

HILARION, JR. AND ENRICO ORENDAIN, REPRESENTED BY FE D. ORENDAIN, PETITIONERS, VS. TRUSTEESHIP OF THE ESTATE OF DOÑA MARGARITA RODRIGUEZ, RESPONDENT.*G.R. No. 168660. June 30, 2009*

Ponente: NACHURA, J.

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This petition for certiorari, filed under Rule 65 of the Rules of Court, assails the Order[2] of the Regional Trial Court (RTC) of Manila, Branch 4 in SP. PROC. No. 51872 which denied petitioners' (Hilarion, Jr. and Enrico Orendain, heirs of Hilarion Orendain, Sr.) Motion to Dissolve the Trusteeship of the Estate of Doña Margarita Rodriguez.

First, we revisit the long settled facts.

On July 19, 1960, the decedent, Doña Margarita Rodriguez, died in Manila, leaving a last will and testament. On September 23, 1960, the will was admitted to probate by virtue of the order of the Court of First Instance of Manila City (CFI Manila) in Special Proceeding No. 3845. On August 27, 1962, the CFI Manila approved the project of partition presented by the executor of Doña Margarita Rodriguez's will.

At the time of her death, the decedent left no compulsory or forced heirs and, consequently, was completely free to dispose of her properties, without regard to legitimes,[3] as provided in her will. Some of Doña Margarita Rodriguez's testamentary dispositions contemplated the creation of a trust to manage the income from her properties for distribution to beneficiaries specified in the will, to wit:

x x x x

CLAUSULA SEGUNDA O PANG-DALAWA: - x x x Ipinaguutos ko na matapos magawa ang pagaayos ng aking Testamentaria at masara na ang Expediente ng aking Testamentaria, ang lahat ng pagaare ko sa aking ipinaguutos na pangasiwaan sa habang panahon ay ipagbukas sa Juzgado ng tinatawag na "FIDEICOMISO" at ang ilalagay na "fideicomisario" ang manga taong nasabi ko na sa itaas nito, at ang kanilang gaganahin ay ang nasasabi sa testamentong ito na gaganahen ng tagapangasiwa at albacea. x x x x

CLAUSULA TERCERA O PANG-TATLO: - Ipinaguutos ko na ang kikitain ng lahat ng aking pagaare, na ang hindi lamang kasama ay ang aking lupain na nasasabi sa Certificado de Transferencia de Titulo No. 7156 (Lote No. 1088-C), Certificado Original de Titulo No. 4588 (LOTE No. 2492), Certificado Original de Titulo No. 4585 (Lote No. 1087) ng lalawigan ng Quezon, at ang bahaging maytanim na palay ng lupang nasasaysay sa Certificado Original de Titulo No. 4587 (Lote No. 1180) ng Quezon, ay IIPUNIN SA BANCO upang maibayad sa anillaramiento, ang tinatawag na "estate Tax", ang "impuesto de herencia" na dapat pagbayaran ng aking pinagbibigyan na kasama na din ang pagbabayaran ng "Fideicomiso", gastos sa abogado na magmamakaalam ng testamentaria at gastos sa Husgado. Ngunit bago ipasok sa Banco ang kikitaen ng nabangit na manga gagaare, ay aalisin muna ang manga sumusunod na gastos:

x x x x

CLAUSULA DECIMA O PANG-SAMPU: - Ipinaguutos ko na ang manga pagaareng nasasabi sa Clausulang ito ay pangangasiwaan sa habang panahon, at ito nga ang ipagbubukas ng "Fideicomiso" sa Juscado pagkatapos na maayos ang naiwanan kong pagaare. Ang pangangasiwaang pagaare ay ang manga sumusunod:

x x x x

Ang lahat ng pagaaring nasasabe sa Clausulang ito (hindi kasama ang "generator" at automovil) hindi maisasanla o maipagbibili kailan man, maliban sa pagaaring nasa Quezon Boulevard, Maynila, na maaring isanla kung walang fondo na gagamitin sa ipagpapaigui o ipagpapagawa ng panibago alinsunod sa kaayusang hinihingi ng panahon.

