

TESTATE ESTATE OF PETRONA FRANCISCO, DECEASED. CASIMIRO TIANGCO AND MARIA TIANGCO, FIDUCIARIES AND APPELLANTS, VS. PROCESO FRANCISCO, PETITIONER AND APPELLEE.*G.R. No. 46390. September 30, 1939*

Ponente: LAUREL, J.

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Petrona Francisco provided in her last will that the income derived from the one-half portion of her fishpond in the barrio of Gasak, Navotas, Rizal, shall be devoted to the celebration of the "Flores de Mayo" in Malabon, Rizal, and for other religious activities mentioned in the will. Upon probate of the will the Court of First Instance of Rizal appointed Casimiro Tiangco as trustee. Shortly afterwards, on March 16, 1922, Maria Tiangco was also appointed cotrustee to act with Casimiro Tiangco in supervising the affairs of the trust. The records of the case disclose that from the beginning the submission of annual reports to the court was very irregular. When the accounts for the year 1935 were submitted, Proceso Francisco, the herein oppositor-appellee, filed an opposition. Meanwhile, the court appointed the clerk of court as commissioner to make a detailed examination of the accounts already submitted, and declared its order of January 30, 1937, approving the said accounts over the objection of Proceso Francisco, of no legal force and effect. The trustees entered an opposition to this decree. Upon the other hand, the oppositor-appellee, on March 22, 1937, requested for the temporary substitution of the trustees. The report for the year 1936 having been filed on April 13, 1937, an order for the joint hearing of the two annual accounts, was issued. Again, Proceso Francisco made several objections to the accounts for the year 1936 with reference to certain items. In the meantime, the clerk of court submitted his report. On April 26, 1938, the court issued the following order requiring the resignation of the trustees within ten days, and appointed Father L. R. Arcaira as temporary trustee:

"It appearing from the evidence submitted by the commissioner, regarding the account of the trustees, that the said trustees have not faithfully discharged their duties and that their continuance in office would cause further prejudice to the estate under trusteeship, they are hereby given ten days within which to submit their resignation. It is understood that action on the resignation will be taken by the court upon the filing and settlement of their account to be submitted by the trustees pursuant to the order of this court dated April 20, 1938. In the meantime, the parish priest of Malabon, Father L. A. Arcaira is hereby appointed temporarily trustee to take immediate possession of the property under trust and manage the same until regular trustee is duly appointed. So ordered.

"Pasig, Rizal, Philippines, April 26, 1938.

"SIXTO DE LA COSTA

"Judge"

Appellants assign various errors, the principal bearing on the power of the lower court to require the resignation of the trustees and the legal sufficiency of the above-questioned order for this purpose.

The will of the deceased, Petrona Francisco, created a continuing trust, but no particular persons were named as beneficiaries. The appellants themselves did not have anything to do with the trust until their appointment by the lower court, and they were so commissioned not because of any beneficial interest they had in the estate but because their selection was approved by the lower court in the belief that they would faithfully perform their obligations. The same court found later that they "have not faithfully discharged their duties and that their continuance in office would cause further prejudice to the estate under trusteeship," and we cannot, on appeal, override the action of the lower court by reversing its finding, and indirectly sanction the violation of an unquestioned and legally existing trust.

It is also contended that the order appealed from does not contain a finding of facts, as required by section 133 of the Code of Civil Procedure, and for this reason, the order is ineffectual. We find that the order read in conjunction with the report of the clerk of court as commissioner, exhibits a finding upon all the evidence presented during the trial, and is sufficient compliance with the requirements of the law. (*Aringo vs. Arena*, 14 Phil., 263, 266.)

The appellants likewise contend that the trial court committed grave abuse of discretion in ordering the resignation of the trustees-appellants. The power to appoint a trustee is discretionary with the court before whom application is made, and this court will decline to interfere except in cases of clear abuse. Thereafter, upon proper showing that the interests of justice would be adequately served with the removal of the incumbent trustees, it is likewise within its discretion to do so (section 587, Code of Civil Procedure) and this court will refuse to interfere in the absence of a showing of grave abuse or whimsical and capricious exercise of that discretion.

The order appealed from is confirmed, with costs against the appellants. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

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