two lots for the benefit of the said town of Tayabas; that the said trust was duly fulfilled upon the complete establishment in or about 1932 of a high school now known as "Luis Palad High School" in the town of Tayabas financed with the income of said lots and is actually self-supporting; that the town of Tayabas has been enjoying the income of the said lots as beneficiary for the last 54 years since November 9, 1904 up to the present time (when complaint was filed), while the defendant provincial governor continues to be the trustee and/or administrator of the two lots in violation of Article 605 of the Civil Code; that the pertinent facts are well-established in the decision of the Supreme Court on December 10, 1924 in the case of "The Government of the Philippine Islands vs. Anastacia Abadilla, et al.";[1] that the aforesaid lots have a net annual income of P7,000; and that since the establishment of the Luis Palad High School in 1932 or since November, 1904 in accordance with Article 605 of the Civil Code, the plaintiffs were already entitled to the reversion of the two lots in their favor and to the dissolution and/or termination of the trusteeship; and accordingly prayed for judgment (1) directing the defendant provincial governor to submit an accounting of the fruits or income of the two lots from 1932, and to turn over the funds under his trusteeship to the plaintiffs, (2) terminating or dissolving the trusteeship, (3) ordering the reversion of the lots to the plaintiffs, (4) directing the governor to reconvey the same to the plaintiffs, (5) ordering the register of deeds of Quezon province to cancel O.C.T. Nos. 6448 and 6656 and to issue the transfer certificates of title in their favor, and (6) sentencing the defendants to pay the costs.

The answer dated June 11, 1958 filed by the provincial fiscal for and in behalf of the defendants, alleges that they

have no knowledge or information sufficient to form a belief as to the truth of plaintiffs' claim that they are the immediate heirs and successors-in-interest of the deceased Luis Palad, denies the rest of the allegations in the complaint, and interposes as special defenses the fact that the two parcels of land were ordinary unconditional devise of realties in trust contained in the last will did testament of the late Luis Palad for the establishment and maintenance of a secondary school for the continued benefit and welfare of the inhabitants of the municipality of Tayabas; that Article 605 of the new Civil Code (on usufruct) does not apply to the case at bar; that to give effect to the abovementioned testamentary grant, the Philippine Legislature enacted Acts Nos. 3232, 3462 and 3757 creating the Luis Palad High School to be established and maintained with funds coming from said two parcels of land, which institution is still existing and being maintained for the benefit of the inhabitants of the said town; that the testator intended the said testamentary grant or devise of land for the establishment and maintenance of a high school to be permanent and not subject to any resolutory or other condition; that the ownership of the two parcels of land had been irrevocably vested in the province of Quezon as trustee with the municipality of Tayabas as cestui que trustent; that the plaintiffs as alleged heirs of the late Luis Palad are bereft of any interest in said lots; and that the defendants are conscientiously devoting the funds from the said two parcels for the establishment and maintenance of the said high school in accordance with the will of the testator and they have not enriched themselves or benefited therefrom; that the province of Quezon had to appropriate funds for the maintenance of the said high school when the income from the disputed lands became insufficient; that the said high school is not entirely self-supporting; that the alleged average annual net income (P7,000.00) of the two parcels of land is exorbitant and unfounded; that the claims or demands of the plaintiffs had been released or had prescribed; and that the plaintiffs are in estoppel, aside from a counter-claim of P5,000.00 representing damages suffered by reason of the groundless and malicious suit; and accordingly prayed for the dismissal of the complaint and for the confirmation of the valid claim of the defendant governor as trustee and the municipality of Tayabas as cestui que trustent over the two parcels of land in the concept of a permanent testamentary grant for the establishment and perpetual maintenance and operation of the Luis Palad High School.

The plaintiffs filed their answer to the counterclaim dated June 28, 1958 averring, among others, that the defendants being political institutions authorized by law to employ the services of government counsel receiving salary from the government, have not suffered and could not suffer damages.

In a petition dated July 22, 1950, the plaintiffs prayed for the exclusion from the complaint as party plaintiffs the names of Victoria Queano, Jose Palomera, Concepcion Palomera, Edgardo Obciana, Celso Zafranco and Ernesto Zafranco on the ground that the testator Luis Palad died without ascendants or descendants but survived by his brothers Policarpio, Victor and Leopoldo; that Leopoldo died without issue while Victor died earlier than the testator Luis Palad; that the persons sought to be excluded from the complaint are the grandchildren of Victor Palad who lost whatever successional right he had over the lots in question to Policarpio Palad, the only brother who survived the testator Luis Palad, by right of accretion.

In an order dated July 25, 1958, the Court granted the aforesaid petition for exclusion; but subsequently the co-plaintiffs, whose names were deleted from the complaint, filed on August 29, 1958 a motion for intervention claiming that they are likewise heirs and successors-in-interest of the deceased Luis Palad and his nieces Segunda and Emilia, who are children of Victor Palad. Plaintiffs Miguel Palad, Fe Palad and Galo Nosce filed their answer dated Sept. 4, 1958 to the motion for intervention.

Upon motion of the plaintiffs dated December 12, 1962, for judgment on the pleadings, the trial court rendered on December 28, 1964 the appealed decision.

