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WHEREFORE, the order of dismissal appealed in this case is hereby affirmed. No costs.

Antonio (Actg. Chairman), Aquino, Concepcion Jr., and *Santos, JJ.*, concur.

Barredo and *Abad Santos, JJ.*, on leave.

SECOND DIVISION

[G.R. No. L-22036. April 30, 1979]

TESTATE ESTATE OF THE LATE REVEREND FATHER PASCUAL RIGOR. THE PARISH PRIEST OF THE ROMAN CATHOLIC CHURCH OF VICTORIA, TARLAC, *petitioner-appellant, vs.* **BELINA RIGOR, NESTORA RIGOR, FRANCISCA ESCOBAR DE RIGOR and JOVITA ESCOBAR DE FAUSTO,** *respondents-appellees.*

SYLLABUS

1. **CIVIL LAW; SUCCESSION; TESTAMENTARY SUCCESSION; TESTATOR'S INTENT IS THE LAW OF THE CASE.** — In testamentary succession cases, as in cases involving the law of contracts and statutory construction, where the intention of the contracting parties or of the lawmaking body is to be ascertained, the primary issue is the determination of the testator's intention which is the law of the case (*dicat estor et eirt lex*). The will of the testator is the first and principal law in the matter of testaments. When his intention is clearly and precisely expressed, any interpretation must be in accord with the plain and literal meaning of his words, except when it may certainly appear that his intention was different from that literally expressed.

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2. ID.; ID.; ID.; CAPACITY TO INHERIT; REQUISITE. — In order to be capacitated to inherit, the heir, devisee or legatee must be living at the moment the succession opens, except in case of representation, when it is proper (Art. 1025, Civil Code).

3. ID.; ID.; ID.; RULE WHERE BEQUEST IS INOPERATIVE. — If the bequest for any reason should be inoperative, it shall be merged into the estate, except in cases of substitution and those in which the right of accretion exists (Art. 956, New Civil Code). The Civil Code recognizes that a person may die partly testate and partly intestate, or that there may be mixed succession. The old rule as to the indivisibility of the testator's will is no longer valid. Thus, if a conditional legacy does not take effect, there will be intestate succession as to the property covered by the said legacy.

4. ID.; ID.; ID.; RULE WHERE WILL DOES NOT DISPOSE OF ALL PROPERTIES. — Legal succession takes place when the will "does not dispose of all that belongs to the testator (Art. 960(2), New Civil Code).

APPEARANCES OF COUNSEL

D. Tañedo, Jr. for petitioner-appellant.
J. Palanca, Sr. for respondent-appellees.

D E C I S I O N

AQUINO, *J.*:

This case is about the efficaciousness or enforceability of a devise of ricelands located at Guimba, Nueva Ecija, with a total area of around forty-four hectares. That devise was made in the will of the late Father Pascual Rigor, a native of Victoria, Tarlac, in favor of his nearest male relative who would study for the priesthood.

The parish priest of Victoria, who claimed to be a trustee of the said lands, appealed to this Court from the decision of the Court of Appeals affirming the order of the probate court declaring that the said devise was inoperative (*Rigor vs. Parish*

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Priest of the Roman Catholic Church of Victoria, Tarlac, CA-G.R. No. 24319-R, August 1, 1963).

The record discloses that Father Rigor, the parish priest of Pulilan, Bulacan, died on August 9, 1935, leaving a will executed on October 29, 1933 which was probated by the Court of First Instance of Tarlac in its order of December 5, 1935. Named as devisees in the will were the testator's nearest relatives, namely, his three sisters: Florencia Rigor-Escobar, Belina Rigor-Manaloto and Nestora Rigor-Quiambao. The testator gave a devise to his cousin, Fortunato Gamalinda.

