

JESUS MA. CUI, PLAINTIFF AND APPELLEE, VS. ANTONIO MA. CUI, DEFENDANT AND APPELLANT, ROMULO CUI, INTERVENOR AND APPELLANT.*G. R. No. 18727. August 31, 1964*

Ponente: MAKALINTAL, J.

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This is a proceeding in quo warranto originally filed in the Court of First Instance of Cebu. The office in contention is that of Administrator of the Hospicio de San Jose de Barili. Judgment was rendered on 27 April 1961 in favor of the plaintiff, Jesus Ma. Cui, and appealed to us by the defendant, Antonio Ma. Cui, and by the intervenor, Romulo Cui.

The Hospicio is a charitable institution established by the, spouses Don Pedro Cui and Dona Benigna Cui, now deceased, "for the care and support, free of charge, of indigent invalids, and incapacitated and helpless persons." It acquired corporate existence by legislation (Act No. 3239 of the Philippine Legislative passed 27 November 1925) and endowed with extensive properties by the said spouses through a series of donations, principally the deed of donation executed on 2 January 1926.

Section 2 of Act No. 3239 gave the initial management to the founders jointly and, in case of their incapacity or death, to "such persons as they may nominate or designate, in the order prescribed by them." Section 2 of the deed of donation provides as follows:

"Que en caso de nuestro fallecimiento o incapacidad para administrar, nos suatituyan nuestro lcgitimo sobrino Mariano Cui. si at tiempo de nuestra muerte o incapacidad ge liullare residiendo en la ciudurl de Cebu, y nuestro sobrino politico Dionisio Jakosafrm. Si nuestro dieho sobrino Mariano Cui no estuviese residiendo entonces en la ciudad de Cebu, designamos en su lugnr a nuestro otro sobrino legitinio Mauricio Cui. Ambos sobrinos administraran conjuntamente el HOSPICIO DE SAN JOSE DE BARILI. A la muerte o incapacidnd de estos dos administradnres, la administracion del HOSPICIO DE SAN JOSE DE BARILI pasara a una sola persona que sera el varonf mayor de edad, que descienda legitimamente de cualquk'i-a de nustrs sobrinos legitimos Mariano Cui, Mauricio Cui, Vicente Cui y Victor Cui, y Que posea titulo de abogado, o medico, o inpeniero civil, o farmaceutico, o a falta de estos titulos. el que pague al Estado mayor iinpuesto o contribution. En igualdad de circunstancias, sera preferido el varon de mas edad descendiente de quien tenia ultimamente la administracion. Cuando absolutnmente faltare persona de esta.s cualiflcaciones, l» ndministracion <>cto, al Gobi* mo Provincial de Cebu."

Don Pedro Gui died in 1926, and his widow continued to administer the Hospicio until her death in 1929. Thereupon the administration passed to MauWcio Gui and Dionisio Jakosalem. The first died on 8 May 1931 and the second, on 1 July 1031. On 2 July 1931 Dr. Teodoro Cui, only son of Mauricio Gui, became the administrator. Thereafter, beginning in 1932, a series of controversies and court litigations ensued concerning the position of administrator, to which, in so far as they are pertinent to the present case, reference will be made later in this decision.

Plaintiff Jesus Ma. Cui and defendant Antonio Ma. Cui are brothers, being the sons of Mariano Cui, one of the nephews of the spouses Don Pedro Cui and Dona Benigna Cui. On 27 February 1960 the then incumbent administrator, Dr. Teodoro Cui, resigned in favor of Antonio Ma. Cui pursuant to a "convenio" entered into between them and embodied in a notarial document. The next day, 28 February, Antonio Ma. Cui took his oath of office. Jesus Ma. Cui, however, had no prior notice of either the "convenio" or of his brother's assumption of the position.

Dr. Teodoro Cui died on 27 August 1960; on 5 September 1960 the plaintiff wrote a letter to the defendant demanding that the office be turned over to him; and on 13 September 1960, the demand not having been complied with, the plaintiff filed the complaint in this case. Romulo Cui later on intervened, claiming a right to the same office, being a grandson of Vicente Cui, another one of the nephews mentioned by the founders of the Hospicio in their deed of donation.

As between Jesus and Antonio the main issue turns upon their respective qualifications to the position of administrator. Jesus is the older of the two and therefore under equal circumstances would be preferred, pursuant to section 2 of the deed of donation. However, before the test of age may be applied the deed gives preference to the one, among the legitimate descendants of the nephews therein named, "que posea titulo de abogado, o medico, o ingeniero civil, o farmaceutico, o a falta de estos titulos, el que pague al estado mayor impuesto o contribution."

