

**JOHNNY S. RABADILLA, PETITIONER, VS. COURT OF APPEALS AND
MARIA MARLENA COSCOLUELLA Y BELLEZA
VILLACARLOS, RESPONDENTS.**

G.R. No. 113725. June 29, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

This is a petition for review of the decision of the Court of Appeals,[3] dated December 23, 1993, in CA-G.R. No. CV-35555, which set aside the decision of Branch 52 of the Regional Trial Court in Bacolod City, and ordered the defendants-appellees (including herein petitioner), as heirs of Dr. Jorge Rabadilla, to reconvey title over Lot No. 1392, together with its fruits and interests, to the estate of Aleja Belleza.

The antecedent facts are as follows:

In a Codicil appended to the Last Will and Testament of testatrix Aleja Belleza, Dr. Jorge Rabadilla, predecessor-in-interest of the herein petitioner, Johnny S. Rabadilla, was instituted as a devisee of 511, 855 square meters of that parcel of land surveyed as Lot No. 1392 of the Bacolod Cadastre. The said Codicil, which was duly probated and admitted in Special Proceedings No. 4046 before the then Court of First Instance of Negros Occidental, contained the following provisions:

"FIRST

I give, leave and bequeath the following property owned by me to Dr. Jorge Rabadilla resident of 141 P. Villanueva, Pasay City:

(a) Lot No. 1392 of the Bacolod Cadastre, covered by Transfer Certificate of Title No. RT-4002 (10942), which is registered in my name according to the records of the Register of Deeds of Negros Occidental.

(b) That should Jorge Rabadilla die ahead of me, the aforementioned property and the rights which I shall set forth hereinbelow, shall be inherited and acknowledged by the children and spouse of Jorge Rabadilla.

xxx

FOURTH

(a)....It is also my command, in this my addition (Codicil), that should I die and Jorge Rabadilla shall have already received the ownership of the said Lot No. 1392 of the Bacolod Cadastre, covered by Transfer Certificate of Title No. RT-4002 (10942), and also at the time that the lease of Balbinito G. Guanzon of the said lot shall expire, Jorge Rabadilla shall have the obligation until he dies, every year to give to Maria Marlina Coscolluela y Belleza, Seventy (75) (sic) piculs of Export sugar and Twenty Five (25) piculs of Domestic sugar, until the said Maria Marlina Coscolluela y Belleza dies.

FIFTH

(a) Should Jorge Rabadilla die, his heir to whom he shall give Lot No. 1392 of the Bacolod Cadastre, covered by Transfer Certificate of Title No. RT-4002 (10492), shall have the obligation to still give yearly, the sugar as specified in the Fourth paragraph of his testament, to Maria Marlina Coscolluela y Belleza on the month of

December of each year.

SIXTH

I command, in this my addition (Codicil) that the Lot No. 1392, in the event that the one to whom I have left and bequeathed, and his heir shall later sell, lease, mortgage this said Lot, the buyer, lessee, mortgagee, shall have also the obligation to respect and deliver yearly ONE HUNDRED (100) piculs of sugar to Maria Marlina Coscolluela y Belleza, on each month of December, SEVENTY FIVE (75) piculs of Export and TWENTY FIVE (25) piculs of Domestic, until Maria Marlina shall die, lastly should the buyer, lessee or the mortgagee of this lot, not have respected my command in this my addition (Codicil), Maria Marlina Coscolluela y Belleza, shall immediately seize this Lot No. 1392 from my heir and the latter's heirs, and shall turn it over to my near descendants, (sic) and the latter shall then have the obligation to give the ONE HUNDRED (100) piculs of sugar until Maria Marlina shall die. I further command in this my addition (Codicil) that my heir and his heirs of this Lot No. 1392, that they will obey and follow that should they decide to sell, lease, mortgage, they cannot negotiate with others than my near descendants and my sister."[4]

Pursuant to the same Codicil, Lot No. 1392 was transferred to the deceased, Dr. Jorge Rabadilla, and Transfer Certificate of Title No. 44498 thereto issued in his name.

Dr. Jorge Rabadilla died in 1983 and was survived by his wife Rufina and children Johnny (petitioner), Aurora, Ofelia and Zenaida, all surnamed Rabadilla.

