

THIRD DIVISION

[G.R. No. 113725, June 29, 2000]

**JOHNNY S. RABADILLA,^[1] PETITIONER, VS. COURT OF APPEALS
AND MARIA MARLENA^[2] COSCOLUELLA Y BELLEZA
VILLACARLOS,RESPONDENTS.**

D E C I S I O N

PURISIMA, J.:

This is a petition for review of the decision of the Court of Appeals,^[3] dated December 23, 1993, in CA-G.R. No. CV-35555, which set aside the decision of Branch 52 of the Regional Trial Court in Bacolod City, and ordered the defendants-appellees (*including herein petitioner*), as heirs of Dr. Jorge Rabadilla, to reconvey title over Lot No. 1392, together with its fruits and interests, to the estate of Aleja Belleza.

The antecedent facts are as follows:

In a Codicil appended to the Last Will and Testament of testatrix Aleja Belleza, Dr. Jorge Rabadilla, predecessor-in-interest of the herein petitioner, Johnny S. Rabadilla, was instituted as a devisee of 511, 855 square meters of that parcel of land surveyed as Lot No. 1392 of the Bacolod Cadastre. The said Codicil, which was duly probated and admitted in Special Proceedings No. 4046 before the then Court of First Instance of Negros Occidental, contained the following provisions:

"FIRST

I give, leave and bequeath the following property owned by me to Dr. Jorge Rabadilla resident of 141 P. Villanueva, Pasay City:

(a) Lot No. 1392 of the Bacolod Cadastre, covered by Transfer Certificate of Title No. RT-4002 (10942), which is registered in my name according to the records of the Register of Deeds of Negros Occidental.

(b) That should Jorge Rabadilla die ahead of me, the aforementioned property and the rights which I shall set forth hereinbelow, shall be inherited and acknowledged by the children and spouse of Jorge Rabadilla.

xxx

FOURTH

(a)....It is also my command, in this my addition (Codicil), that should I die and Jorge Rabadilla shall have already received the ownership of the

said Lot No. 1392 of the Bacolod Cadastre, covered by Transfer Certificate of Title No. RT-4002 (10942), and also at the time that the lease of Balbinito G. Guanzon of the said lot shall expire, Jorge Rabadilla shall have the obligation until he dies, every year to give to Maria Marlina Coscolluela y Belleza, Seventy (75) (sic) piculs of Export sugar and Twenty Five (25) piculs of Domestic sugar, until the said Maria Marlina Coscolluela y Belleza dies.

FIFTH

(a) Should Jorge Rabadilla die, his heir to whom he shall give Lot No. 1392 of the Bacolod Cadastre, covered by Transfer Certificate of Title No. RT-4002 (10492), shall have the obligation to still give yearly, the sugar as specified in the Fourth paragraph of his testament, to Maria Marlina Coscolluela y Belleza on the month of December of each year.

SIXTH

I command, in this my addition (Codicil) that the Lot No. 1392, in the event that the one to whom I have left and bequeathed, and his heir shall later sell, lease, mortgage this said Lot, the buyer, lessee, mortgagee, shall have also the obligation to respect and deliver yearly ONE HUNDRED (100) piculs of sugar to Maria Marlina Coscolluela y Belleza, on each month of December, SEVENTY FIVE (75) piculs of Export and TWENTY FIVE (25) piculs of Domestic, until Maria Marlina shall die, lastly should the buyer, lessee or the mortgagee of this lot, not have respected my command in this my addition (Codicil), Maria Marlina Coscolluela y Belleza, shall immediately seize this Lot No. 1392 from my heir and the latter's heirs, and shall turn it over to my near descendants, (sic) and the latter shall then have the obligation to give the ONE HUNDRED (100) piculs of sugar until Maria Marlina shall die. I further command in this my addition (Codicil) that my heir and his heirs of this Lot No. 1392, that they will obey and follow that should they decide to sell, lease, mortgage, they cannot negotiate with others than my near descendants and my sister."^[4]

Pursuant to the same Codicil, Lot No. 1392 was transferred to the deceased, Dr. Jorge Rabadilla, and Transfer Certificate of Title No. 44498 thereto issued in his name.