The specific point in dispute is the meaning of the term "titulo de abogado." Jesus Ma. Cui holds the degree of Bachelor of Laws from the University of Santo Tomas (Class 192C) but is not a member of the Bar, not having passed the examinations to qualify him as one. Antonio Ma. Cui, on the other hand, is a member of the Bar, and although disbarred by this Court on 29 March 1957 (administrative case No. 141), was reinstated by resolution promulgated on 10 February 1960, about two weeks before he assumed the position of administrator of the Hospicio de Barili.

The Court *a quo*, in deciding this point in favor of the plaintiff, said that the phrase "titulo de abogado," taken alone, means that of a full-fledged lawyer, but that "as used in the deed of donation and considering the function or purpose of the administrator, it should not be given a strict interpretation but a liberal one," and therefore means a law degree or diploma of Bachelor of Laws. This ruling is assailed as erroneous both by the defendant and by intervenor.

We are of the opinion that whether taken alone or in context the term "titulo de abogado" means not mere possession of the academic degree of Bachelor of Laws but membership in the Bar after due admission thereto, qualifying one for the practice of law. In Spanish the word "titulo" is defined as "testimonio o instrumento dado para ejercer un empleo, dignidad o profesion" (Diccionario de la Lengua Espanola, Real Academia Espanola, 1947 ed., p. 1224); and the word "abogado," as follows: "Perito en el derecho positivo que se dedica a defender en juicio, por escrito o de palabra, los derechos o intereses de los litigantes, y tambien a dar dictamen sobre las cuestiones o puntos legales que se le consultan" (Id. p. 5) A Bachelor's degree alone, conferred by a law school upon completion of certain academic requirements, does not entitle its holder to exercise the legal profession. The English equivalent of "abogado" is lawyer or attorney-at-law. This term has a fixed and general signification, and has reference to that class of persons who are by license officers of the courts, empowered to appear, prosecute and defend, and upon whom peculiar duties, responsibilities and liabilities are developed by law as a consequence.

In this jurisdiction admission to the Bar and to the practice of law is under the authority of the Supreme Court. According to Rule 138 such admission requires passing the Bar examinations, taking the lawyer's oath and receiving a certificate from the Clerk of Court, this certificate being his license to practice the profession. The

academic degree of Bachelor of Laws in itself has little to do with admission to the Bar, except as evidence of compliance with the requirement that an applicant to the examinations has "successfully completed all the prescribed courses, in a law school or university, officially approved by the Secretary of Education." For this purpose, however, possession of the law degree itself is not indispensable: completion of the prescribed course may be shown in some other way. Indeed there are instances, particularly under the former Code of Civil Procedure, where persons who had not gone through any formal legal education in college were allowed to take the Bar examinations and to qualify as lawyers. (Section 14 of that code required possession of "the necessary qualification of learning and ability.") Yet certainly it would be incorrect to say that such persons do not possess the "titulo de abogado" because they lack the academic degree of Bachelor of Laws from some law school or university.

The founders of the Hospicio de San Jose de Barili must have established the foregoing test advisedly, and provided in the deed of donation that if not a lawyer, the administrator should be a doctor or a civil engineer or a pharmacist, in that order; or failing all these, should be the one who pays the highest taxes among those otherwise qualified. A lawyer, first of all, because under Act No. 3239 the managers or trustees of the Hospicio shall "make regulations for the government of said institution (Sec. 3, b); shall "prescribe the conditions subject to which invalids and incapacitated and destitute persons may be admitted to the institute (Sec. 3, d); shall see to it that the rules and conditions promulgated for admission are not in conflict with the provisions of the Act; and shall administer properties of considerable value—for all of which work, it is to be presumed, a working knowledge of the law and a license to practice the profession would be distinct asset.

Under this particular criterion we hold that the plaintiff is not entitled, as against the defendant, to the office of administrator. But it is argued that although the latter is a member of the Bar he is nevertheless disqualified by virtue of paragraph 3 of the deed of donation, which provides that the administrator may be removed, on the ground, among others, of ineptitude in the discharge of his office or lack of evident sound moral character. Reference is made to the fact that the defendant was disbarred by this Court on 29 March 1957 for immorality and unprofessional conduct. It is also a fact, however, that he was reinstated on 10 February 1960, before he assumed the office of administrator. His reinstatement is a recognition of his moral rehabilitation, upon proof no less than that required for his admission to the Bar in the first place.

