

Santiago Degala, Plaintiff-Appellee vs. Cecilia Reyes et al., Defendants-Appellants, G.R. No. 2402, November 29, 1950.

PLEADING AND PRACTICE; INDISPENSABLE PARTIES; DECLARATORY RELIEF. — The Roman Catholic church, or its legal representative, the Roman Catholic Bishop of Nueva Segovia, has interest in defending the validity of the trust created in the will in question and its interest would be affected by the declaration of nullity of the trust. "When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration..." (Rule 66, sec. 3). "And the absence of a defendant with such adverse interest is a jurisdictional defect, and no declaratory judgment can be rendered (I.C.S., p. 1049). But the Roman Catholic Church, or its legal representatives, was not included as party defendant in the present case.

J. Quintillan for appellants.

Antonio Directo for appellee.

DECISION

FERIA, J.:

During the pendency of the appeal from the order of the Court of First Instance of Ilocos Sur probating a will executed by the late Placida Mina of Santa Maria, Ilocos Sur, on April 22, 1927, Santiago Degala, alleging that he is one of the legal heirs of said Placida Mina, filed a petition with the court praying that the provisions of said will and testament creating a trust be declared null and void because there is no *cestui que trust* named therein, under Rule 66 on Declaratory judgment.

The said will provides, among others, the following:

"SEGUNDO. — Las rentas o productos de mis terrenos, casas y animales con excepcion de las parcelas de terreno arriba mencionadas se aplicaran al pago de amillaramiento de mis propiedades para la reparacion y continuacion de la construccion de mis dos casas de mamposteria que estan frente a frente, y para la realizacion de las misas dispuestas en este testamento; y caso de que sobrare algo se dispondra, en caso necesario, para ayudar en los gastos de la reparacion de la iglesia, convento y la antigua capilla del cementerio romano de Santa Maria y la iglesia de Burgos.

x x x x

OCTAVO. — Ordeno que todos los años empezando desde mi muerte se celebren misas cantadas en las fechas del día de mi nacimiento y muerte, en sufragio de mi alma, de las de mis parientes mencionadas al comienzo de este testamento y de las de mis difuntos abuelos Santiago Mina y Florentina Degala, padre y madre de mi padre, y de las de Mariano Directo y Anastacia Peralta, padre y madre de mi madre."

The only persons who were made party defendants in the petition for declaratory judgment are Cecilia Reyes, petitioner for the probate of the will in Case No. 3689, Valentin Umipig, special administrator of the estate of the deceased appointed by the court, and Leona Leones and Cipriana Alcantara named as trustees under the will.

After the hearing of the petition, the Court of First Instance of Ilocos Sur held that if it were not the unanimous desire of all the parties that the court declare, once and for all, whether certain provisions of the will are null and void or not, it would dismiss the petition for declaratory judgment in accordance with American precedents, because the judgment of the lower court probating the will was then still pending appeal in the Supreme Court. But in view of such unanimous desire, the court declared, among others, that the above quoted provisions of the will creating a fideicomiso or trust are null and void, because the testatrix has not named the first heir or *cestui que trust* and because they are contrary to the law on perpetuities.

The defendants Cecilia Reyes and Valentin Umipig appealed from the said judgment to this court.

The appellants in a well written brief contend (1) that the provisions in the will or testament of the late Placida Mina

which leave certain properties of the testatrix for the saying of masses for the soul of the testatrix and her relatives and for the maintenance and repair of the church, convent and the old chapel of the Roman Catholic cemetery of Sta. Maria and of the church of Burgos, Ilocos Sur, create a charitable and religious trust, and this court in the case of Government of the P. I. vs. Aiaidilla, 46 Phil. 642, 647, quoting Perry on Trusts, held that in regard to private trust it is not always necessary that the *cestui que trust* should be in esse at the time the trust is created in his favor, and that in charitable trust the rule is still further relaxed. And (2) as to prohibition to alienate the properties in trust, Art. 785 of the Civil Code provides that in fiduciary substitutions "dispositions, imposing perpetual prohibition and temporary prohibition beyond the limits fixed by Art. 781" are inoperative; and that Art. 792 prescribes that, impossible conditions and those contrary to law and good morals imposed in testamentary disposition shall be considered as not imposed, and shall not prejudice that heir or legatee in any manner whatsoever, even should the testator otherwise provide.

It is obvious, that the Roman Catholic church or its legal representative the Roman Catholic Bishop of Nueva Segovia, has interest in defending that validity of the trust created in the will and its interest would be affected by the declaration of nullity of the trust. Sec. 3, Rule 66, of the Rules of Court provides that "when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall, except as otherwise provided in these rules, prejudice the rights of persons not parties to the action." The nonjoinder of necessary parties would deprive the declaration of the final and pacifying function it is calculated to subserve, as they would not be bound by the declaration and may raise the identical issue (*Hoskyns vs. National City Bank of New York, G.R. No. L-1877, promulgated December 29, 1949*) "And the absence of a defendant with such adverse interest is a jurisdictional defect, and no declaratory judgment can be rendered (*Corpus Juris Secundum, Vol. I, p. 1049*). But the Roman Catholic Church, or its legal representatives was not included as party defendant in the present case.

In view of the foregoing, the judgment appealed from in so far as it declares the trust under consideration null and void, is set aside, without pronouncement as to costs.

So ordered.

Mornn, Paras, Pablo, Bengzon, Tuason, Montemayor; Reyes; Jugo, and Bautista Angelo, J.J., concur.