In a decision rendered on December 10, 1924, the Supreme Court held that the said testamentary disposition in the holographic will of the late Luis Palad dated January 25, 1892 created a trust for the establishment and

maintenance of a secondary school to be financed with the income of the two lots aforesaid for the benefit of the inhabitants of the town of Tayabas, thus:

"It is a well-known rule that testamentary dispositions must be liberally construed so as to give effect to the intention of the testator as revealed by the will itself. Applying this rule of construction it seems evident that by the clause in question the testator proposed to create a trust for the benefit of a secondary school to be established in the town of Tayabas, naming as trustee the ayuntamiento of the town or if there be no ayuntamiento, then the civil governor of the Province of Tayabas.

" * * *. There can therefore be but very little doubt that the governor of the Province of Tayabas, as the successor of the civil governor of the province under the Spanish regime, may act as trustee in the present case.

"In regard to private trusts it is not always necessary that the cestui que trust should be named, or even be in esse at the time the trust is created in his favor.

"* * * * *

"But counsel argues that assuming all this to be true the collateral heirs of the deceased would nevertheless be entitled to the income of the land until the cestui que trust is actually in esse. We do not think so. If the trustee holds the legal title and the devise is valid, the natural heirs of the deceased have no remaining interest in the land except their right to the reversion in the event the devise for some reason should fail, an event which has not as yet taken place. From a reading of the testamentary clause under discussion it seems quite evident that the intention of the testator was to have the income of the property accumulate for the benefit of the proposed school until the same should be established."[2]

Implementing the trust thus created, the Philippine Legislature enacted Act No. 3232 approved on November 27, 1925, which established the Luis Palad Rural High School as an agricultural high school under the direction, supervision and control of the Director of Education, the expenses for the establishment and maintenance of which shall be paid out of the funds left by the late Luis Palad and any other funds which may be donated by the Government or any of its dependencies or any other persons. The Director of Education is authorized to receive from the provincial governor as trustee of the estate of Luis Palad the sums necessary for the proper operation, construction and upkeep of the permanent buildings of the School. Said Act No. 3232 was amended by Act No. 3462 approved on December 7, 1928 to the effect that the funds for the school shall be disbursed subject to the approval by a Board composed of the Director of Education, the governor of Quezon province and the municipal president of the town of Tayabas and that the Director of Education is authorized to receive from the provincial governor as trustee sums necessary for the proper operation, the construction and upkeep of the permanent buildings of the school as well as for the acquisition of land whereon to erect such buildings. Act No. 3757 approved on November 26, 1930 further amended the aforesaid two laws by converting the said agricultural school into a regular high school to be known as the Luis Palad High School.

Appellants claimed that the trial court erred in (1) holding that the Supreme Court ruled in the case of *Government vs. Abadilla*[3] that the trust was a permanent one created for the benefit of the Luis Palad High School and is a perpetual charge upon the land devised, (2) in not declaring the termination of the usufruct of the trust estate as provided in Art. 515 of the Spanish Civil Code, and (3) in not ordering the dissolution of this trusteeship under Art. 870 of the New Civil Code.

As to the nature of the trust created by the last will and testament of the late Luis Palad, the law of the case is the decision in *Government vs. Abadilla, et al.*, supra, that "the testator proposed to create a trust for the benefit of a secondary school to be established in the town of Tayabas, naming as trustee * * * the civil governor of the province of Tayabas (now Quezon) * * *"[4] and that "if the trustee holds the legal title and the devise is valid, the natural heirs of the deceased have no remaining interest in the land except their right to the reversion in the event

the devise for some reason should fail, an event which has not as yet taken place. From a reading of the testamentary clause under discussion it seems quite evident that the intention of the testator was to have the income of the property accumulate for the benefit of the proposed school until the same should be established." [5]

Article 515 of the Old Spanish Civil Code prohibiting the creation of a usufruct for more than thirty (30) years in favor of any town, province or association, does not apply to the instant case; because what was constituted by the last will and testament of the late Luis Palad is a trust, not a usufruct, as held by the Supreme Court in *Government vs. Abadilla, et al.*, *supra*.

The pretension of appellants that the trust violates the rule against trust in perpetuities citing *Thompson on Wills*, [6] as well as Art. 785 of the Spanish Civil Code [7] providing that dispositions imposing perpetual prohibitions upon alienation shall be inoperative [8] was squarely considered and refuted by the Supreme Court in said *Abadilla* case, thus: "As the law of trusts has been much more frequently applied in England and in the United States than it has in Spain, we may draw freely upon American precedents in determining the effect of the testamentary trusts here under consideration, especially so as the trust known to American and English equity jurisprudence are derived from the *fidei commissa* of the Roman law and are based entirely upon Civil Law principles," [9] adding that the testamentary trust is in harmony with Art. 788 of the Spanish Civil Code regarding the obligation of the heir to make periodic investments of specified sums [10] and finally stating that:

" * * * unless the devise contravenes some other provision of the Code it must be upheld.

