

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PETITIONER, VS. ANASTASIA ABADILLA ET AL., CLAIMANTS. THE MUNICIPALITY OF TAYABAS ET AL., CLAIMANTS AND APPELLEES, 33 MARIA PALAD ET AL....*G.R. No. 21334. December 10, 1924*

Ponente: OSTRAND, J.

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This is an appeal from a judgment in cadastral land registration case No. 3 of the Court of First Instance of Tayabas (G. L. R. 0. Record No. 213) in which case lots Nos. 3464, 3469, and 3470 are claimed by the municipality of Tayabas and the governor of the province on one side, and by Maria, Eufemio, Eugenia, Felix, Caridad, Segunda, and Emilia Palad on the other. Lot No. 3470 is also claimed by Dorotea Lopez. The court below ordered the registration of all three lots in the name of the governor of the Province of Tayabas in trust for a secondary school to be established in the municipality of Tayabas. The claimants Palad and Dorotea Lopez appealed.

It appears from the evidence that the lands in question were originally owned by one Luis Palad, a school teacher, who obtained title to the land by *composicion gratuita* in 1894. On January 25, 1892, Palad executed a holographic will partly in Spanish and partly in Tagalog. Palad died on December 3, 1896, without descendants, but leaving a widow, the appellant Dorotea Lopez, to whom he had been married since October 4, 1885. On July 27, 1897, the Court of First Instance of Tayabas ordered the protocolization of the will over the opposition of Leopoldo and Policarpio Palad, collateral heirs of the deceased and of whom the appellants Palad are descendants.

The will contained a clause in Tagalog which, translated into English, reads:

"That the cocoanut land in Colongcolong, which I have put under cultivation, be used by my wife after my death during her life or until she marries, which property is referred to in the inventory under No. 5, but from this cocoanut land shall be taken what is to be lent to the persons who are to plant cocoanut trees and that which is to be paid to them as their share of the crop if any should remain; and that she try to earn with the product of the cocoanut trees of which those bearing fruit are annually increasing; and if the times aforementioned should arrive, I prepare and donate it to a secondary college to be erected in the capital of Tayabas; so this will be delivered by my wife and the executors to the Ayuntamiento of this town, should there be any, and if not, to the civil governor of this province in order to cause the manager thereof to comply with my wishes for the good of many and the welfare of the town."

After the death of Luis Palad the widow Dorotea Lopez remained in possession of the land and in the year 1900 married one Calixto Dolendo. On April 20, 1903, the aforesaid collateral heirs of Luis Palad brought an action against the widow for the partition of the lands here in question on the ground that she, by reason of her second marriage, had lost the right to their exclusive use and possession. In the same action the municipality of Tayabas intervened claiming the land under the clause of the Palad will above quoted. During the pendency of the action

an agreement was arrived at by the parties under which the land which now constitutes lots Nos. 3464 and 3469 were turned over to the municipality as its share of the inheritance under the will, and the remaining portion of the land in controversy and which now forms lot No. 3470 was left in the possession of Dorotea Lopez. On the strength of the agreement the action was dismissed on November 9, 1904, upon motion by the counsel for the municipality and concurred in by all the parties, reserving to the collateral heirs the right to bring another action. The municipality of Tayabas has been in possession of said lots Nos. 3464 and 3469 ever since and Dorotea Lopez has likewise held uninterrupted possession of lot No. 3470.

In regard to lots Nos. 3464 and 3469, claimed by the appellants Palad and the appellees, the case presents several problems not directly covered by statutory provisions or by Spanish or local precedents and, for the solution of which, we must resort to the underlying principles of the law on the subject. As it is doubtful whether the possession of the municipality of Tayabas can be considered adverse within the meaning of section 41 of the Code of Civil Procedure, the case as to these lots turns upon the construction and validity of the clause quoted from the will of Luis Palad, rather than upon the question of prescription of title.

The clause is very unskillfully drawn; its language is ungrammatical and at first blush seems somewhat obscure, but on closer examination it sufficiently reveals the purpose of the testator. And if its provisions are not in contravention of some established rule of law or public policy, they must be respected and given effect. It may be observed that the question as to the sufficiency of the form of the will must be regarded as settled by the protocolization proceedings had in the year 1897.

It is a well-known rule that testamentary dispositions must be liberally construed so as to give effect to the intention of the testator as revealed by the will itself. Applying this rule of construction it seems evident that by the clause in question the testator proposed to create a trust for the benefit of a secondary school to be established in the town of Tayabas, naming as trustee the ayuntamiento of the town or if there be no ayuntamiento, then the civil governor of the Province of Tayabas.

As the law of trusts has been much more frequently applied in England and in the United States than it has in Spain, we may draw freely upon American precedents in determining the effect of the testamentary trust here under consideration, especially so as the trusts known to American and English equity jurisprudence are derived from the fidei commissa of the Roman law and are based entirely upon Civil Law principles.

In order that a trust may become effective there must, of course, be a trustee and a cestui que trust, and counsel for the appellants Palad argues that we here have neither; that there is no ayuntamiento, no Gobernador Civil of the province, and no secondary school in the town of Tayabas.

An ayuntamiento corresponds to what in English is termed a municipal corporation and it may be conceded that the ordinary municipal government in these Islands falls short of being such a corporation. But we have provincial governors who like their predecessors, the civil governors, are the chief executives of their respective provinces. It is true that in a few details the functions and powers of the two offices may vary somewhat, but it cannot be successfully disputed that one office is the legal successor of the other. It might as well be contended that when under the present regime the title of the chief executive of the Philippines was changed from Civil Governor to that of Governor-General, the latter was not the legal successor of the former. There can therefore be but very little doubt that the governor of the Province of Tayabas, as the successor of the civil governor of the province under the Spanish regime, may act as trustee in the present case.