On August 21, 1989, Maria Marlina Coscolluela y Belleza Villacarlos brought a complaint, docketed as Civil Case No. 5588, before Branch 52 of the Regional Trial Court in Bacolod City, against the above-mentioned heirs of Dr. Jorge Rabadilla, to enforce the provisions of subject Codicil. The Complaint alleged that the defendant-heirs violated the conditions of the Codicil, in that:

1. Lot No. 1392 was mortgaged to the Philippine National Bank and the Republic Planters Bank in disregard of the testatrix's specific instruction to sell, lease, or mortgage only to the near descendants and sister of the testatrix.
2. Defendant-heirs failed to comply with their obligation to deliver one hundred (100) piculs of sugar (75 piculs export sugar and 25 piculs domestic sugar) to plaintiff Maria Marlina Coscolluela y Belleza from sugar crop years 1985 up to the filing of the complaint as mandated by the Codicil, despite repeated demands for compliance.
3. The banks failed to comply with the 6th paragraph of the Codicil which provided that in case of the sale, lease, or mortgage of the property, the buyer, lessee, or mortgagee shall likewise have the obligation to deliver 100 piculs of sugar per crop year to herein private respondent.

The plaintiff then prayed that judgment be rendered ordering defendant-heirs to reconvey/return-Lot No. 1392 to the surviving heirs of the late Aleja Belleza, the cancellation of TCT No. 44498 in the name of the deceased, Dr. Jorge Rabadilla, and the issuance of a new certificate of title in the names of the surviving heirs of the late Aleja Belleza.

On February 26, 1990, the defendant-heirs were declared in default but on March 28, 1990 the Order of Default was lifted, with respect to defendant Johnny S. Rabadilla, who filed his Answer, accordingly.

During the pre-trial, the parties admitted that:

On November 15, 1998, the plaintiff (private respondent) and a certain Alan Azurin, son-in-law of the herein petitioner who was lessee of the property and acting as attorney-in-fact of defendant-heirs, arrived at an amicable settlement and entered into a Memorandum of Agreement on the obligation to deliver one hundred piculs of sugar, to the following effect:

"That for crop year 1988-89, the annuity mentioned in Entry No. 49074 of TCT No. 44489 will be delivered not later than January of 1989, more specifically, to wit:

75 piculs of 'A' sugar, and 25 piculs of 'B' sugar, or then existing in any of our names, Mary Rose Rabadilla y Azurin or Alan Azurin, during December of each sugar crop year, in Azucar Sugar Central; and, this is considered compliance of the annuity as mentioned, and in the same manner will compliance of the annuity be in the next succeeding crop years.

That the annuity above stated for crop year 1985-86, 1986-87, and 1987-88, will be complied in cash equivalent of the number of piculs as mentioned therein and which is as herein agreed upon, taking into consideration the composite price of sugar during each sugar crop year, which is in the total amount of ONE HUNDRED FIVE THOUSAND PESOS (P105,000.00).

That the above-mentioned amount will be paid or delivered on a staggered cash installment, payable on or before the end of December of every sugar crop year, to wit:

For 1985-86, TWENTY SIX THOUSAND TWO HUNDRED FIFTY (P26,250.00) Pesos, payable on or before December of crop year 1988-89;

For 1986-87, TWENTY SIX THOUSAND TWO HUNDRED FIFTY (P26,250.00) Pesos, payable on or before December of crop year 1989-90;

For 1987-88, TWENTY SIX THOUSAND TWO HUNDRED FIFTY (P26,250.00) Pesos, payable on or before December of crop year 1990-91; and

For 1988-89, TWENTY SIX THOUSAND TWO HUNDRED FIFTY (P26,250.00) Pesos, payable on or before December of crop year 1991-92."[5]

However, there was no compliance with the aforesaid Memorandum of Agreement except for a partial delivery of 50.80 piculs of sugar corresponding to sugar crop year 1988 -1989.

On July 22, 1991, the Regional Trial Court came out with a decision, dismissing the complaint and disposing as follows:

"WHEREFORE, in the light of the foregoing findings, the Court finds that the action is prematurely filed as no cause of action against the defendants has as yet arose in favor of plaintiff. While there maybe the non-performance of the command as mandated exaction from them simply because they are the children of Jorge Rabadilla, the title holder/owner of the lot in question, does not warrant the filing of the present complaint. The remedy at bar must fall. Incidentally, being in the category as creditor of the left estate, it is opined that plaintiff may initiate the intestate proceedings, if only to establish the heirs of Jorge Rabadilla and in order to give full meaning and semblance to her claim under the Codicil.

