

RESURRECCION DE LEON, ET AL., PLAINTIFFS AND APPELLEES, VS. EMILIANA MOLO-PECKSON, ET AL., RESPONDENTS AND APPELLANTS.

G.R. No. 17809, December 29, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Resurreccion de Leon, et al. filed on November 13, 1958 before the Court of First Instance of Rizal a complaint seeking to compel Emiliana Molo-Peckson, et al. to convey to the former ten parcels of land located in Pasay City with an area of 1,749 sq. m. upon payment of P1.00 per parcel upon the plea that said lots were willed or donated in 1948 to the latter by their foster parents Mariano Molo y Legaspi and Juana Juan with the understanding that they should sell them to the plaintiff under the terms above-stated.

Defendants, in their answer, disclaimed any legal obligation on their part to sell the above properties to the plaintiffs for the nominal consideration of P1.00 per lot alleging that if they executed the document on which the complaint is predicated it was on the mistaken assumption that their foster parents had requested them that they donate the properties to plaintiffs for which reason they executed on August 9, 1956 a document revoking said donation which was acknowledged before Notary Public Leoncio C. Jimenez.

No testimonial evidence was presented by either party. Instead, both agreed to submit the case upon the presentation of their respective exhibits which were all admitted by the trial court.

After trial on the merits, the court a quo rendered on September 21, 1960 a decision wherein it held that, under the facts established by the evidence, trust has been constituted by the late spouses Mariano Molo and Juana Juan over the ten parcels of land in question in favor of plaintiffs as beneficiaries and, as a consequence, concluded:

"Considering all the foregoing, the Court orders:

"1. The defendants, jointly and severally to free the said ten (10) parcels of land from the mortgage lien in favor of the Rehabilitation Finance Corporation (now Development Bank of the Philippines) and Claro Cortez, and thereafter to sign and execute in favor of the plaintiffs a deed of absolute sale of the said properties for and in consideration of TEN (P10.00) PESOS already deposited in Court after all conditions imposed in Exhibit A have been complied with;

"2. That in the event the defendants shall refuse to execute and perform the above, they are ordered, jointly and severally, to pay the plaintiffs the value of said ten (10) parcels of land in question, the amount to be assessed by the City of Pasay City as the fair market value of the same, upon orders of the Court to assess said value;

"3. The defendants jointly and severally to pay the plaintiffs' Attorney's fees in the amount of P3,000.00, as defendants acted in gross and evident bad faith in refusing to satisfy the plaintiffs' plainly valid, just and demandable claim, under Article 2208 subparagraph 5 of the New Civil Code;

"4. The defendants to render an accounting of the fruits of said ten (10) parcels of land from the time plaintiffs

demanded the conveyance of said parcels of land on August 11, 1956 as per Exhibits B and C, in accordance with the provisions of Article 1164, New Civil Code which provides that the creditor has a right to the fruit of the thing from the time the obligation to deliver it arises; and

"5. The defendants to pay the costs."

Defendants took the present appeal.

On January 24, 1941, Mariano Molo y Legaspi died leaving a Will wherein he bequeathed his entire estate to his wife, Juana Juan. This will was probated in the Court of First Instance of Pasay City, Rizal, which was affirmed by the Supreme Court on November 26, 1956 (G.R. No. L-8774, 100 Phil., 344; 53 Off. Gaz., No. 3, p. 658) On May 11, 1948, Juana Juan in turn executed a will naming therein many devisees and legatees, one of whom is Guillerma San Rafael, mother of the plaintiffs and defendant Pilar Perez Nable. On June 7, 1948, however, Juana Juan executed a donation inter vivos in favor of Emiliana Molo-Peckson and Pilar Perez Nable of almost all of her entire property leaving only about P16,000.00 worth of property for the devisees mentioned in the will Among the properties conveyed to the donees are the ten parcels of land subject of the present action. Juana Juan died on May 28, 1950.

On December 5, 1950, Emiliana Molo-Peckson and Pilar Perez Nable executed a document which they called "Mutual Agreement" the pertinent provisions of which are:

"That the above named parties hereby mutually agree by these presents * * * that the following lots should be sold at onb (1) peso each to the following persons and organization:

* * * * *

"To—Justa de Leon and Resurreccion de Leon, several parcels of land located at Calle Tolentino (South of Tenorio and Kapitan Magtibay), Pasay City, share and share alike or half and half of ten (10) lots described in:

"Transfer Certificate of Title No. 28157—and allocated as follows:

"(a) To Justa de Leon, Five (5) Lots.

"(b) To Resurreccion de Leon, the remaining Five (5) Lots.

"That this agreement is made in conformity with the verbal wish of the late Don Mariano Molo y Legaspi and the late Doña Juana Francisco Juan y Molo. These obligations were repeatedly told to Emiliana Molo Peckson, before their death and that same should be fulfilled after their death."