"We have been unable to find any such provision. There is no violation of any rule against perpetuities: the devise does not prohibit the alienation of the land devised. It does not violate article 670 of the Code: the making of the will and the continuance or quantity of the estate of the heir are not left in the discretion of a third party. The devisee is not uncertain and the devise is therefore not repugnant to article 750 of the Civil Code. The provincial governor can hardly be regarded as a public establishment within the meaning of article 748 and may therefore receive the inheritance without the previous approval of the Government." [11]

Article 870 of the New Civil Code, which regards as void any disposition of the testator declaring all or part of the estate inalienable for more than 20 years, is not violated by the trust constituted by the late Luis Palad; because the will of the testator does not interdict the alienation of the parcels devised. The will merely directs that the income of said two parcels be utilized for the establishment, maintenance and operation of the high school.

Said Article 870 was designed "to give more impetus to the socialization of the ownership of property and to prevent the perpetuation of large holdings which give rise to agrarian troubles." [12] The trust herein involved covers only two lots, which have not been shown to be a large landholding. And the income derived therefrom is being devoted to a public and social purpose – the education of the youth of the land. The use of said parcels therefore is in a sense socialized. There is no hint in the record that the trust has spawned agrarian conflicts.

And even if the trust herein involved falls within the prohibition of the said Article 870, the same cannot be given retroactive effect, the testator having died long before the effectivity of the New Civil Code. [13]

Appellants seem to cling to the statement in the decision in the *Abadilla* case that: "From a reading of the testamentary clause under discussion it seems quite evident that the intention of the testator was to have the income or the property accumulate for the benefit of the proposed school until the same should be established." [14]

They argue that upon the establishment of the school in 1932, the trust ceased, as the object or purpose thereof had been accomplished.

Appellants' position accords a very restrictive meaning to the term "established" as employed in the aforequoted

portion of the decision. The word "established" should not be limited to the initial construction of the high school, which alone will not serve the purpose of the testamentary disposition of the testator, if the maintenance and operation of the school are excluded from its scope. To give full effect to the intention of the testator, the said portion of the decision should be read together with the preceding statement therein that "it seems evident that by the clause in question the testator proposed to create a trust for the benefit of a secondary school to be established in the town of Tayabas, * * *." [15] The benefit that could be derived from a secondary school cannot be enjoyed by the residents of the town of Tayabas if the school is not in operation or functioning. It can only function and operate if the needed funds are provided therefor. This the testator realized only too well and therefore willed that the income from the two lots – Lots Nos. 3464 and 3469 – should be utilized for the maintenance and upkeep of the school including the reconstruction, repairs, or expansion of the physical plants and other facilities as well as hiring of faculty members and administrative staff and personnel of the high school as may be compelled by increase in enrollment and the requirements of efficient instruction.

To establish means "to settle or fix firmly; * * * place on a permanent footing" [16] ; or "to originate and secure the permanent existence of, to found, to institute, to create and regulate, as of a colony, estate or other institution or to place upon a secure foundation." [17] Thus to "establish a company for any business means complete and permanent provision for carrying on that business, and putting a company in operation may well include its continued as well as its first or original operation * * *." [18]

The high school edifice and its equipment, if left to deteriorate until they are completely destroyed, would not have any permanent existence, if they are not repaired or reconstructed or not properly maintained. As We ruled in the Abadilla case, [19] the trust ceases only if the devise fails - if the maintenance of the high school is abandoned and its operation stopped. Since the school continues to operate and is being maintained, with the income from the two parcels of land subject of the trust, and donations from the government and other sources, the devise has not yet failed. It should be emphasized that the income alone of the two lots does not suffice to support the school. Under Acts Nos. 3232 and 3462, funds donated by the government, its dependencies and other persons contribute to the establishment, maintenance and upkeep of the institution.

WHEREFORE, the appealed judgment is hereby affirmed, and the appeal is hereby dismissed with costs against petitioners-appellants.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Antonio, and Esguerra, JJ., concur.

[1] Vol. 46 Phil. 642.

[2] Gov't. of the Phil. Islands vs. Abadilla, Dec. 10, 1924, 46 Phil. 642, 646, 647, 649.

[3] 46 Phil. 642.

[4] p. 647.

[5] p. 649.

[6] 3rd ed. p. 647; Page on Wills (Lifetime ed. p. 543); and Vol. 41, Am. Jur., pp. 50, 53-54.

[7] Now Article 867, New Civil Code.

[8] Barretto vs. Tuason, 50 Phil. 888; Severino vs. Severino, 44 Phil. 343.

[9] pp. 646-647.

[10] p. 648.

[11] pp. 648-649, italics supplied.

[12] Report of the Code Commission, p. 111; Vol. III, Padilla, Civil Code Annotated, 1966 Ed., p. 237.

[13] Articles 2252, 2253, 2258 and 2263, NCC.

[14] p. 649, italics supplied.

[15] Italics supplied.

[16] Black's Law Dictionary, 3rd ed., p. 861; Bouvier's Law Dictionary, 3rd ed., p. 1075.

[17] Words and Phrases, Vol. XV, 1950 ed., pp. 249, 250, 255, 256, 258.

[18] Words and Phrases, Vol. XV, p. 253.

[19] Supra.

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