Dr. Jorge Rabadilla died in 1983 and was survived by his wife Rufina and children Johnny (petitioner), Aurora, Ofelia and Zenaida, all surnamed Rabadilla.

On August 21, 1989, Maria Marlina Coscolluela y Belleza Villacarlos brought a complaint, docketed as Civil Case No. 5588, before Branch 52 of the Regional Trial Court in Bacolod City, against the above-mentioned heirs of Dr. Jorge Rabadilla, to enforce the provisions of subject Codicil. The Complaint alleged that the defendant-heirs violated the conditions of the Codicil, in that:

1. Lot No. 1392 was mortgaged to the Philippine National Bank and the Republic Planters Bank in disregard of the testatrix's specific instruction to sell, lease, or mortgage only to the near descendants and sister of the

testatrix.

2. Defendant-heirs failed to comply with their obligation to deliver one hundred (100) piculs of sugar (75 piculs export sugar and 25 piculs domestic sugar) to plaintiff Maria Marlena Coscolluela y Belleza from sugar crop years 1985 up to the filing of the complaint as mandated by the Codicil, despite repeated demands for compliance.

3. The banks failed to comply with the 6th paragraph of the Codicil which provided that in case of the sale, lease, or mortgage of the property, the buyer, lessee, or mortgagee shall likewise have the obligation to deliver 100 piculs of sugar per crop year to herein private respondent.

The plaintiff then prayed that judgment be rendered ordering defendant-heirs to reconvey/return-Lot No. 1392 to the surviving heirs of the late Aleja Belleza, the cancellation of TCT No. 44498 in the name of the deceased, Dr. Jorge Rabadilla, and the issuance of a new certificate of title in the names of the surviving heirs of the late Aleja Belleza.

On February 26, 1990, the defendant-heirs were declared in default but on March 28, 1990 the Order of Default was lifted, with respect to defendant Johnny S. Rabadilla, who filed his Answer, accordingly.

During the pre-trial, the parties admitted that:

On November 15, 1998, the plaintiff (*private respondent*) and a certain Alan Azurin, son-in-law of the herein petitioner who was lessee of the property and acting as attorney-in-fact of defendant-heirs, arrived at an amicable settlement and entered into a Memorandum of Agreement on the obligation to deliver one hundred piculs of sugar, to the following effect:

"That for crop year 1988-89, the annuity mentioned in Entry No. 49074 of TCT No. 44489 will be delivered not later than January of 1989, more specifically, to wit:

75 piculs of 'A' sugar, and 25 piculs of 'B' sugar, or then existing in any of our names, Mary Rose Rabadilla y Azurin or Alan Azurin, during December of each sugar crop year, in Azucar Sugar Central; and, this is considered compliance of the annuity as mentioned, and in the same manner will compliance of the annuity be in the next succeeding crop years.

That the annuity above stated for crop year 1985-86, 1986-87, and 1987-88, will be complied in cash equivalent of the number of piculs as mentioned therein and which is as herein agreed upon, taking into consideration the composite price of sugar during each sugar crop year, which is in the total amount of ONE HUNDRED FIVE THOUSAND PESOS (P105,000.00).

That the above-mentioned amount will be paid or delivered on a staggered cash installment, payable on or before the end of December of every sugar crop year, to wit:

For 1985-86, TWENTY SIX THOUSAND TWO HUNDRED FIFTY (P26,250.00) Pesos, payable on or before December of crop year 1988-89;

For 1986-87, TWENTY SIX THOUSAND TWO HUNDRED FIFTY (P26,250.00) Pesos, payable on or before December of crop year 1989-90;

For 1987-88, TWENTY SIX THOUSAND TWO HUNDRED FIFTY (P26,250.00) Pesos, payable on or before December of crop year 1990-91; and

For 1988-89, TWENTY SIX THOUSAND TWO HUNDRED FIFTY (P26,250.00) Pesos, payable on or before December of crop year 1991-92."^[5]

However, there was no compliance with the aforesaid Memorandum of Agreement except for a partial delivery of 50.80 piculs of sugar corresponding to sugar crop year 1988 -1989.

