

NICOLAS TRINIDAD, ATILANO TRINIDAD, AND THE INTESTATE ESTATE OF ALEJANDRO TRINIDAD, PLAINTIFFS AND APPELLANTS, VS. THE ROMAN CATHOLIC ARCHBISHOP OF MANILA, DEFENDANT AND APPELLANT.

G. R. No. 33769. March 11, 1931

Ponente: MALCOLM, J.

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MALCOLM, J.:

About a century ago, there lived in Manila two sisters and a brother by the names of Marcelina Bonifacio Alonso, Valentina Teodoro, and Basilio de la Trinidad. Marcelina Bonifacio Alonso was the first to pass on. Valentina Teodoro died on April 22, 1838, leaving as her sole heir her brother Basilio de la Trinidad. Two days before her death, Valentina Teodoro executed a will the pertinent clauses of which read as follows:

"Fourth item.—Having in my possession some properties belonging to my sister Dona Marcelina Bonifacio, situated in the market place or public square of this town, I leave the same at the disposal of my elder brother Don Basilio de la Trinidad and my nephews for the establishment of a chaplaincy charged with seventy-five masses.

"Fifth item.—Possessing another property consisting of rough stone and mortar with four stores, it is my will that another chaplaincy be established charged with fifty masses.

"Sixth item.—Declaring that the house where I live was inherited from my parents, and a third chaplaincy shall be established thereon charged with thirty annual masses, for all of which I wish that my nearest relatives be appointed and preferred, and the most worthy in case they belong to the same degree, and it being my object, partly, to leave this aid to those of my own blood, it is my will that each of them obtain a chaplain, for I expressly prohibit the union of two of these chaplaincies in one person unless no other relative of mine can be found entitled to it, in which case anyone possessing the qualification of relationship may obtain all the three chaplaincies, his possession and enjoyment being without prejudice to the right of any of my relatives who may later be found qualified for appointment, to whom I then desire to be conferred one of them, and in the event that I have absolutely no relative qualified for appointment, a chaplain, or three of them, may be temporarily appointed as administrator or administrators, without the right of ownership or possession.

"Eighteenth item.—I appoint as my executors, first Don Basilio de la Trinidad, second, Don Teodoro Pantoja, and third, Don Gregorio Alonso, to comply strictly in that capacity with the provisions of this her will, in accordance with the inventory of real and personal properties."

It was not until September 25, 1841, that the executor Basilio de la Trinidad requested the Archbishop of Manila to approve the creation of three chaplaincies. As the rents received from the properties were considered insufficient for the maintenance of three chaplaincies, the petition, on recommendation of the promotor fiscal, was denied. Thereupon, on July 15, 1842, the executor filed a new petition in which it was prayed that the three chaplaincies be united in one. This petition met with a favorable response from the Archbishop of Manila who, on July 12, 1843, approved the creation of one chaplaincy, and named to the same Telesforo Trinidad, the son of the

executor Basilio de la Trinidad. Telesforo Trinidad acted as chaplain until his death on April 3, 1878. He had under his charge the administration of the three properties which constituted the chaplaincy. The chaplaincy was again filled on June 6, 1879, when Rosauo Trinidad was declared entitled to the chaplaincy and to its income, the capital to be administered by the representative of the Sacred Mitra in like manner as the properties of the same kind are administered. The matter stood in this way up to December 12, 1914, when Rosauo Trinidad died. From that date to the present time, the chaplaincy has remained vacant.

The properties which originally were assigned for the chaplaincy had no great value. At the present time, however, they are assessed for purposes of taxation at P165,987. The properties have Torrens titles standing in the name of the Roman Catholic Archbishop of Manila.

In 1929, an action was begun by the surviving heirs of Valentina Teodoro, that is, by Nicolas Trinidad, Atilano Trinidad, and the estate of Alejandro Trinidad, against the Roman Catholic Archbishop of Manila, to annul the chaplaincy, to recover the title and possession of the properties pertaining thereto, and to obtain an accounting of the fruits of these properties received since 1878. The particular special defenses which were urged upon the court were (1) that the creation of one instead of three chaplaincies was in accordance with law, and (2) that the right of action of the plaintiffs, if they had any, is barred. The trial Judge, Hon. Pedro Tuason, found these defenses well founded, but at the same time, ordered that proper notations be made on the Torrens title certificates of the properties. The judgment of the trial judge in its exact terms reads as follows:

"Wherefore, it is ordered that the defendant cause to be noted on the Torrens certificates of title of the properties left by Valentina Teodoro the legal charge imposed by the deed of foundation executed by Basilio de la Trinidad. With this exception, the case is dismissed, without prejudice to the right of the plaintiffs to assert in a new action their rights, if they have any, to the surplus income accruing from the properties during the incumbency of Rosauo Trinidad and during the vacancies in the office of chaplain, without special pronouncement as to costs."