In the light of the foregoing findings, the Complaint being prematurely filed is DISMISSED without prejudice.

SO ORDERED."[6]

On appeal by plaintiff, the First Division of the Court of Appeals reversed the decision of the trial court; ratiocinating and ordering thus:

"Therefore, the evidence on record having established plaintiff-appellant's right to receive 100 piculs of sugar annually out of the produce of Lot No. 1392; defendants-appellee's obligation under Aleja Belleza's codicil, as heirs of the modal heir, Jorge Rabadilla, to deliver such amount of sugar to plaintiff-appellant; defendants-appellee's admitted non-compliance with said obligation since 1985; and, the punitive consequences enjoined by both the codicil and the Civil Code, of seizure of Lot No. 1392 and its reversion to

the estate of Aleja Belleza in case of such non-compliance, this Court deems it proper to order the reconveyance of title over Lot No. 1392 from the estates of Jorge Rabadilla to the estate of Aleja Belleza. However, plaintiff-appellant must institute separate proceedings to re-open Aleja Belleza's estate, secure the appointment of an administrator, and distribute Lot No. 1392 to Aleja Belleza's legal heirs in order to enforce her right, reserved to her by the codicil, to receive her legacy of 100 piculs of sugar per year out of the produce of Lot No. 1392 until she dies.

Accordingly, the decision appealed from is SET ASIDE and another one entered ordering defendants-appellees, as heirs of Jorge Rabadilla, to reconvey title over Lot No. 1392, together with its fruits and interests, to the estate of Aleja Belleza.

SO ORDERED."[7]

Dissatisfied with the aforesaid disposition by the Court of Appeals, petitioner found his way to this Court via the present petition, contending that the Court of Appeals erred in ordering the reversion of Lot 1392 to the estate of the testatrix Aleja Belleza on the basis of paragraph 6 of the Codicil, and in ruling that the testamentary institution of Dr. Jorge Rabadilla is a modal institution within the purview of Article 882 of the New Civil Code.

The petition is not impressed with merit.

Petitioner contends that the Court of Appeals erred in resolving the appeal in accordance with Article 882 of the New Civil Code on modal institutions and in deviating from the sole issue raised which is the absence or prematurity of the cause of action. Petitioner maintains that Article 882 does not find application as there was no modal institution and the testatrix intended a mere simple substitution - i.e. the instituted heir, Dr. Jorge Rabadilla, was to be substituted by the testatrix's "near descendants" should the obligation to deliver the fruits to herein private respondent be not complied with. And since the testatrix died single and without issue, there can be no valid substitution and such testamentary provision cannot be given any effect.

The petitioner theorizes further that there can be no valid substitution for the reason that the substituted heirs are not definite, as the substituted heirs are merely referred to as "near descendants" without a definite identity or reference as to who are the "near descendants" and therefore, under Articles 843[8] and 845[9] of the New Civil Code, the substitution should be deemed as not written.

The contentions of petitioner are untenable. Contrary to his supposition that the Court of Appeals deviated from the issue posed before it, which was the propriety of the dismissal of the complaint on the ground of prematurity of cause of action, there was no such deviation. The Court of Appeals found that the private respondent had a cause of action against the petitioner. The disquisition made on modal institution was, precisely, to stress that the private respondent had a legally demandable right against the petitioner pursuant to subject Codicil; on which issue the Court of Appeals ruled in accordance with law.

It is a general rule under the law on succession that successional rights are transmitted from the moment of death of the decedent[10] and compulsory heirs are called to succeed by operation of law. The legitimate children and descendants, in relation to their legitimate parents, and the widow or widower, are compulsory heirs.[11] Thus, the petitioner, his mother and sisters, as compulsory heirs of the instituted heir, Dr. Jorge Rabadilla, succeeded the latter by operation of law, without need of further proceedings, and the successional rights were transmitted to them from the moment of death of the decedent, Dr. Jorge Rabadilla.

Under Article 776 of the New Civil Code, inheritance includes all the property, rights and obligations of a person, not extinguished by his death. Conformably, whatever rights Dr. Jorge Rabadilla had by virtue of subject Codicil were transmitted to his forced heirs, at the time of his death. And since obligations not extinguished by death also form part of the estate of the decedent; corollarily, the obligations imposed by the Codicil on the deceased Dr.