On August 9, 1956, however, the same defendants, assisted by their husbands, executed another document in which they revoked the so-called mutual agreement mentioned above, and another relating to the same subject matter, stating therein that the parties, "after matured and thorough study, realized that the above-mentioned public instruments * * * do not represent their true and correct interpretations of the verbal wishes of the late spouses Don Mariano Molo y Legaspi and Doña Juana Francisco Juan y Molo." But after the execution of this document, that is, on August 11, 1956, the beneficiaries Resurreccion de Leon and Justa de Leon, thru their counsel, demanded the conveyance to them of the ten parcels of land for the consideration of P1.00 per parcel as stated in the document of December 5, 1950. And having the defendants refused to do so, said beneficiaries consigned on July 8, 1957 the amount of P10.00 as the consideration of the ten parcels of land.

In this appeal, appellants assigns the following errors:

"I

THE LOWER COURT ERRED IN HOLDING THAT THE SPOUSES, MARIANO MOLO AND JUANA JUAN, CONSTITUTED A TRUST OVER THE PROPERTIES IN QUESTION WITH PLAINTIFFS-APPELLEES AS BENEFICIARIES.

II

THE LOWER COURT ERRED IN APPLYING ARTICLES 1440, 1441, 1449, 1453 AND 1457 OF THE NEW CIVIL CODE TO THE CASE AT BAR.

III

THE LOWER COURT ERRED IN HOLDING PLAINTIFFS-APPELLEES EXHIBIT 'A' TO BE A DECLARATION AGAINST INTEREST AND AN ADMISSION BY DEFENDANTS-APPELLANTS.

IV

THE LOWER COURT ERRED IN HOLDING THAT DEFENDANTS-APPELLANTS HAD NO RIGHT TO REVOKE EXHIBIT 'A'.

V

THE LOWER COURT ERRED IN ORDERING APPELLANTS TO RENDER AN ACCOUNTING OF THE FRUITS OF THE PROPERTIES IN QUESTION.

VI

THE LOWER COURT ERRED IN ORDERING APPELLANTS TO FREE THE PROPERTIES FROM MORTGAGE LIENS IN FAVOR OF THE DEVELOPMENT BANK OF THE PHILIPPINES AND CLARO CORTEZ.

VII

THE LOWER COURT ERRED IN AWARDING ATTORNEY'S FEES TO THE APPELLEES.

VIII

THE LOWER COURT ERRED IN NOT DIMISSING THE COMPLAINT."

There is no merit in the claim that the document executed on December 5, 1950 does not represent the true and correct interpretation by appellants of the verbal wish of their foster parents relative to the conveyance for a nominal consideration to appellees of the ten parcels of land in question considering the circumstances obtaining in the present case. To begin with, this document was executed by appellants on December 5, 1950, or about two years and six months from the time they acquired title to the lands by virtue of the donation inter vivos executed in their favor by their foster mother Juana Juan and six months after the death of the donor. There is nobody who could cajole them to execute it, nor is there any force that could coerce them to make the declaration therein expressed, except the constraining mandate of their conscience to comply with "the obligations repeatedly told to Emiliana Molo Peckson," one of appellants, before their death, epitomized in the "verbal wish of the late Don Mariano Molo y Legaspi and the late Doña Juana Francisco Juan y Molo" to convey after their death said ten parcels of land at P1.00 a parcel to appellees. In fact, the acknowledgment appended to the document they subscribed states that it was "their own free act and voluntary deed."

Indeed, it is to be supposed that appellants understood and comprehended the legal import of said document when they executed it more so when both of them had studied in reputable centers of learning, one being a pharmacist and the other a member of the bar. Moreover, they have more than ample time—the six months intervening between the death of the donor and the execution of the document—to ponder not only on the importance of the wish of their predecessors-in-interest but also on the propriety of putting in writing the mandate they have received. It is, therefore, reasonable to presume that that document represents the real wish of appellants' predecessors-in-interest and that the only thing to be determined is its real import and legal implications.

That the document represents a recognition of pre-existing trust or a declaration of an express trust impressed on the ten parcels of land in question is evident. A declaration of trust has been defined as an act by which a person acknowledges that the property, title to which he holds, is held by him for the use of another (*Griffith vs. Maxfield*, 51 S.W. 832, 66 Ark. 513, 521). This is precisely the nature of the will of the donor: to convey the titles of the land to appellants with the duty to hold them in trust for the appellees. Appellants obligingly complied with this duty by executing the document under consideration.

