

CARMEN G. DE PEREZ, TRUSTEE OF THE ESTATE OF ANA MARIA ALCANTARA, PLAINTIFF AND APPELLEE, VS. MARIANO GARCHITORENA, AND JOSE CASIMIRO, SHERIFF OF THE COURT OF FIRST INSTANCE OF ...

G. R. No. 31703. February 13, 1930

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }The amount of P21,428.58 is on deposit in the plaintiff's name with the association known as La Urbana in Manila, as the final payment of the liquidated credit of Ana Maria Alcantara, deceased, whose heiress is said plaintiff, against Andres Garchitorena, also deceased, represented by his son, the defendant Mariano Garchitorena.

And as said Mariano Garchitorena held a judgment for P7,872.23 against Joaquin Perez Alcantara, husband of the plaintiff, Carmen G. de Perez, the sheriff pursuant to the writ of execution issued in said judgment, levied an attachment on said amount deposited with La Urbana.

The plaintiff, alleging that said deposit belongs to the fideicommissary heirs of the decedent Ana Maria Alcantara, secured a preliminary injunction restraining the execution of said judgment on the sum so attached. The defendants contend that the plaintiff is the decedent's universal heiress, and pray for the dissolution of the injunction.

The court below held that said La Urbana deposit belongs to the plaintiff's children as fideicommissary heirs of Ana Maria Alcantara, and granted a final writ of injunction.

The defendants insist in their contentions, and, in their appeal from the decision of the trial court; assign the following errors:

"1. The lower court erred in holding that a trust was created by the will of Dona Aha Maria Alcantara.

"2. The lower court erred in concluding and declaring that the amount of P21,428.58 deposited with La Urbana is the property of the children of the plaintiff as 'herederos fidei-comisarios.'

"3. The lower court erred in making the injunction permanent and condemning defendant to pay the costs."

The question here raised is confined to the scope and meaning of the institution of heirs made in the will of the late Ana Maria Alcantara already admitted to probate, and whose legal force and effect is not in dispute.

The clauses of said will relevant to the points in dispute, between the parties are the ninth, tenth, and eleventh,

quoted below:

"Ninth. Being single and without any forced heir, to show my gratitude to my niece-in-law, Carmen Garchitorena, of age, married to my nephew, Joaquin Perez Alcantara, and living in this same house with me, I institute her as my sole and universal heiress to the remainder of my estate after the payment of my debts and legacies, so that upon my death and after probate of this will, and after the report of the committee on claims and appraisal has been rendered and approved, she will receive from my executrix the properties composing my hereditary estate, that she may enjoy them with God's blessing and my own. "Tenth. Should my heiress Carmen Garchitorena die, I order that my whole estate shall pass unimpaired to her surviving children; and should any of these die, his share shall serve to increase the portion of his surviving brothers (and sisters) by accretion, in such wise that my estate shall never pass out of the hands of my heiress or her children in so far as it is legally possible.

"Eleventh. Should my aforesaid heiress, Carmen Garchitorena, die after me while her children are still in their minority, I order that my estate be administered by my executrix, Mrs. Josefa Laplana, and in her default, by Attorney Ramon Salinas and in his default, by his son Ramon Salinas; but the direction herein given must not be considered as an indication of lack of confidence in my nephew Joaquin Perez Alcantara, whom I relieve from the duties of administering my estate, because I recognize that his character is not adapted to management and administration."

The appellants contend that in these clauses the testatrix has ordered a simple substitution, while the appellee contends that it is a fideicommissary substitution.

This will certainly provides for a substitution of heirs. and of the three cases that might give rise to a simple substitution (art. 774, Civil Code), only the death of the instituted heiress before the testatrix would in the instant case give place to such substitution, inasmuch as nothing is said of the waiver of inheritance, or incapacity to accept it. As a matter of fact, however, clause XI provides for the administration of the estate in case the heiress instituted should die after the testatrix and while the substitute heirs are still under age. And it is evident that, considering the nature of simple substitution by the heir's death before the testator, and the fact that by clause XI in connection with clause X, the substitution is ordered where the heiress instituted dies after the testatrix, this cannot be a case of simple substitution.

The existence of a substitution in the will is not and cannot be denied, and since it cannot be a simple substitution in the light of the considerations above stated, let us now see whether the instant case is a fideicommissary substitution.

In clause IX, the testatrix institutes the plaintiff herein her sole and universal heiress, and provides that upon her death (the testatrix's) and after probate of the will and approval of the report of the committee on claims and appraisal, said heiress shall receive and enjoy the whole hereditary estate. Although this clause provides nothing explicit about substitution, it does not contain anything in conflict with the idea of fideicommissary substitution. The fact that the plaintiff was instituted the sole and universal heiress does not prevent her children from receiving, upon her death and in conformity with the express desire of the testatrix, the latter's hereditary estate, as provided in the following (above quoted) clauses, which cannot be disregarded if we are to give a correct interpretation of the will. The word sole does not necessarily exclude the idea of substitute heirs; and taking these three clauses together, such word means that the plaintiff is the sole heiress instituted in the first instance.