Jorge Rabadilla, were likewise transmitted to his compulsory heirs upon his death.

In the said Codicil, testatrix Aleja Belleza devised Lot No. 1392 to Dr. Jorge Rabadilla, subject to the condition that the usufruct thereof would be delivered to the herein private respondent every year. Upon the death of Dr. Jorge Rabadilla, his compulsory heirs succeeded to his rights and title over the said property, and they also assumed his (decedent's) obligation to deliver the fruits of the lot involved to herein private respondent. Such obligation of the instituted heir reciprocally corresponds to the right of private respondent over the usufruct, the fulfillment or performance of which is now being demanded by the latter through the institution of the case at bar. Therefore, private respondent has a cause of action against petitioner and the trial court erred in dismissing the complaint below.

Petitioner also theorizes that Article 882 of the New Civil Code on modal institutions is not applicable because what the testatrix intended was a substitution - Dr. Jorge Rabadilla was to be substituted by the testatrix's near descendants should there be noncompliance with the obligation to deliver the piculs of sugar to private respondent.

Again, the contention is without merit.

Substitution is the designation by the testator of a person or persons to take the place of the heir or heirs first instituted. Under substitutions in general, the testator may either (1) provide for the designation of another heir to whom the property shall pass in case the original heir should die before him/her, renounce the inheritance or be incapacitated to inherit, as in a simple substitution,[12] or (2) leave his/her property to one person with the express charge that it be transmitted subsequently to another or others, as in a fideicommissary substitution.[13] The Codicil sued upon contemplates neither of the two.

In simple substitutions, the second heir takes the inheritance in default of the first heir by reason of incapacity, predecease or renunciation.[14] In the case under consideration, the provisions of subject Codicil do not provide that should Dr. Jorge Rabadilla default due to predecease, incapacity or renunciation, the testatrix's near descendants would substitute him. What the Codicil provides is that, should Dr. Jorge Rabadilla or his heirs not fulfill the conditions imposed in the Codicil, the property referred to shall be seized and turned over to the testatrix's near descendants.

Neither is there a fideicommissary substitution here and on this point, petitioner is correct. In a fideicommissary substitution, the first heir is strictly mandated to preserve the property and to transmit the same later to the second heir.[15] In the case under consideration, the instituted heir is in fact allowed under the Codicil to alienate the property provided the negotiation is with the near descendants or the sister of the testatrix. Thus, a very important element of a fideicommissary substitution is lacking; the obligation clearly imposing upon the first heir the preservation of the property and its transmission to the second heir. "Without this obligation to preserve clearly imposed by the testator in his will, there is no fideicommissary substitution." [16] Also, the near descendants' right to inherit from the testatrix is not definite. The property will only pass to them should Dr. Jorge Rabadilla or his heirs not fulfill the obligation to deliver part of the usufruct to private respondent.

Another important element of a fideicommissary substitution is also missing here. Under Article 863, the second heir or the fideicommissary to whom the property is transmitted must not be beyond one degree from the first heir or the fiduciary. A fideicommissary substitution is therefore, void if the first heir is not related by first degree to the second heir.[17] In the case under scrutiny, the near descendants are not at all related to the instituted heir, Dr. Jorge Rabadilla.

The Court of Appeals erred not in ruling that the institution of Dr. Jorge Rabadilla under subject Codicil is in the

nature of a modal institution and therefore, Article 882 of the New Civil Code is the provision of law in point. Articles 882 and 883 of the New Civil Code provide:

Art. 882. The statement of the object of the institution or the application of the property left by the testator, or the charge imposed on him, shall not be considered as a condition unless it appears that such was his intention.

That which has been left in this manner may be claimed at once provided that the instituted heir or his heirs give security for compliance with the wishes of the testator and for the return of anything he or they may receive, together with its fruits and interests, if he or they should disregard this obligation.

Art. 883. When without the fault of the heir, an institution referred to in the preceding article cannot take effect in the exact manner stated by the testator, it shall be complied with in a manner most analogous to and in conformity with his wishes.