On July 22, 1991, the Regional Trial Court came out with a decision, dismissing the complaint and disposing as follows:

"WHEREFORE, in the light of the foregoing findings, the Court finds that the action is prematurely filed as no cause of action against the defendants has as yet arose in favor of plaintiff. While there maybe the non-performance of the command as mandated exaction from them simply because they are the children of Jorge Rabadilla, the title holder/owner of the lot in question, does not warrant the filing of the present complaint. The remedy at bar must fall. Incidentally, being in the category as creditor of the left estate, it is opined that plaintiff may initiate the intestate proceedings, if only to establish the heirs of Jorge Rabadilla and in order to give full meaning and semblance to her claim under the Codicil.

In the light of the foregoing findings, the Complaint being prematurely filed is DISMISSED without prejudice.

SO ORDERED."^[6]

On appeal by plaintiff, the First Division of the Court of Appeals reversed the decision of the trial court; ratiocinating and ordering thus:

"Therefore, the evidence on record having established plaintiff-appellant's right to receive 100 piculs of sugar annually out of the produce of Lot No. 1392; defendants-appellee's obligation under Aleja Belleza's codicil, as heirs of the modal heir, Jorge Rabadilla, to deliver such amount of sugar to plaintiff-appellant; defendants-appellee's admitted non-compliance with said obligation since 1985; and, the punitive consequences enjoined by both the codicil and the Civil Code, of seizure of Lot No. 1392 and its reversion to the estate of Aleja Belleza in case of such non-compliance, this Court deems it proper to order the reconveyance of title over Lot No.

1392 from the estates of Jorge Rabadilla to the estate of Aleja Belleza. However, plaintiff-appellant must institute separate proceedings to re-open Aleja Belleza's estate, secure the appointment of an administrator, and distribute Lot No. 1392 to Aleja Belleza's legal heirs in order to enforce her right, reserved to her by the codicil, to receive her legacy of 100 piculs of sugar per year out of the produce of Lot No. 1392 until she dies.

Accordingly, the decision appealed from is SET ASIDE and another one entered ordering defendants-appellees, as heirs of Jorge Rabadilla, to reconvey title over Lot No. 1392, together with its fruits and interests, to the estate of Aleja Belleza.

SO ORDERED."^[7]

Dissatisfied with the aforesaid disposition by the Court of Appeals, petitioner found his way to this Court *via* the present petition, contending that the Court of Appeals erred in ordering the reversion of Lot 1392 to the estate of the testatrix Aleja Belleza on the basis of paragraph 6 of the Codicil, and in ruling that the testamentary institution of Dr. Jorge Rabadilla is a modal institution within the purview of Article 882 of the New Civil Code.

The petition is not impressed with merit.

Petitioner contends that the Court of Appeals erred in resolving the appeal in accordance with Article 882 of the New Civil Code on modal institutions and in deviating from the sole issue raised which is the absence or prematurity of the cause of action. Petitioner maintains that Article 882 does not find application as there was no modal institution and the testatrix intended a mere simple substitution - *i.e.* the instituted heir, Dr. Jorge Rabadilla, was to be substituted by the testatrix's "near descendants" should the obligation to deliver the fruits to herein private respondent be not complied with. And since the testatrix died single and without issue, there can be no valid substitution and such testamentary provision cannot be given any effect.

The petitioner theorizes further that there can be no valid substitution for the reason that the substituted heirs are not definite, as the substituted heirs are merely referred to as "near descendants" without a definite identity or reference as to who are the "near descendants" and therefore, under Articles 843^[8] and 845^[9] of the New Civil Code, the substitution should be deemed as not written.

The contentions of petitioner are untenable. Contrary to his supposition that the Court of Appeals deviated from the issue posed before it, which was the propriety of the dismissal of the complaint on the ground of prematurity of cause of action, there was no such deviation. The Court of Appeals found that the private respondent had a cause of action against the petitioner. The disquisition made on modal institution was, precisely, to stress that the private respondent had a legally demandable right against the petitioner pursuant to subject Codicil; on which issue the Court of Appeals ruled in accordance with law.

It is a general rule under the law on succession that successional rights are