The foregoing is believed to be a correct statement of the case and of the facts. Indeed, there is no real controversy between the parties about the essential facts of the case. If necessary, the facts could be presented in more extended form so as to set out literally all of the various proceedings, but as these exhibits are in the record, this is believed to be unnecessary.

Neither party has been satisfied with the decision in the trial court. The defendant has appealed from that part of the judgment, which orders that the defendant cause to be noted on the Torrens certificates of title of the properties left by Valentina Teodoro the legal charge imposed by the deed of foundation executed by Basilio de la Trinidad. The plaintiffs have appealed with the following assignment of errors:

- The lower court erred in finding that the sole heir of the testatrix Valentina Teodoro was Basilio de la Trinidad.
- The lower court erred in finding that the action of the plaintiffs to ask the nullity of the chaplaincy created by the defendant is barred by the statute of prescription.
- The lower court erred in not finding that the one chaplaincy created by the defendant at the request of the executor Basilio de la Trinidad is null and void.
- The lower court erred in not ordering the transfer of the certificates of title Nos. 5027, 16950 and 4546 of the register of deeds of Manila in the names of the plaintiffs with the charge of the chaplaincy.
- The lower court erred in not ordering the defendant to render an accounting of the un-expended income of the chaplaincy to the plaintiffs.

- The lower court erred in not removing the defendant as trustee of the properties in litigation in spite of its finding that the said defendant has violated the trust by appropriating said properties to himself.
- The trial court erred in not ordering a new trial as asked by the plaintiffs."

The disposition of the defendant's appeal presents no difficulties. It is true that the complaint did not ask specifically for the notation of the foundation, but this was naturally included in the larger questions submitted by the plaintiffs. Moreover, it was a chaplaincy or chaplaincies which the testatrix had in mind to create. It never occurred to the deceased to donate absolutely these properties to the church. Whether the proper indorsement of the incumbrance be made by an order in this case or by an order in another proceeding instituted for that particular purpose is unimportant, for in so far as the equities are concerned, they all move in the direction of the action so appropriately taken by the trial judge.

A resolution of the appeal perfected by the plaintiffs offers more perplexities. In the first place, it is alleged that the creation of one, instead of three chaplaincies, was improper, and so resulted in only establishing a trust for the benefit of the heirs of the deceased. It is, of course, a cardinal rule that the testator's intention should prevail. The purpose of the testatrix here, as disclosed by her will, was to provide for three chaplaincies and to prohibit the union of any two of these chaplaincies in one person. However, a practical difficulty, which had not been foreseen by the testatrix, confronted the executor of the will and the Archbishop of Manila, and this was that the properties set aside for the chaplaincies did not produce sufficient revenue to warrant the creation of three chaplaincies. It may, therefore, be safely assumed that the executor and the Archbishop of Manila were acting in the best of faith to carry out the wishes of the deceased when they agreed upon one chaplaincy instead of three. It is very easy now to find fault with this action, but if we were to put ourselves in the position of the executor and the Archbishop in those early days, we would probably have been inclined to do exactly as they did. Moreover, curiously enough, the testatrix set aside for one chaplaincy certain properties belonging to her sister, while had the chaplaincy not been carried out, the properties would have gone to the surviving heir, who was the brother Basilio de la Trinidad. Although in presenting his petition for the amalgamation of the chaplaincies, the brother did so in his testamentary capacity, yet his rights as the heir of the deceased were affected. At this late date, we are not inclined to nullify proceedings taken so many years ago.

The plaintiffs further argue that chaplaincies were prohibited by the Spanish law which was applicable when the will was executed; that the chaplaincy did not have the sanction of royal license, and that since 1867, there must be enforced the agreement with the Holy See about collative chaplaincies. The researches of counsel for the plaintiffs have been exhaustive in this respect, and we have to commend them for their industry. At the same time, it would not be profitable for the court to follow counsel into a discussion of the various and intricate points which they have raised. The question after all is, What law should govern? Broadly stated, in 1838, when Valentina Teodoro executed her will, the institution of chaplaincies was prohibited. In 1843, when the chaplaincy was created, chaplaincies were permitted. Before and after those dates there were other laws which have been pressed upon the court as having weight and influence, but which after all are of minor importance. We think that the trial judge was right in giving effect to the laws and decrees in force in the Philippines in 1843, which permitted the creation of chaplaincies.