In regard to private trusts it is not always necessary that the cestui que trust should be named, or even be in esse at the time the trust is created in his favor. (Flint on Trusts and Trustees, section 25; citing *Frazier vs. Frazier*, 2 Hill Ch., 305; *Ashurst vs. Given*, 5 Watts & S., 329; *Carson vs. Carson*, 1 Wins. [N. C.], 24.) Thus a devise to a father

in trust for accumulation for his children lawfully begotten at the time of his death has been held to be good although the father had no children at the time of the vesting of the funds in him as trustee. In charitable trusts such as the one here under discussion, the rule is still further relaxed. (Perry on Trusts, 5th ed., section 66.)

This principle is in harmony with article 788 of the Civil Code which reads as follows:

"Any disposition which imposes upon an heir the obligation of periodically investing specified sums in charitable works, such as dowries for poor maidens or scholarships for students, or in favor of the poor, or any charitable or public educational institution, shall be valid under the following conditions:

"If the charge is imposed on real property and is temporary, the heir or heirs may dispose of the encumbered estate, but the lien shall continue until the record thereof is canceled.

"If the charge is perpetual, the heir may capitalize it and invest the capital at interest, fully secured by first mortgage.

"The capitalization and investment of the principal shall be made with the intervention of the civil governor of the province after hearing the opinion of the prosecuting officer.

"In any case, if the testator should not have laid down any rules for the management and application of the charitable legacy, it shall be done by the executive authorities upon whom this duty devolves by law."

It is true that minor distinctions may possibly be drawn between the case before us and that presupposed in the article quoted, but the general principle is the same in both cases. Here the trustee, who holds the legal title, as distinguished from the beneficial title resting in the cestui que trust, must be considered the heir. The devise under consideration does not in terms require periodical investments of specified sums, but it is difficult to see how this can affect the general principle involved, and unless the devise contravenes some other provision of the Code it must be upheld.

We have been unable to find any such provision. There is no violation of any rule against perpetuities: the devise does not prohibit the alienation of the land devised. It does not violate article 670 of the Code: the making of the will and the continuance or quantity of the estate of the heir are not left in the discretion of a third party. The devisee is not uncertain and the devise is therefore not repugnant to article 750 of the Civil Code. The provincial governor can hardly be regarded as a public establishment within the meaning of article 748 and may therefore receive the inheritance without the previous approval of the Government.

But counsel argues that assuming all this to be true the collateral heirs of the deceased would nevertheless be entitled to the income of the land until the cestui que trust is actually in esse. We do not think so. If the trustee holds the legal title and the devise is valid, the natural heirs of the deceased have no remaining interest in the land except their right to the reversion in the event the devise for some reason should fail, an event which has not as yet taken place. From a reading of the testamentary clause under discussion it seems quite evident that the intention of the testator was to have the income of the property accumulate for the benefit of the proposed school until the same should be established.

From what has been said it follows that the judgment appealed from must be affirmed in regard to lots Nos. 3464 and 3469.

As to lot No. 3470 little need be said. It may be noted that though the Statute of Limitations does not run as between trustee and cestui que trust as long as the trust relations subsist, it may run as between the trust and third persons. Contending that the Colongcolong land was community property of her marriage with Luis Palad and that lot No. 3470 represented her share thereof, Dorotea Lopez has held possession of said lot, adverse to all other

claimants, since the year 1904 and has now acquired title by prescription.

The judgment appealed from is affirmed in regard to lots Nos. 3464 and 3469 and is reversed as to lot No. 3470, and it is ordered that said lot No. 3470 be registered in the name of the claimant Dorotea Lopez. No costs will be allowed. So ordered.

Street, Avanceña, Villamor, and Romualdez, JJ., concur.

CONCURRING AND DISSENTING OPINION

MALCOLM, J.:

I concur in regard to lots Nos. 3464 and 3469 and dissent in regard to lot No. 3470. As to the last mentioned lot, it will be recalled that title to it is adjudicated to Dorotea Lopez, the widow of Luis Palad who, in his will, transmitted the usufructuary rights to the land to his widow "during her life or until she marries," after which the property was to be delivered to the ayuntamiento of Tayabas, Tayabas, or if there should not be any, to the civil governor of the Province of Tayabas, for the benefit of a secondary college. Dorotea Lopez having remarried, the property should have been turned over to the municipality of Tayabas. The alleged agreement of 1904 cannot alter these basic and controlling facts. The possession of Dorotea Lopez has been in contravention of the terms of the trust and in bad faith.

Whatever may be the rule elsewhere, in civil law jurisdictions including the Philippines, it is settled that to perfect title by adverse possession, such possession must have been held in good faith on the part of the claimant. (Arriola vs. Gomez de la Serna [1909], 14 Phil., 627; Santiago vs. Cruz [1911], 19 Phil., 145; Cuaycong vs. Benedicto [1918], 37 Phil., 781; Tolentino vs. Vitug [1918], 39 Phil, 126; Ochoa vs. Hernandez [1913], 230 U. S., 139; Kennedy vs. Townsley [1849], 16 Ala., 239; Abshire vs. Lege [1913], 133 La., 254; 2 C. J., 199.) The doctrines announced in Tolentino vs. Vitug, supra, are particularly applicable to the facts.

For these reasons, I would prefer to see the judgment appealed from affirmed in all respects.

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