

**EMILIO NATIVIDAD, ADMINISTRATOR OF THE ESTATE OF THE  
DECEASED TIBURCIO SALVADOR Y REYES, PETITIONER AND  
APPELLANT, VS. BASILIA GABINO, RESPONDENT AND APPELLEE.***G.R. No. 11386. March 31, 1917*

Ponente: TORRES, J.

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This is an appeal, filed by the administrator of the estate of the decedent Tiburcio Salvador y Reyes, from the order of August 21, 1915, by which the judge of the Court of First Instance of Manila, interpreting the true wishes of the testator, expressed the opinion that the ownership and dominion of the property mentioned in clause 6 of the will should be awarded to Basilia Gabino, subject to the reservation made in behalf of Lorenzo Salvador and Emilio Natividad. Therefore the trial court ordered an amendment made to the fourth basis for the proposed partition of the decedent's estate, presented by the testamentary executor, and, as soon as such be made, a day set for the hearing and approval of the proposed amended partition.

The testator Salvador y Reyes contracted a valid and legal marriage with Anselma Nicasio, who died in 1868, leaving a daughter named Higinia who married Clemente Natividad. Higinia Salvador died in 1913, survived by two children Emilio and Purificacion, both surnamed Natividad y Salvador. Tiburcio Salvador disposed of all his property in the manner recorded in the will executed in legal form on November 9, 1914, instituting as sole heirs his grandchildren Emilio and Purificacion, both surnamed Natividad y Salvador. In the sixth clause of this will the testator left to Basilia Gabino the legacy mentioned therein. Literally, this clause is as follows:

"I bequeath to Dona Basilia Gabino the ownership and dominion of the urban property, consisting of a house and lot situated on Calle Lavezares of the said district of San Nicolas and designated by No. 520, and in addition eleven meters by two meters of the lot designated by No. 419, situated on Calle Madrid. This portion shall be taken from that part of the lot which is adjacent to the rear of said property No. 520. If the said legatee should die, Lorenzo Salvador shall be obliged to deliver this house, together with the lot on which it stands, to my grandson Emilio Natividad, upon payment by the latter to the former of the sum of four thousand pesos (P4,000), Philippine currency."

The executor of the estate of the decedent is the decedent's own heir, Emilio Natividad, who in due season and by counsel presented to the court for its approval a proposed partition of the property pertaining to the estate, setting forth in the fourth basis the following relative to the legacy made to Basilia Gabino:

"Summarizing the statements made in respect to this matter, we are of the opinion that the sixth clause expresses in itself a right of usufruct, in favor of Doña Basilia Gabino, of the house at No. 520 Calle Lavezares, and a general legacy in favor of Lorenzo Salvador of the sum of P4,000 whenever Basilia should die; but that the ownership of the property upon which this right and legacy are established belongs to the heir Emilio Natividad who, by the express will of the testator, has been made liable for these encumbrances."

By a writing of August 5, 1915, counsel for the legatee Basilia Gabino opposed the approval of the proposed

partition with regard to the adjudication to the legatee of the usufruct only of the property at No. 520 Calle Lavezares, claiming that said legatee ought to be recognized as entitled to the dominion and ownership of the same. For this and the other reasons set forth, her counsel requested that the testamentary executor be ordered to amend the fourth basis of the proposed partition in order that ownership and dominion, instead of usufruct only, of said property be adjudicated to the objector-legatee, Basilia Gabino.

After proper legal steps had been taken and the written briefs of the parties and the schedule of the proposed partition filed by the testamentary executor had been examined, the trial judge issued the order aforementioned. Appeal was taken by counsel for the executor to this court, and a transcript of the record of the proceedings below was forwarded to the clerk of this court.

The only question raised by this appeal and submitted to us for decision is: What construction must be given to the above-quoted sixth clause of the will executed by Tiburcio Salvador?

A person is entirely free to make his will in such manner as may best please him, provided the testamentary provisions conform to law and meet its requirements. He may impose conditions, either with respect to the institution of heirs or to the designation of legatees and, when the conditions imposed upon the former or the latter do not fall within the provisions of those articles of the Civil Code touching heirs and legatees, they shall be governed by the rules therein prescribed for conditional obligations. (Civ. Code, arts. 790 and 791.)

In the sixth clause of the will executed by the decedent Tiburcio Salvador y Reyes, he bequeathed to Basilia Gabino the ownership and dominion of the property therein specified as to its location and other circumstances, on condition that if the legatee should die Lorenzo Salvador would be obliged, upon the payment of P4,000 by the testator's grandson and heir Emilio Natividad, to hand over this property to the latter.

The condition imposed by the testator in the double legacy mentioned depends upon the happening of the event constituting the condition, to wit, the death of the legatee Basilia Gabino, a perfectly legal condition according to article 1114 of the Civil Code, as it is not impossible of performance and is not contrary to law or public morals, as provided in article 1116 of said code.

The moment the legatee Gabino dies the other legatee, Lorenzo Salvador, is obliged to deliver the property to the heir Emilio Natividad who, in his turn and in exchange, must pay the legatee Salvador the sum of P4,000, thereby fulfilling the double legacy contained in the said sixth clause of the will, the first of these legacies being the voluntary reservation to Basilia Gabino of the ownership of the said house, and the second, the conditional legacy of P4,000 to Lorenzo Salvador. Making use of his right, the testator provided in his will that the dominion, that is, the ownership and possession of his house situated on Calle Lavezares, No. 520 together with a part of the lot at No. 419, should be delivered as a legacy, provided that if the legatee should die, this property instead of passing to her successor, would revert to the testator's grandson and heir, provided that he in turn would pay to Lorenzo Salvador the sum of P4,000. It cannot be understood that the legacy conveyed only the usufruct of the property because the plain and literal meaning of the words employed by the testator in the said clause sixth clearly shows beyond all doubt the express wishes of the testator who, establishing a voluntary reservation of the ulterior and final disposition of the bequeathed property, ordered that the legatee's right of dominion should end at her death, and that on this occurrence his wish was that the ownership of the property should pass to Emilio Natividad, provided the latter in turn delivered said P4,000 to Lorenzo Salvador who appears to be the son of the legatee Gabino.

If the provisions of article 675 of the Civil Code are to be complied with, it cannot be understood that the testator meant to bequeath to Basilia Gabino the mere usufruct of the property, inasmuch as, by unmistakable language employed in the said sixth clause, he bequeathed her the ownership or dominion of the said property—language

which expresses without the slightest doubt his wishes which should be complied with literally, because it is constant rule, of jurisprudence that in matters of last wills and testaments the testators's will is the law.

It is true that the legatee could not make any disposal of the bequeathed real property to be effective after her death, nor could the property be acquired from her by her heir through testate or intestate succession; but if we take into account that the institution of donations and legacies depends on the full free will of the testator, and that if the testator intended no more than that Basilia Gabino should enjoy the ownership of the property during her lifetime, this testamentary provision is not contrary to law or to public morals, inasmuch as the testator thereby intended that the property should revert to its lawful heir, the latter being obliged to make a monetary compensation to Lorenzo Salvador who appears to be the successor of the legatee Gabino.

For the foregoing reasons, considering that the order appealed from is in accordance with law and that the several features of the sole assignment of error made thereto are without merit, the said order of August 21, 1915, must be affirmed, with the costs against the appellant. So ordered.

Carson, Trent, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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