"Whether or not the applicant shall be reinstated rests to a great extent in the sound discretion of the court. The court action will depend, generally speaking, on whether or not it decides that the public interest in the orderly and impartial administration of justice, will be conserved by the applicant's participation therein in the capacity of an attorney and counselor at law. The applicant must, like a candidate for admission to the bar, satisfy the court that he is a person of good moral character—a fit and proper person to practice law. The court will take into consideration the applicant's character and standing prior to the disbarment, the nature and character of the charge for which he was disbarred, his conduct subsequent to the disbarment, and the time that has elapsed between the disbarment and the application for reinstatement. (5 Am. Jm, Sec. 301, p. 443).

"Evidence of reformation is required before applicant is entitled to reinstatement, notwithstanding the attorney has received a pardon following his conviction, and the requirements for reinstatement have been held to be the same as for original admission to the bar, except that the court may require a greater degree of proof than in an original admission." (7 G.J.S., Attorney & Client, Sec. 41, p. 815).

"The derivative questions on an application for reinstatement are whether applicant is 'of good moral character' in the sense in which that phrase is used when applied to attorneys-at-law and is a fit and proper person to be entrusted with the privileges of the office of an attorney, and whether his mental qualifications are such as to enable him to discharge efficiently his duty to the public, and the moral attributes are to be regarded as a separate and distinct from his mental qualifications." (7 C.J.S., Attorney & Client, Sec. 41, p. 816)."

As far as moral character is concerned, the standard required of one seeking reinstatement to the office of attorney cannot be less exacting than that implied in paragraph 3 of the deed of donation as a requisite for the office which is disputed in this case. When the defendant was restored to the roll of lawyers the restrictions and disabilities resulting from his previous disbarment were wiped out.

This action must fail on one other ground: it is already barred by lapse, of time amounting to prescription or laches. Under Section 16 of Rule 66 (formerly sec. 16, Rule 68, taken from section 216 of Act 190), this kind of action must be filed within one (1) year after the right of the plaintiff to hold the office arose.

Plaintiff Jesus Ma. Cui believed himself entitled to the office in question as long ago as 1932. On January 26 of that year he filed a complaint in quo warranto against Dr. Teodoro Cui, who assumed the administration of the Hospicio on 2 July 1931. Mariano Cui, the plaintiff's father, and Antonio Ma. Cui came in as intervenors. The case was dismissed by the Court of First Instance upon a demurrer by the defendant there to the complaint and complaint in intervention. Upon appeal to the Supreme Court from the order of dismissal, the case was remanded for further proceedings (Cui vs. Cut, 60 Phil. 37, 48). The plaintiff, however, did not prosecute the case as indicated in the decision of this Court, but acceded to an arrangement whereby Teodoro Cui continued as administrator Mariano Cui was named "legal adviser" and plaintiff Jesus Ma. Cui accepted a position as assistant administrator.

Subsequently the plaintiff tried to get the position by a series of extra-judicial maneuvers. First he informed the Social Welfare Commissioner, by letter dated 1 February 1950, that as of the previous 1 January he had "made clear" his "intention of occupying the office of administrator of the Hospicio." He followed that up with another letter dated 4 February, announcing that he had taken over the administration as of 1 January 1950. Actually, however, he took his oath of office before a notary public only on 4 March 1950, after receiving a reply of acknowledgment, dated 2 March, from the Social Welfare Commissioner, who thought that he had already assumed the position as stated in his communication of 4 February 1950. The rather muddled situation was referred by the Commissioner to the Secretary of Justice, who in an opinion dated 3 April 1950 (op. No. 45, S. 1950), correcting another opinion previously given, in effect ruled that the plaintiff, not being a lawyer, was not entitled to the administration of the Hospicio.