In addition, the will contained the following controversial bequest (paragraphing supplied to facilitate comprehension of the testamentary provisions):

"Doy y dejo como legado CUATRO (4) PARCELAS de terreno palayeros, situados en el municipio de Guimba de la provincia de NUEVA ECIJA, cuyo num. de CERTIFICADO DE TRANSFERENCIA DE TITULO SON; — Titulo Num. 6530, mide 16,249 m. cuadrados de superficie; Titulo Num. 6548, mide 242,998 m. cuadrados de superficie; Titulo Num. 6525, mide 62,665 m. cuadrados de superficie; y Titulo Num. 6521, mide 119,251 m. cuadrados de superficie; a cualquier pariente mio varon mas cercano que estudie la carrera eclesiastica hasta ordenarse de Presbiterado o sea Sacerdote; las condiciones de estate legado son:

> *"(1.a) Prohibe en absoluto la venta de estos terrenos arriba situados objectos de este legado;*
>
> *"(2.a) Que el legatario pariente mio mas cercano tendra derecho de empezar a gozar y administrar de este legado al principiar a curzar la Sagrada Teologia, y ordenado de Sacerdote, hasta su muerte; pero que pierde el legatario este derecho de administrar y gozar de este legado al dejar de continuar sus estudios para ordenarse de Presbiterado (Sacerdote).*

"Que el legatario una vez Sacerdote ya estara obligado a celebrar cada año VEINTE (20) Misas rezadas en sufragio de mi alma y de mis padres difuntos, y si el actual legatario, quedase excomulgado, IPSO FACTO se el despoja este legado, y la administracion de esto pasara a cargo del actual Parroco y sus sucesores de la Iglesia Catolica de Victoria, Tarlac.

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"Y en intervalo de tiempo que no haya legatario acondicionado segun lo arriba queda expresado, pasara la administracion de este legado a cargo del actual Parroco Catolico y sus sucesores, de Victoria, Tarlac.

"El Parroco administrador de estate legado, acumulara anualmente todos los productos que puede tener estate legado, ganando o sacando de los productos anuales el CINCO (5) por ciento para su administracion, y los derechos correspondientes de las VEINTE (20) Misas rezadas que debiera el Parroco celebrar cada año, depositando todo lo restante de los productos de estate legado, en un banco, a nombre de estate legado."

To implement the foregoing bequest, the administratrix in 1940 submitted a project of partition containing the following item:

"5. LEGACY OF THE CHURCH

"That it be adjudicated in favor of the legacy purported to be given to the nearest male relative who shall take the priesthood, and in the *interim* to be administered by the actual Catholic Priest of the Roman Catholic Church of Victoria, Tarlac, Philippines, or his successors, the real properties hereinbelow indicated, to wit:

"Title No.	*Lot No.*	*Area in Has.*	*Tax Dec.*	*Ass. Value*
T-6530	3663	1.6249	18740	₱ 340.00
T-6548	3445-C	24.2998	18730	7,290.00
T-6525	3670	6.2665	18736	1,880.00
T-6521	3666	11.9251	18733	3,580.00
"Total area and value —		44.1163		₱13,090.00"

Judge Roman A. Cruz in his order of August 15, 1940, approving the project of partition, directed that after payment of the obligations of the estate (including the sum of ₱3,132.26 due to the church of the Victoria parish) the administratrix should deliver to the devisees their respective shares.

It may be noted that the administratrix and Judge Cruz did not bother to analyze the meaning and implications of Father Rigor's bequest to his nearest male relative who would study for the priesthood. Inasmuch as no nephew of the testator claimed the devise and as the administratrix and the legal heirs believed

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that the parish priest of Victoria had no right to administer the ricelands, the same were not delivered to that ecclesiastic. The testate proceeding remained pending.

About thirteen years after the approval of the project of partition, or on February 19, 1954, the parish priest of Victoria filed in the pending testate proceeding a petition praying for the appointment of a new administrator (succeeding the deceased administratrix, Florencia Rigor), who should deliver to the church the said ricelands, and further praying that the possessors thereof be ordered to render an accounting of the fruits. The probate court granted the petition. A new administrator was appointed. On January 31, 1957 the parish priest filed another petition for the delivery of the ricelands to the church as trustee.