x x x x

CLAUSULA DECIMA SEGUNDA O PANG-LABING DALAWA: - Ang kuartang matitipon sa Banco ayon sa tagubilin na nasasaysay sa Clausulang sinusundan nito ay gagamitin sa manga sumusunod na pagkakagastusan; at ganito din ang gagawin sa lahat ng aking pagaare na nasasakop ng fideicomiso at walang ibang pinaguukulan. Ang pagkakagastusan na ito ay ang sumusunod:

x x x x

CLAUSULA VIGESIMA CUARTA O PANG-DALAWANGPU AT APAT: - Ipinaguutos ko sa aking manga Tagapangasiwa na sa fondong ipinapasok sa Banco para sa gastos ng Niña Maria, Misa at iba pa, kukuha sila na kakailanganin para maitulong sa manga sumusunod: Florentina Luna, Roberta Ponce, Marciada Ponce, Benita Ponce, Constancia Pineda, Regino Pineda, Tomas Payumo, Rosito Payumo, Loreto Payumo, Brigido Santos at Quintin Laino, Hilarion Orendain at manga anak. Ang manga dalaga kung sakali at inabutan ng pagkamatay ko na ako ay pinagtiisan at hindi humiwalay sa akin, kung magkasakit ay ipagagamot at ibabayad sa medico, at ibibili ng gamot, at kung kailangan ang operacion ay ipaooperacion at ipapasok sa Hospital na kinababagayan ng kaniyang sakit, at kahit maypagkakautang pa sa "impuesto de herencia at estate tax" ay ikukuha sa nasabing fondo at talagang ibabawas doon, at ang paggagamot ay huag pagtutuusan, at ang magaalaga sa kanya ay bibigyan ng gastos sa pagkain at sa viaje at iba pa na manga kailangan ng nagaalaga. Kung nasa provincia at dadalhin ditto sa Maynila ay bibigyan ng gastos sa viaje ang maysakit at ang kasama sa viaje, at ang magaalaga ay dito tutuloy sa bahay sa Tuberias at Tanduay na natatalaga sa manga may servicio sa akin, at kung mamatay at gusting iuwi sa provincia ang bangkay ay iupa at doon ilibing at dapit ng Pare at hated sa nicho na natotoka sa kanya. Ganito din ang gagawain kung mayasawa man ay nasa poder ko ng ako ay mamatay. Ang wala sa poder ko datapua at nagservicio sa akin, kaparis ng encargado, ang gagawaing tulong ay ipagagamot, ibibili ng gamot at kung kailangan ang operacion o matira sa Hospital, ipaooperacion at ipagbabayad sa Hospital.[4] (emphasis supplied)

x x x x

As regards Clause 10 of the will which explicitly prohibits the alienation or mortgage of the properties specified therein, we had occasion to hold, in *Rodriguez, etc., et al. v. Court of Appeals, et al.*, [5] that the clause, insofar as the first twenty-year period is concerned, does not violate Article 870[6] of the Civil Code. We declared, thus:

The codal provision does not need any interpretation. It speaks categorically. What is declared void is the testamentary disposition prohibiting alienation after the twenty-year period. In the interim, such a provision does not suffer from the vice of invalidity. It cannot be stricken down. Time and time again, We have said, and We now repeat, that when a legal provision is clear and to the point, there is no room for interpretation. It must be applied according to its literal terms.

Even with the purpose that the testatrix had in mind were not as unequivocal, still the same conclusion emerges. There is no room for intestacy as would be the effect if the challenged resolution of January 8, 1968 were not set aside. The wishes of the testatrix constitute the law. Her will must be given effect. This is so even if there could be an element of uncertainty insofar as the ascertainment thereof is concerned. In the language of

a Civil Code provision: "If a testamentary disposition admits of different interpretations, in case of doubt, that interpretation by which the disposition is to be operative shall be preferred." Nor is this all. A later article of the Civil Code equally calls for observance. Thus: "The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative; and of two modes of interpreting a will, that is to be preferred which will prevent intestacy."