True it is that to establish a trust the proof must be clear, satisfactory and convincing. It cannot rest on vague, uncertain evidence, or on a loose, equivocal or indefinite declaration (*In re Tuttle's Estate*, 200 A. 921, 132 Pa. Super 356); but here the document in question clearly and unequivocally declares the existence of the trust even if the same was executed subsequent to the death of the trustor, Juana Juan, for it has been held that the right creating or declaring a trust need not be contemporaneous or inter-parties (*Stephenson vs. Stephenson*, 171 S.W. 2d 265, 351 Mo. 8; *In re Corbin's Trust Orph.*, 57 York Leg. Rec. 201). It was even held that an express trust may be declared by a writing made after the legal estate has been vested in the trustee (*Kurtz vs. Robinson*, Tex. Civ. App. 256 S.W. 2d 1003). The contention, therefore, of appellants that the will and the donation executed by their predecessors-in-interest were absolute for it did not contain a hint that the lots in question will be held in trust by them does not merit weight because the fact that an express trust was created by a deed which was absolute on its face may be shown by a writing separate from the deed itself (*Mugan vs. Wheeler*, 145 S.W. 462, 241 Mo. 376).

The fact that the beneficiaries were not notified of the existence of the trust or that the latter have not been given an opportunity to accept it, is of no importance, for it is not essential to the existence of a valid trust and to the right of the beneficiaries to enforce the same that they had knowledge thereof at the time of its creation (*Steohr vs. Miller*, 296 F. 414). Neither is it necessary that the beneficiary should consent to the creation of the trust (*Wickwire-Spencer Steel Corporation vs. United Spring Mfg. Co.*, 142 N.E. 758, 247 Mass. 565). In fact, it has been held that in case of a voluntary trust the assent of the beneficiary is not necessary to render it valid because as a general rule acceptance by the beneficiary is presumed (Article 1446, new Civil Code; *Cristobal vs. Gomez*, 50 Phil., 810).

It is true, as appellants contend, that the alleged declaration of trust was revoked, and having been revoked it cannot be accepted, but the attempted revocation did not have any legal effect. The rule is that in the absence of any reservation of the power to revoke a voluntary trust is irrevocable without the consent of the beneficiary (*Allen vs. Safe Deposit and Trust Co. of Baltimore*, 7 A. 2d 180, 177 Md. 26). It cannot be revoked by the creator alone, nor by the trustee (*Fricke vs. Weber*, C.C.A. Ohio, 145 F. 2d 737; *Hughes vs. C.I.R.* C.C.A. 9, 104 F. 2d 144; *Ewing vs. Shannahan*, 20 S.W. 1065, 113 Mo. 188). Here there is no such reservation.

Appellants contend that the lower court erred in applying the provisions of the new Civil Code on trust. This is correct. The express trust was constituted during the lifetime of the predecessor-in-interest of appellants, that is, before the effectivity of the new Civil Code, although the instrument recognizing and declaring such trust was executed on December 5, 1950, after the effectivity of said Code. The Civil Code of 1889 and previous laws and authorities on the matter, therefore, should govern the herein trust under the provisions of Article 2253 of the new

Civil Code.

But the Civil Code of 1889 contains no specific provisions on trust as does the new Civil Code. Neither does the Code of Civil Procedure of 1901 for the same merely provides for the proceeding to be followed relative to trusts and trustees (Chapter XVIII). This silence, however, does not mean that the juridical institution of trust was then unknown in this jurisdiction, for the principles relied upon by the Supreme Court before the effectivity of the new Civil Code were those embodied in Anglo-American jurisprudence as derived from Roman and Civil Law principles (*Government vs. Abadilla*, 46 Phil., 42). And these are the same principles on which we predicate our ruling heretofore stated and on which we now rely for the validity of the trust in question.

The trial court ordered appellants to render an accounting of the fruits of the properties in question even if appellees did not expressly ask for it in their prayer for relief. We, however, believe that this is covered by the general prayer "for such other relief just and equitable under the premises." What is important is to know from what date the accounting should be made. The trial court ordered that the accounting be made from the time appellees demanded the conveyance of the ten parcels of land on August 11, 1956, in accordance with Article 1164 of the new Civil Code which provides that the creditor has a right to the fruit of the thing from the time the obligation to deliver it arises. But this cannot be done without first submitting proof that the conditions stated in the mutual agreement had been complied with. And this only happened when the decision of the Supreme Court in G.R. No. L-8774[*] became final and executory. The ruling of the trial court on this respect should therefore be modified in the sense that the accounting should be made from the date of the finality of said decision.

We find no error in the directive of the trial court that appellants should free the lands in question from the encumbrance that was created thereon by them in favor of the Development Bank of the Philippines and one Claro Cortez, for as trustees it is their duty to deliver the properties to the cestui que trust free from all liens and encumbrances.

To recapitulate, we hold: (1) that the document executed on December 5, 1950 creates an express trust in favor of appellees; (2) that appellants had no right to revoke it without the consent of the cestui que trust; (3) that appellants must render an accounting of the fruits of the lands from the date the judgment rendered in G.R. No. L-8774 became final and executory; and (4) that appellants should free said lands from all liens and encumbrances.

Wherefore, with the modification as above indicated with regard to accounting, we hereby affirm the decision appealed from, without pronouncement as to costs.

Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

* *Molo Pecson and Perez vs. Tanchuco, et al.* (100 Phil., 344; 53 Off. Gaz., [3] 658).

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