The institution of an heir in the manner prescribed in Article 882 is what is known in the law of succession as an institucion sub modo or a modal institution. In a modal institution, the testator states (1) the object of the institution, (2) the purpose or application of the property left by the testator, or (3) the charge imposed by the testator upon the heir.[18] A "mode" imposes an obligation upon the heir or legatee but it does not affect the efficacy of his rights to the succession.[19] On the other hand, in a conditional testamentary disposition, the condition must happen or be fulfilled in order for the heir to be entitled to succeed the testator. The condition suspends but does not obligate; and the mode obligates but does not suspend.[20] To some extent, it is similar to a resolutory condition.[21]

From the provisions of the Codicil litigated upon, it can be gleaned unerringly that the testatrix intended that subject property be inherited by Dr. Jorge Rabadilla. It is likewise clearly worded that the testatrix imposed an obligation on the said instituted heir and his successors-in-interest to deliver one hundred piculs of sugar to the herein private respondent, Marlina Coscolluela Belleza, during the lifetime of the latter. However, the testatrix did not make Dr. Jorge Rabadilla's inheritance and the effectivity of his institution as a devisee, dependent on the performance of the said obligation. It is clear, though, that should the obligation be not complied with, the property shall be turned over to the testatrix's near descendants. The manner of institution of Dr. Jorge Rabadilla under subject Codicil is evidently modal in nature because it imposes a charge upon the instituted heir without, however, affecting the efficacy of such institution.

Then too, since testamentary dispositions are generally acts of liberality, an obligation imposed upon the heir should not be considered a condition unless it clearly appears from the Will itself that such was the intention of the testator. In case of doubt, the institution should be considered as modal and not conditional.[22]

Neither is there tenability in the other contention of petitioner that the private respondent has only a right of usufruct but not the right to seize the property itself from the instituted heir because the right to seize was expressly limited to violations by the buyer, lessee or mortgagee.

In the interpretation of Wills, when an uncertainty arises on the face of the Will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the Will, taking into consideration the circumstances under which it was made.[23] Such construction as will sustain and uphold the Will in all its parts must be adopted.[24]

Subject Codicil provides that the instituted heir is under obligation to deliver One Hundred (100) piculs of sugar yearly to Marlina Belleza Coscuella. Such obligation is imposed on the instituted heir, Dr. Jorge Rabadilla, his heirs, and their buyer, lessee, or mortgagee should they sell, lease, mortgage or otherwise negotiate the property involved. The Codicil further provides that in the event that the obligation to deliver the sugar is not respected,

Marlena Belleza Coscuella shall seize the property and turn it over to the testatrix's near descendants. The non-performance of the said obligation is thus with the sanction of seizure of the property and reversion thereof to the testatrix's near descendants. Since the said obligation is clearly imposed by the testatrix, not only on the instituted heir but also on his successors-in-interest, the sanction imposed by the testatrix in case of non-fulfillment of said obligation should equally apply to the instituted heir and his successors-in-interest.

Similarly unsustainable is petitioner's submission that by virtue of the amicable settlement, the said obligation imposed by the Codicil has been assumed by the lessee, and whatever obligation petitioner had become the obligation of the lessee; that petitioner is deemed to have made a substantial and constructive compliance of his obligation through the consummated settlement between the lessee and the private respondent, and having consummated a settlement with the petitioner, the recourse of the private respondent is the fulfillment of the obligation under the amicable settlement and not the seizure of subject property.

Suffice it to state that a Will is a personal, solemn, revocable and free act by which a person disposes of his property, to take effect after his death.[25] Since the Will expresses the manner in which a person intends how his properties be disposed, the wishes and desires of the testator must be strictly followed. Thus, a Will cannot be the subject of a compromise agreement which would thereby defeat the very purpose of making a Will.

WHEREFORE, the petition is hereby DISMISSED and the decision of the Court of Appeals, dated December 23, 1993, in CA-G.R. No. CV-35555 AFFIRMED. No pronouncement as to costs

SO ORDERED.

Melo, J., (Chairman), concur in the separate opinion of Justice Vitug.

Vitug, J., see separate opinion.

Panganiban, J., join the separate opinion of Justice Vitug.

Gonzaga-Reyes, J., no part.

[1] Was spelled interchangeably in Rollo as Ravadilla.

[2] Was spelled interchangeably in Rollo as Marlina.

[3] Penned by Justice Santiago M. Kapunan (Chairman) and concurred in by Justices Minerva P. Gonzaga-Reyes and Eduardo G. Montenegro, (Members)

[4] Annex "C", Rollo, pp. 34-35.