x x x x

Nothing can be clearer, therefore, than that [Petra, Antonia and Rosa, all surnamed Rodriguez] could not challenge the provision in question. [They] had no right to vindicate. Such a right may never arise. The twenty-year period is still with us. What would transpire thereafter is still locked up in the inscrutable future, beyond the power of mere mortals to foretell. At any rate, We cannot anticipate. Nor should We. We do not possess the power either of conferring a cause of action to a party when, under the circumstances disclosed, it had none.[7]

Almost four decades later, herein petitioners Hilarion, Jr. and Enrico Orendain, heirs of Hilarion Orendain, Sr. who was mentioned in Clause 24 of the decedent's will, moved to dissolve the trust on the decedent's estate, which they argued had been in existence for more than twenty years, in violation of Articles 867[8] and 870 of the Civil Code, and inconsistent with our ruling in *Rodriguez v. Court of Appeals*.[9]

On April 18, 2005, the RTC issued the herein assailed Order:[10]

The above-cited provisions of the civil code find no application in the present motion to dissolve the trust created by the testatrix. There is no question that the testamentary disposition of Doña Margarita Rodriguez prohibiting the mortgage or sale of properties mentioned in clause X of her Last Will and Testament forevermore is void after the lapse of the twenty year period. However, it does not mean that the trust created by [the] testatrix in order to carry out her wishes under clauses 12, 13 and 24 will also become void upon expiration of the twenty year period. As ruled by the Supreme Court in *Emetrio Barcelon v. CA*, "the codal provision cited in Art. 870 is clear and unequivocal and does not need any interpretation. What is declared void is the testamentary disposition prohibiting alienation after the twenty year period." Hence, the trustees may dispose of the properties left by the testatrix in order to carry out the latter's testamentary disposition.

The question as to whether a trust can be perpetual, the same finds support in Article 1013[,] paragraph 4 of the Civil Code, which provides that "the Court, at the instance of an interested party or its motion, may order the establishment of a permanent trust so that only the income from the property shall be used." In the present case, the testatrix directed that all the twenty five (25) pieces of property listed in the tenth clause should be placed under the trusteeship and should be perpetually administered by the trustees and a certain percentage of the income from the trust estate should be deposited in a bank and should be devoted for the purposes specifically indicated in the clauses 12, 13 and 24.

The wishes of the testatrix constitute the law. Her will must be given effect. This is even if there could be an element of uncertainty insofar as the ascertainment thereof is concerned. This Court so emphatically expressed it in a decision rendered more than sixty years ago. Thus, respect for the will of a testator as [an] expression of his last testamentary disposition, constitutes the principal basis of the rules which the law prescribes for the correct interpretation of all of the clauses of the will; the words and provision therein written must be plainly construed in order to avoid a violation of his intentions and real purpose. The will of the testator clearly and explicitly stated must be respected and complied with as an inviolable law among the parties in interest. Such is the doctrine established by the Supreme Court of Spain, constantly maintained in a great number of decisions.

Hence, this petition, positing the following issues:

1. WHETHER THE TRUSTEESHIP OVER THE PROPERTIES LEFT BY DOÑA MARGARITA

RODRIGUEZ CAN BE DISSOLVED APPLYING ARTICLES 867 AND 870 OF THE CIVIL CODE.

2. WHETHER THE LOWER COURT IS CORRECT IN STATING THAT THE ABOVE-CITED PROVISIONS OF THE CIVIL CODE FINDS NO APPLICATION IN THE PRESENT MOTION TO DISSOLVE THE TRUST CREATED BY THE TESTATRIX.

3. CONCOMITANT THERETO, [WHETHER] THE LOWER COURT [IS] CORRECT IN APPLYING ARTICLE 1013 PARAGRAPH 4 OF THE CIVIL CODE.[11]

Before we delve into the foregoing issues, it is noteworthy that the present petition, albeit captioned as a petition for certiorari, is actually a petition for review on certiorari, raising only pure questions of law. On more than one occasion, we have allowed erroneously labeled actions based on the averments contained in the petition or complaint.[12] Thus, we now disregard the incorrect designation and treat this as a petition for review on certiorari under Rule 45 of the Rules of Court.