The laws and decrees of the Council of Trent were in force in the Philippines and constituted the applicable law not only as Canon law but also as Civil law and therein it was provided:

"We do not make therein a complete statement of all the canons of the Roman Catholic Church, nor even a compilation of all those in force; that is impracticable and the result would be voluminous. We limit ourselves to the publication of the Council of Trent which undoubtedly is the most important of all those promulgated since the establishment of the church. The decisions of the said Council have, for us, another importance; they form a

part of our positive law, because King D. Felipe who ruled the destinies of Spain at the adjournment of the sessions of that Assembly, by a Royal License of July 12, 1564, ordered their observance in these dominions as law of the Kingdom. This License is at present Law 13, title I of the Novísima Recopilación, and it has not been abrogated by any provision of law. (1 Bravo, The Council of Trent, p. VI)." Chapter VI of the decree relating to reforms, section 12 of the Council of Trent, reads as follows:

"CHAPTER VI. Last wills and testaments must be commuted with much circumspection

"Bishops shall take cognizance, summarily and extra-judicially, as delegates of the Apostolic See, of the commutations of last wills and testaments, which should not be done unless for just and necessary cause, nor should they be carried out without any showing that no falsehood has been stated in the petition and that the truth was not concealed. (Lopez de Ayala, Concilio de Trento, p. 260.)"

Aside from the foregoing, it would not appear necessary to decide whether or not the Supreme Court of Spain was right in its decision of April 28, 1882, regarding the duration of certain laws or whether Alcubilla and others are right in criticizing this decision. The point is that the chaplaincy was established in 1843 agreeable to law then permitting it, and has continued during all the years of Spanish occupation of the Philippines without protest. Further, it would be with extreme difficulty that the agreement of 1867 could be given effect in 1931 to the facts before us.

We reach the very definite conclusion that no error was committed in holding the chaplaincy legally established and subsisting.

The trial judge was led to find with the defendant on the further ground that the right of action of the plaintiffs had prescribed. Although possibly not needed for the disposition of this appeal, in order that silence on the question may not be taken as assent in any other proceedings, we will say that we do not agree with His Honor, the trial judge. A trust, it must be repeated, was what the testatrix provided for. There can be no running of the statute of limitations when it relates to the liquidation of a subsisting trust. Section 38 of the Code of Civil Procedure specifically provides that the Code shall not apply in the case of a continuing and subsisting trust, and as near as the facts can be placed under our present procedural law, that is exactly what we have here.

There remains for consideration the question of whether or not on the supposition that the chaplaincy was valid, the plaintiffs have a right to ask for an accounting. The trial judge, it will be recalled, left this matter for decision in a new action. The allegations of the complaint are undoubtedly sufficient to throw the question of accounting into issue. At the same time, the defendant has not interposed any special defense in relation with this question, presumably for the reason that he assumed the main question to be one of the validity or invalidity of the chaplaincy. Also, the evidence along this line is possibly deficient. It would appear preferable, therefore, to follow the lead of the trial judge in this regard. When the new action shall be begun, it will likely be found that the plaintiffs will lay emphasis on the lack of power of the ecclesiastical authorities to vary the terms of a testamentary foundation and on that clause of the will reading, "administrador o administradores, sin derecho de propiedad ni de posesión," while it may be expected that the defense will lay emphasis on the surplus income accruing from the chaplaincy belonging to the church for its general pious purposes, in accordance with custom and the provisions of the Canon law. This is a clear issue which can be amplified in a new complaint, in a new answer, in a new hearing, and in a new decision (Gonzalez vs. Harty and Hartigan [1915], 32 Phil., 328; Gonzalez vs. Roman Catholic Archbishop of Manila [1929], 280 U. S., 1).

The ultimate result will be to overrule the sole assignment of error made by the defendant as appellant, to over-rule all of the assignment of errors raised by the plaintiffs as appellants, except the second which is sustained, and to conform to the dispositive part of the decision below.

Judgment affirmed, without special finding as to costs in this instance.

Johnson, Villamor, Ostrand, and Johns, JJ., concur.

CONCURRING

ROMUALDEZ, J.:

I concur with the majority in affirming the judgment of dismissal entered by the court below.

But, I believe we are here concerned with an ecclesiastical or collative chaplaincy, and that therefore the property of the endowment has become spiritual properly according to the Canon law; that is, it has passed to the ownership of the Catholic Church. The petition of executor Basilio de la Trinidad dated September 25, 1841, asking that the three original chaplaincies be approved, expressly refers to them as collative chaplaincies, and in the order clarifying the decree given by His Grace, the Archbishop of Manila, it is declared that by said decree "the three properties" of the chaplaincy "shall become spiritual property raised to the status of an ecclesiastical benefice." If those properties, as declared, passed to the ownership of the church, then the latter holds them as owner and not as trustee, and hence the action to recover them or their products, besides being groundless, has prescribed, and section 38 of the Code of Civil Procedure is not applicable.

I deem it, furthermore, improper to order the notation of the duty imposed by the deed of endowment in the certificates of title, inasmuch as such notation can in no case set forth anything but the spiritual office or obligation of celebrating the stated number of masses. And I think so for the reason that even supposing, such notation could be recorded as a legal charge, the present action is not a class, as stated in *Gonzales vs. Roman Catholic Archbishop of Manila* (51 Phil., 420; 74 [U.S.] Law. ed., 131)

VILLA-REAL, J.:

I concur.

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