[5] Rollo, pp. 65-66.

[6] RTC Decision, pp. 8-9.

[7] CA Decision, p. 14.

[8] Art. 843. The testator shall designate the heir by his name and surname, and when there are two persons having the same names, he shall indicate some circumstance by which the instituted heir may be known. Even though the testator may have omitted the name of the heir, should he designate him in such manner that there can be no doubt as to who has been instituted, the institution shall be valid.

[9] Art. 845. Every disposition in favor of an unknown person shall be void, unless by some event or circumstance his identity becomes certain. However, a disposition in favor of a definite class or group of persons shall be valid.

- [10] Article 777, New Civil Code.
- [11] Ibid., Article 887.
- [12] Ibid., Article 859.
- [13] Ibid., Article 863.
- [14] Ibid., Article 859.
- [15] Arturo Tolentino, Commentaries and Jurisprudence on the Civil Code, Volume III, p. 212.
- [16] Ibid., p. 212.
- [17] Ramirez vs. Vda. De Ramos, 111 SCRA 704.
- [18] Tolentino, supra, pp. 241-242.
- [19] Ibid., p. 242.
- [20] Ibid.
- [21] Jottings and Jurisprudence in Civil Law, Ruben Balane, p. 249.
- [22] Tolentino, supra, p. 242.
- [23] Article 789, NCC.
- [24] Tolentino, supra, p. 34.
- [25] Art. 783, NCC and Tolentino, p. 28-29.

SEPARATE OPINION

VITUG, J.:

By virtue of a codicil appended to her will, Aleja Belleza devised a 511,856-square meter parcel of land in Bacolod City, denominated Lot No. 1392 of the Bacolod Cadastral Survey, to Jorge Ravadilla (predecessor-in-interest of petitioner),^[1] carrying with it an obligation to deliver to private respondent, Maria Marlena Coscolluela y Belleza, one hundred piculs of sugar per crop year during her lifetime. The portions of the codicil, pertinent to the instant controversy, read:

"FIRST

"I give, leave and bequeath the following property owned by me to Dr. Jorge Rabadilla, resident of 141 P. Villanueva, Pasay City:

"(a) Lot No. 1392 of the Bacolod Cadastre, covered by Transfer Certificate of Title No. RT-4002(10942), which is registered in my name according to the records of the Register of Deeds of Negros Occidental.

"(b) That should Jorge Rabadilla die ahead of me, the aforementioned property and the rights which I shall set forth hereinbelow, shall be inherited and acknowledged by the children and spouse of Jorge Rabadilla.

"x x x x x x x x.

"FOURTH

"(a) It is also my command, in this my addition (codicil), that should I die and Jorge Rabadilla shall have already received the ownership of the said Lot No. 1392 of the Bacolod Cadastre, covered by Transfer Certificate of Title No. RT-4002(10942), and also at the time that the lease of Balbinito Guanzon of the said lot shall expire, Jorge Rabadilla shall have the obligation until he dies, every year to give to Maria Marlina Coscolluela y Belleza, Seventy (75) (sic) piculs of Export sugar and Twenty Five (25) piculs of Domestic sugar, until the said Maria Marlina Coscolluela y Belleza dies.

"FIFTH

"(a) Should Jorge Rabadilla die, his heir to whom he shall give Lot No. 1392 of the Bacolod Cadastre, covered by Transfer Certificate of Title No. RT-4002(10942), shall have the obligation to still give yearly, the sugar as specified in the Fourth paragraph of this testament, to Maria Marlina Coscolluela y Belleza on the month of December of each year.

"SIXTH

"I command, in this my addition (Codicil) that the Lot No. 1392, in the event that the one to whom I have left and bequeathed, and his heir shall later sell, lease, mortgage this said Lot, the buyer, lessee, mortgagee, shall have also the obligation to respect and deliver yearly ONE HUNDRED (100) piculs of sugar to Maria Marlina Coscolluela y Belleza, on each month of December, SEVENTY FIVE (75) piculs of Export and TWENTY FIVE (25) piculs of Domestic, until Maria Marlina shall die, lastly should the buyer, lessee, or the mortgagee of this lot, not have respected my command in this my addition (codicil), Maria Marlina Coscolluela y Belleza, shall immediately seize this Lot No. 1392 from my heir and the latter's heirs, and shall turn it over to my near descendants,[2] and the latter shall then have the obligation to give the ONE HUNDRED (100) piculs of sugar until Maria Marlina shall die. I further command in this my addition (Codicil) that my heir and his heirs of this Lot No. 1392, that they will obey and follow that should they decide to sell, lease, mortgage, they cannot negotiate with others than my near descendants and my sister."[3]

Pursuant to the above provisions of the codicil, ownership of Lot No. 1392 was transferred to Jorge Rabadilla and Transfer Certificate of Title No. T-44498 was issued in his name.