The petition is impressed with merit.

The issues being intertwined, we shall discuss them jointly.

Quite categorical from the last will and testament of the decedent is the creation of a perpetual trust for the administration of her properties and the income accruing therefrom, for specified beneficiaries. The decedent, in Clause 10 of her will, listed a number of properties to be placed under perpetual administration of the trust. In fact, the decedent unequivocally forbade the alienation or mortgage of these properties. In all, the decedent did not contemplate the disposition of these properties, but only sought to bequeath the income derived therefrom to various sets of beneficiaries.

On this score, we held in *Rodriguez v. Court of Appeals*[13] that the perpetual prohibition was valid only for twenty (20) years. We affirmed the CA's holding that the trust stipulated in the decedent's will prohibiting perpetual alienation or mortgage of the properties violated Articles 867 and 870 of the Civil Code. However, we reversed and set aside the CA's decision which declared that that portion of the decedent's estate, the properties listed in Clause 10 of the will, ought to be distributed based on intestate succession, there being no institution of heirs to the properties covered by the perpetual trust.

As previously quoted, we reached a different conclusion and upheld the trust, only insofar as the first twenty-year period is concerned. We refrained from forthwith declaring the decedent's testamentary disposition as void and the properties enumerated in Clause 10 of the will as subject to intestate succession. We held that, in the interim, since the twenty-year period was then still upon us, the wishes of the testatrix ought to be respected.

Thus, at present, there appears to be no more argument that the trust created over the properties of the decedent should be dissolved as the twenty-year period has, quite palpably, lapsed.

Notwithstanding the foregoing, the RTC ruled otherwise and held that: (a) only the perpetual prohibition to alienate or mortgage is declared void; (b) the trust over her properties stipulated by the testatrix in Clauses 12, 13 and 24 of the will remains valid; and (c) the trustees may dispose of these properties in order to carry out the latter's testamentary disposition.

We disagree.

Apparent from the decedent's last will and testament is the creation of a trust on a specific set of properties and the income accruing therefrom. Nowhere in the will can it be ascertained that the decedent intended any of the trust's designated beneficiaries to inherit these properties. The decedent's will did not institute any heir thereto, as clearly shown by the following:

- Clause 2 instructed the creation of trust;
- Clause 3 instructed that the remaining income from specified properties, after the necessary deductions for expenses, including the estate tax, be deposited in a fund with a bank;
- Clause 10 enumerated the properties to be placed in trust for perpetual administration (pangasiwaan sa habang panahon);
- Clauses 11 and 12 directed how the income from the properties ought to be divided among, and distributed to the different beneficiaries; and
- Clause 24 instructed the administrators to provide medical support to certain beneficiaries, to be deducted from the fund deposits in the bank mentioned in Clauses 2 and 3.

Plainly, the RTC was mistaken in denying petitioners' motion to dissolve and ordering the disposition of the properties in Clause 10 according to the testatrix's wishes. As regards these properties, intestacy should apply as the decedent did not institute an heir therefor. Article 782, in relation to paragraph 2, Article 960 of the Civil Code, provides:

Art. 782. An heir is a person called to the succession either by the provision of a will or by operation of law.

x x x x

Art. 960. Legal or intestate succession takes place:

x x x x

(2) When the will does not institute an heir to, or dispose of all the property belonging to the testator. In such case, legal succession shall take place only with respect to the property of which the testator has not disposed;

x x x

We find as erroneous the RTC's holding that paragraph 4,[14] Article 1013 of the same code specifically allows a perpetual trust, because this provision of law is inapplicable. Suffice it to state that the article is among the Civil Code provisions on intestate succession, specifically on the State inheriting from a decedent, in default of persons entitled to succeed. Under this article, the allowance for a permanent trust, approved by a court of law, covers property inherited by the State by virtue of intestate succession. The article does not cure a void testamentary provision which did not institute an heir. Accordingly, the article cannot be applied to dispose of herein decedent's properties.

