

**DELFIN YAMBAO, PLAINTIFF AND APPELLANT, VS. ANGELINA GONZALES, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. L-10763. April 29, 1961*

Ponente: BAUTISTA ANGELO, J.

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This is an action filed by Delfin Yambao against Angelina Gonzales and Maria Pablo praying that the latter be ordered to appoint and employ him as tenant during his lifetime on the parcels of land bequeathed to and inherited by them from Maria Gonzales, as well as to deliver to him the value of the harvests belonging to him as tenant of said parcels of land. In their answer, defendants averred that the provisions of the will relied upon by plaintiff are not mandatory; that the determination of who should be the tenant of the land is vested in a special court; and that the present action is not the proper remedy.

After trial, the court dismissed the complaint for lack of sufficient cause of action. It held that the provisions of the will relied upon by plaintiff merely amount to a suggestion to the defendants who, though morally bound, are not legally compelled to follow said suggestion, invoking as authority Article 797 of the old Civil Code. Plaintiff has appealed.

The pertinent provisions of the will relied upon by appellant read as follows:

"Dapat din naman malaman, ng dalawa kong taga-pagmana na sila MARIA PABLO at ANGELINA GONZALES na sila ay may dapat TUNGKULIN O GAMPANAN GAYA ng mga sumusunod:

\* \* \* \* \*

"(2) Pahihintulutan nila na si Delfin Yambao ang makapagtrabaho ng bukid habang panahon, at ang nasabing bukid ay isasailalim ng pamamahala ng Albacea samantalang ang bukid ay nasa usapin at may utang pa."

It appears that on August 10, 1942, Maria Gonzales executed a will bequeathing to appellees all her properties situated in Sta. Rosa, Laguna. The will was probated in 1948. Immediately, thereafter, appellant went to appellees to request that he be placed as tenant of the riceland which, by an express provision of said will, they were directed to give to him for cultivation as tenant, and when they refused alleging that they had already given it to another tenant he filed the present action.

In holding that the provisions of the will relied upon by appellant imposes only a moral but not a legal obligation, the trial court went on to consider the import of the word "pahihintulutan" employed with reference to appellant. In its opinion said word only means to permit or to allow, but not to direct appellees to appoint appellant as tenant. Rather, it opines, it merely contains a suggestion to employ because the testatrix did not use the words "ipinag-uutos ko" which she used in connection with other provisions of the will, so that there is no clear indication that it was her intention to make such provision compulsory.

We believe, however, that the trial court has not properly interpreted the real import of the wish of the testatrix. Analyzing it carefully we will find that the same contains a clear directive to employ appellant as may be seen

from the words preceding the word "pahihintulutan" which say: "Dapat din naman malaman, ng dalawa kong taga-pagmana na sila MARIA PABLO at ANGELINA GONZALES na sila ay may dapat TUNGKULIN O GAMPANAN GAYA ng mga sumusunod." The words "dapat TUNGKULIN O GAMPANAN" means to do or to carry out as a mandate or directive, and having reference to the word "pahihintulutan", can convey no other meaning than to impose a duty upon appellees. To follow the interpretations given by the trial court would be to devoid the wish of the testatrix of its real and true meaning.

Article 797 of the old Civil Code, invoked by the trial court, is inapplicable. That refers to an institution of an heir intended to be conditional by providing that a statement to that effect cannot be considered as a condition unless it appears clearly that such is the intention of the testator. We are not faced here with any conditional institution of heirship. What we have is a clear-cut mandate which the heirs cannot fail to carry out.

Wherefore, the decision appealed from is reversed. Appellees are hereby ordered to employ appellant as tenant immediately after this decision has become final. Costs against appellees.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes and Dizon, JJ., concur.

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