Sometime in 1983, Jorge Rabadilla died, survived by his wife, Rufina, and their children Johnny, Aurora, Ofelia and Zenaida.

On 21 August 1989, on account of the failure of the heirs of Jorge Rabadilla to comply with the obligation under the codicil, private respondent filed an action, docketed Civil Case No. 5588, against the Rabadilla heirs before the Regional Trial Court, Branch 52, of Bacolod City for the reconveyance of Lot 1392 to the heirs of Aleja Belleza and the cancellation of Transfer Certificate of Title No. 44498 covering the property in the name of Jorge Rabadilla.

The trial court dismissed the complaint "without prejudice." [4] On appeal taken by private respondent to the Court of Appeals, the appellate court set aside the appealed decision and held:

"Therefore, the evidence on record having established plaintiff-appellant's right to receive 100 piculs of sugar annually out of the produce of Lot No. 1392; defendants-appellees' obligation under Aleja Belleza's codicil, as heirs of the modal heir, Jorge Rabadilla, to deliver such amount of sugar to plaintiff-appellant; defendants-appellees' admitted non-compliance with said obligation since 1985; and, the punitive consequences enjoined by both the codicil and the Civil Code, of seizure of Lot No. 1392 and its reversion to the estate of Aleja Belleza in case of such non-compliance, this Court deems it proper to order the reconveyance of title over Lot No. 1392 from the estate of Jorge Rabadilla to the estate of Aleja Belleza. However, plaintiff-appellant must institute separate proceedings to re-open Aleja Belleza's estate, secure the appointment of an administrator, and distribute Lot No. 1392 to Aleja Belleza's legal heirs in order to enforce her right, reserved to her by the codicil, to receive her legacy of 100 piculs of sugar per year out of the produce

of Lot No. 1392 until she dies.

"Accordingly, the decision appealed from is SET ASIDE and another one entered ordering defendants-appellees, as heirs of Jorge Rabadilla, to reconvey title over Lot No. 1392, together with its fruits and interests, to the estate of Aleja Belleza.

SO ORDERED."[5]

Petitioner, in the instant petition for review, submits that the appellate court has erred in: (1) ordering the reversion of Lot 1392 to the estate of Aleja Belleza on the basis of paragraph six of the codicil, and (2) in ruling that the testamentary institution of Dr. Jorge Rabadilla is a modal institution within the purview of Article 882 of the Civil Code. Additionally, he avers that respondent court has improvidently deviated from the sole issue raised which is the prematurity of the action before the court a quo. Upon the other hand, respondent would have this Court sustain the assailed decision of the Court of Appeals contending that the appellate court is completely justified in delving into the nature of the institution in the codicil, the same having a direct significance on the issue of whether or not the complaint before the trial court has been prematurely filed. Private respondent adds that the institution in question is modal within the context of Article 882 of the Civil Code which gives her the right to seize the subject property.