We are not unmindful of our ruling in *Palad, et al. v. Governor of Quezon Province, et al.*[15] where we declared, thus:

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." 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.[16]

In this case, however, we reach a different conclusion as the testatrix specifically prohibited the alienation or mortgage of her properties which were definitely more than the two (2) properties in the aforecited case. The herein testatrix's large landholdings cannot be subjected indefinitely to a trust because the ownership thereof would then effectively remain with her even in the afterlife.

In light of the foregoing, therefore, the trust on the testatrix's properties must be dissolved and this case remanded to the lower court to determine the following:

- The properties listed in Clause 10 of the will, constituting the perpetual trust, which are still within reach and have not been disposed of as yet; and
- The intestate heirs of the decedent, with the nearest relative of the deceased entitled to inherit the remaining properties.

One final note. To obviate confusion, we clarify that the petitioners, although correct in moving for the dissolution of the trust after the twenty-year period, are not necessarily declared as intestate heirs of the decedent. Our remand of the case to the RTC means that the probate court should now make a determination of the heirship of the intestate heirs of the decedent where petitioners, and all others claiming to be heirs of the decedent, should establish their status as such consistent with our ruling in *Heirs of Yapinchay v. Hon. del Rosario*.[17]

WHEREFORE, premises considered, the petition is GRANTED. The Order of the Regional Trial Court of Manila, Branch 4 in SP. PROC. No. 51872 is REVERSED and SET ASIDE. The trust approved by the Regional Trial Court of Manila, Branch 4 in SP. PROC. No. 51872 is DISSOLVED. We ORDER the Regional Trial Court of Manila, Branch 4 in SP. PROC. No. 51872 to determine the following:

- the properties listed in Clause 10 of Doña Margarita Rodriguez's will, constituting the perpetual trust, which are still within reach and have not been disposed of as yet; and
- the intestate heirs of Doña Margarita Rodriguez, with the nearest relative of the decedent entitled to inherit the remaining properties.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

[1] The case before the Regional Trial Court of Manila, Branch 4, is entitled "Trusteeship of the Estate of Doña Margarita Rodriguez v. Jesus Ayala and Lorenzo Rodriguez." In the present petition filed by petitioners, they erroneously designate the petitioner as the Trusteeship of the Estate of Doña Margarita Rodriguez v. Jesus Ayala and Lorenzo Rodriguez, the executors of the estate. The title of the present petition should reflect the actual petitioners, and the Trusteeship of the Estate of Doña Margarita Rodriguez, represented by the executors, as the respondent.

[2] Penned by Judge Socorro B. Inting, rollo, pp. 17-18.

[3] See Article 886 of the Civil Code.

[4] Records, Vol. I, pp. 3-15.

[5] G.R. No. L-28734, March 28, 1969, 137 Phil. 371.

[6] Art. 870. The dispositions of the testator declaring all or part of the estate inalienable for more than twenty years are void.

[7] Supra note 5 at pp. 376-379.

[8] Art. 867. The following shall not take effect.

x x x x

2. Provisions which contain a perpetual prohibition to alienate, and even a temporary one, beyond the limit fixed in article 863.

x x x x

[9] Supra note 5.

[10] Rollo, pp. 17-18.

[11] Petitioner's Memorandum, rollo, p. 98.

[12] Benguet State University v. Commission on Audit, G.R. No. 169637, June 8, 2007, 524 SCRA 437, 444.

[13] Supra note 5.

[14] Art. 1013. After the payment of debts and charges, the personal property shall be assigned to the municipality or city where the deceased last resided in the Philippines, and the real estate to the municipalities or cities, in which the same is situated.

x x x x

The court, at the instance of an interested party, or on its own motion, may order the establishment of a permanent trust, so that only the income from the property shall be used.

[15] No. L-24302, August 18, 1972, 46 SCRA 354.

[16] Id. at 243-244.

[17] G.R. No. 146818, February 6, 2006, 481 SCRA 556.

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