The disposition contained in clause IX, that said heiress shall receive and enjoy the estate, is not incompatible with a fideicommissary substitution (it certainly is incompatible with the idea of simple substitution, where the heiress instituted does not receive the inheritance). In fact the enjoyment of the inheritance is in conformity with the idea of fideicommissary substitution, by virtue of which the heir instituted receives the inheritance and enjoys

it, although at the same time he preserves it in order to pass it on to the second heir. On this point the illustrious Manresa, in his Civil Code (Vol. 6, pp. 142 and 143, 5th ed.), says:

"Or, what amounts to the same thing, the fideicommissary substitution, as held in the Resolutions of June 25, 1895, February 10, 1899, and July 19, 1909, requires three things:

"1. A first heir called primarily to the enjoyment of the estate.

"2. An obligation clearly imposed upon him to preserve and transmit to a third person the whole or a part of the estate.

"3. A second heir.

"To these requisites, the decision of November 18, 1918 adds another, namely that the fideicommissarius be entitled to the estate from the time the testator dies, since he is to inherit from the latter and not from the fiduciary.' (Italics ours.)

It appears from this quotation that the heir instituted or the fiduciary, as referred to in article 783 of the Civil Code, is entitled to enjoy the inheritance. And it might here be observed, as a timely remark, that the fideicommissum arising from a fideicommissary substitution, which is of Roman origin, is not exactly equivalent to, nor may it be confused with, the English "trust."

It should also be noted that said clause IX vests in the heiress only the right to enjoy but not the right to dispose of the estate. It says, she may enjoy it, but does not say she may dispose of it. This is an indication of the usufruct inherent in fideicommissary substitution.

Clause X expressly provides for the substitution. It is true that it does not say whether the death of the heiress herein referred to is before or after that of the testatrix; but from the whole context it appears that in making the provisions contained in this clause X, the testatrix had in mind a fideicommissary substitution, since she limits the transmission of her estate to the children of the heiress by this provision, "in such wise that my estate shall never pass out of the hands of my heiress or her children in so far as it is legally possible." Here it clearly appears that the testatrix tried to avoid the possibility that the substitution might later be legally declared null for transcending the limits fixed by article 781 of the Civil Code which prescribes that fideicommissary substitutions shall be valid "provided they do not go beyond the second degree."

Another clear and outstanding indication of fideicommissary substitution in clause X is the provision that the whole estate shall pass unimpaired to the heiress's children, that is to say the heiress is required to preserve the whole estate, without diminution, in order to pass it on in due time to the fideicommissary heirs. This provision complies with another of the requisites of fideicommissary substitution according to our quotation from Manresa inserted above.

Lastly, clause XI more clearly indicates the idea of fideicommissary substitution, when a provision is therein made in the event the heiress should die after the testatrix. That is, said clause anticipates the case where the instituted heiress should die after the testatrix and after receiving and enjoying the inheritance.

The foregoing leads us to the conclusion that all the requisites of a fideicommissary substitution, according to the quotation from Manresa above inserted, are present in the case of substitution now under consideration, to wit:

1. A first heir primarily called to the enjoyment of the estate. In this case the plaintiff was instituted an heiress, called to the enjoyment of the estate, according to clause IX of the will.
2. An obligation clearly imposed upon the heir to preserve and transmit to a third person the whole or a part of the estate. Such an obligation is imposed in clause X which provides that the "whole estate shall pass unimpaired to

her (heiress's) surviving children;" thus, instead of leaving the heiress at liberty to dispose of the estate by will, or of leaving the law to take its course in case she dies intestate, said clause not only disposes of the estate in favor of the heiress instituted, but also provides for the disposition thereof in case she should die after the testatrix.

3. A second heir. Such are the children of the heiress instituted, who are referred to as such second heirs both in clause X and in clause XI.

Finally, the requisite added by the decision of November 18, 1918, to wit, that the fideicommissarius or second heir should be entitled to the estate from the time of the testator's death, which in the instant case, is, rather than a requisite,, a necessary consequence derived from the nature of the fideicommissary substitution, in which the second heir does not inherit from the heir first instituted, but from the testator.

By virtue of this consequence, the inheritance in question does not belong to the heiress instituted, the plaintiff herein, as her absolute property, but to her children, from the moment of the death of the testatrix, Ana Maria Alcantara.

Therefore, said inheritance, of which the amount referred to at the beginning, which is on deposit with the association known as La Urbana in the plaintiff's name, is a part, does not belong to her nor can it be subject to the execution of the judgment against Joaquin Perez, who is not one of the fideicommissary heirs.

The judgment appealed from is affirmed, with costs against the appellant, Mariano Garchitorena. So ordered.

Johnson, Malcolm, Villamor, Ostrand, Johns and Villa-Real, JJ., concur.

Street, J.: reserves his vote.

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