I agree with my colleagues that "substitution" is not here apropos. Substitution is the appointment of another heir so that he may enter into the inheritance in default of the heir originally instituted.[6] Substitution is simple when the testator designates one or more persons to substitute the heir or heirs instituted in case the latter should die before him, or should not wish, or should be incapacitated to accept the inheritance, and a substitution without a statement of the cases to which it refers shall comprise all said three cases.[7] There is no simple substitution that takes place where the heir originally instituted is able to succeed.[8] Fideicommissary substitution, on the other hand, occurs when the fiduciary or first heir instituted is entrusted with the obligation to preserve and to transmit to a second heir the whole or part of the inheritance.[9] Every fideicommissary substitution should be expressly made in order that it may be valid.[10] The term "fideicommissary substitution" need not, however, be used in the will; it is enough that there is a clear and unequivocal statement that one shall enjoy usufructuary or other rights, short of naked ownership or title, over certain property of the testator with the obligation to preserve the property and to transmit it to a second heir.[11] It is essential for the validity of a fideicommissary substitution that both heirs are living and qualified to succeed at the time of death by the testator and that the substitute does not go beyond one degree from the heir originally instituted. The term "one degree" has been the subject of varied interpretation. One view is to the effect that the term means one transfer, citing the Supreme Tribunal of Spain and as advocated by eminent civilists as Justices J.B.L. Reyes, R. Puno, E. Caguioa, and D. Jurado. In *Ramirez vs. Ramirez*, [12] decided on 15 February 1982, the Court, however, adopted the literal view that "one decree" means relationship or generation as so advanced by equally eminent writers Dr. A. Padilla, Justice E. Paras and Dr. A. Tolentino. In the subsequent case of the *Testate Estate* case of *Fr. Aranas*, [13] however, the Court upheld the usufructuary right of the Roman Catholic Church under a legacy that now renders doubtful the continued validity of the *Ramirez* doctrine.

The institution of Jorge Rabadilla in the Belleza codicil partook the nature of an institution sub modo, rather than one of substitution, governed by the provisions of Article 882 of the Civil Code. This law provides:

"Art. 882. The statement of the object of the institution, or the application of the property left by the testator, or the charge imposed by him, shall not be considered as a condition unless it appears that such was his intention.

"That which has been left in this manner may be claimed at once provided that the instituted heir or his heirs give security for compliance with the wishes of the testator and for the return of anything he or they may receive, together with its fruits and interests, if he or they should disregard this obligation." (Emphasis

supplied)

A mode is distinguished from a condition contemplated in the rules on succession in that the latter dictates the efficacy, either in a suspensive or resolutive manner, of a testamentary disposition while the former obligates the instituted heir to comply with the mandate made by the testator but does not prevent the heir from at once claiming the inheritance provided he gives a security to ensure compliance with the will of the testator and the return of the thing received together with its fruits and interests, "should (the heir) disregard this obligation." The obligation imposed upon the heir or legatee is deemed not to be a condition for his entry forthwith into the inheritance unless a contrary intention of the testator is evident. In case of doubt, the institution is considered modal, rather than conditional. Much of the variance in the legal effects of the two classes,[14] however, is now practically theoretical and merely conceptual. Under the old Civil Code [15] an institucion sub modo could be said to be more akin to an institution sub demonstratione, or an expression of a wish or suggestion of the testator that did not have any real obligatory force, that matter being left instead to the discretion of the heir, i.e., whether to abide by it or not. The amendatory provisions of the new Civil Code now hardly differentiates between the principal effect of the non-compliance with the mode and that of the occurrence of a resolutive condition expressed in the will. In both instances, the property must be returned to the estate of the decedent to then pass on under the rules on intestacy.

ACCORDINGLY, I also vote for the dismissal of the instant petition.

[1] The will, along with the codocil, was probated and admitted in Special Proceedings No. 4046 before the then Court of First Instance of Negros Occidental.

[2] Relative to the intimation that the term "near descendants" of the testatrix is too indefinite and opposed to the requirement of Article 843 of the Code, attention might be invited to the provisions of Article 845, in relation to Article 959, of the Code that can permit proper identification by some means other than the given name and surname of the intended testate heirs enough to render the institution valid and effective. The ponencia, in any case, states that the testatrix "died single and without issue."

[3] Rollo, pp. 34-35.

[4] The trial court opined that the action was premature since no cause of action had as yet arisen in favor of private respondent and noted that the banking institutions, mortgagees of the property, were not privies to the obligation of Jorge Rabadilla under the Belleza codicil.

[5] Rollo, p. 73.

[6] Article 857, New Civil Code.

[7] Article 859, New Civil Code.

[8] The codicil indicates that the testatrix clearly intended Jorge Rabadilla to have the ownership of the lot in question pass on to him upon her death.

[9] Article 863, New Civil Code.

[10] Article 864, New Civil Code.

[11] See *Crisologo vs. Singson*, 4 SCRA 491.

[12] 111 SCRA 704.

[13] 29 May 1987.

[14] *Morente vs. De la Santa*, 9 Phil. 387; *Chiong vs. Vaño*, 8 Phil. 119.

[15] See Art. 797.

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