Meanwhile, the question again become the subject of a court controversy. On 14 March 1950 the Hospicio commenced an action against the Philippine National Bank in the Court of First Instance of Cebu (Civ. Case No. R-1216) because the bank had frozen the Hospicio's deposits therein. The Bank then filed a third-party complaint against herein plaintiff-appellee, Jesus Ma. Cui, who had, as stated above, taken oath as administrator. On 19 October 1950, having been deprived of recognition by the opinion of the Secretary of Justice he moved to dismiss the third-party complaint on the ground that he was relinquishing "temporarily" his claim to the administration of the Hospicio. The motion was denied in an order dated 2 October 1953. On 6 February 1954 he was able to take another oath of office as administrator before President Magsaysay, and soon afterward filed a second motion to dismiss in Civil Case No. R-1216. President Magsaysay, be it said, upon learning that a case was pending in Court, stated in a telegram to his Executive Secretary that "as far as (he) was concerned the court may disregard the oath" thus taken. The motion to dismiss was granted nevertheless and the other parties in the case filed their notice of appeal from the order of dismissal. The plaintiff then filed an ex-parte motion to be excluded as party in the appeal and the trial court again granted the motion. This was on 24 November 1954. Appellants thereupon instituted a mandamus proceeding in the Supreme Court (G.R. No. L-8540), which was decided on 28 May 1956, to the effect that Jesus Ma. Cui should be reinstated in the appeal. That appeal, however, after it reached this Court was dismissed upon motion of the parties, who agreed that "the office of administrator and trustee of the Hospicio . . . should be ventilated in quo warranto proceedings to be initiated against the incumbent by

whomsoever is not occupying the office but believes he has a right to it" (G.R. No. L-9103). the resolution of dismissal was issued 31 July , 1956. At that time the incumbent administrator was Dr, Teodoro Cui, but no action in quo warranto was filed against him by plaintiff Jesus Ma. Cui as indicated in the aforesaid motion for dismissal.

On 10 February 1960,; defendant Antonio Ma. Cui was, reinstated by this Court as member of: the Bar, and on the following 27 February Dr. Teodoro Cui, resigned as administrator in his favor, pursuant to the "convenio" between them executed on the same date. The next day Antonio Ma, Cui took his oath of office.

The failure of the plaintiff to prosecute his claim judicially after this Court decided the first case of Cui vs. Cui in 1934 (60 Phil. 3769), remanding it to the trial court for further proceedings; his acceptance instead of the position of assistant administrator, allowing Dr. Teodoro Cui to continue as administrator; and his failure to file an action in quo warranto against said Dr. Cui after 31 July 1956, when the appeal in Civil Case No. R-1216 of the Cebu Court was dismissed upon motion of the parties precisely so that the conflicting claims of the parties could be ventilated in such an action—all these circumstances militate against the plaintiff's present claim in view of the rule that an action in quo warranto must be filed within one year after the right of the plaintiff to hold office arose. The excuse that the plaintiff did not file an action against Dr. Teodoro Cui after 31 July 1956 because of the latter's illness did not interrupt the running of the statutory period. And the fact that this action was filed within one year of the defendant's assumption of office in September 1960 does not make the plaintiff's position any better, for the basis of the action is his own right to the office and it is from the time such right arose that the one-year limitation must be counted, not from the time the incumbent began to discharge the duties of said office. *Bautista vs. Fajardo*, 38 Phil. 624; *Lim vs. Yulo*, 62; Phil. 161.

Now for the claim of intervenor and appellant Romulo Cui. This party is also a lawyer, grandson of Vicente Cui, one of the nephews of the founders of the Hospicio mentioned by them in the deed of donation. He is farther, in the line of succession, than "defendant Antonio Ma. Cui, who is a son of Mariano Cui, another one of the said nephews. The deed of donation provides: "a la muerte o incapacidad de estos administradores (those appointed in the deed itself) pasara a una sola persona que sera el varon, mayor de edad, que deacienda legitima .de cualquiera de nuestros sobrinos legitimas Maiano Cui, Mauricio Cui, Vicente Cui, Victor Cui, y quo posea titulo de abogado. En igualdad de circunstancias, sera preferido el varon de mas edad descendiente e quien tenia ultimamente la administracion." Besides being a nearer descendant than Romulo Cui, Antonio Ma. Cui is older than he and therefore is preferred when the circumstances are otherwise equal. The intervenor contends that the intention of the founders was to confer the administration by line and successively to the descendants of the nephews named in the deed, in the order they are named. Thus, he argues, since the last administrator was Dr. Teodoro Cui, who belonged to the Mauricio Cui line, the next administrator must come from the line of Vicente Cui, to whom the intervenor belongs. This interpretation, however, is not justified by the terms of the deed of donation.

In view of the foregoing considerations, the judgment appealed from is reversed and set aside, and the complaint as well as the complaint in intervention are dismissed, with costs equally against plaintiff-appellee and intervenor-appellant.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes and Regala, JJ., concur.

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