The intestate heirs of Father Rigor countered with a petition dated March 25, 1957 praying that the bequest be declared inoperative and that they be adjudged as the persons entitled to the said ricelands since, as admitted by the parish priest of Victoria, "no nearest male relative of" the testator "has ever studied for the priesthood" (pp. 25 and 35, Record on Appeal). That petition was opposed by the parish priest of Victoria.

Finding that petition to be meritorious, the lower court, through Judge Bernabe de Aquino, declared the bequest inoperative and adjudicated the ricelands to the testator's legal heirs in his order of June 28, 1957. The parish priest filed two motions for reconsideration.

Judge De Aquino granted the second motion for reconsideration in his order of December 10, 1957 on the ground that the testator had a grandnephew named Edgardo G. Cunanan (the grandson of his first cousin) who was a seminarian in the San Jose Seminary of the Jesuit Fathers in Quezon City. The administrator was directed to deliver the ricelands to the parish priest of Victoria as trustee.

The legal heirs appealed to the Court of Appeals. It reversed that order. It held that Father Rigor had created a testamentary trust for his nearest male relative who would take the holy orders but that such trust could exist only for twenty years

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because to enforce it beyond that period would violate "the rule against perpetuities." It ruled that since no legatee claimed the ricelands within twenty years after the testator's death, the same should pass to his legal heirs, citing Articles 888 and 912(2) of the old Civil Code and Article 870 of the new Civil Code.

The parish priest in this appeal contends that the Court of Appeals erred in not finding that the testator created a public charitable trust and in not liberally construing the testamentary provisions so as to render the trust operative and to prevent intestacy.

As refutation, the legal heirs argue that the Court of Appeals declared the bequest inoperative because no one among the testator's nearest male relatives had studied for the priesthood and not because the trust was a private charitable trust. According to the legal heirs, that factual finding is binding on this Court. They point out that appellant priest's change of theory cannot be countenanced in this appeal.

In this case, as in cases involving the law of contracts and statutory construction, where the intention of the contracting parties or of the lawmaking body is to be ascertained, the primary issue is the determination of the testator's intention which is the law of the case (*dicat testor et erit lex. Santos vs. Manarang,* 27 Phil. 209, 215; *Rodriguez vs. Court of Appeals*, L-28734, March 28, 1969, 27 SCRA 546).

The will of the testator is the first and principal law in the matter of testaments. When his intention is clearly and precisely expressed, any interpretation must be in accord with the plain and literal meaning of his words, except when it may certainly appear that his intention was different from that literally expressed (*In re Estate of Calderon,* 26 Phil. 333).

"The intent of the testator is the cardinal rule in the construction of wills." It is "the life and soul of a will." It is "the first greatest rule, the sovereign guide, the polestar, in giving effect to a will." (See Dissent of Justice Moreland in *Santos vs. Manarang,* 27 Phil. 209, 223, 237-8.)

One canon in the interpretation of the testamentary provisions is that "the testator's intention is to be ascertained from the

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words of the will, taking into consideration the circumstances under which it was made," but excluding the testator's oral declarations as to his intention (Art. 789, Civil Code of the Philippines).

To ascertain Father Rigor's intention, it may be useful to make the following restatement of the provisions of his will:

1. That he bequeathed the ricelands to anyone of his nearest male relatives who would pursue an ecclesiastical career until his ordination as a priest.

2. That the devisee could not sell the ricelands.

3. That the devisee at the inception of his studies in sacred theology could enjoy and administer the ricelands, and once ordained as a priest, he could continue enjoying and administering the same up to the time of his death but the devisee would cease to enjoy and administer the ricelands if he discontinued his studies for the priesthood.

4. That if the devisee became a priest, he would be obligated to celebrate every year twenty masses with prayers for the repose of the souls of Father Rigor and his parents.

5. That if the devisee is excommunicated, he would be divested of the legacy and the administration of the ricelands would pass to the incumbent parish priest of Victoria and his successors.

6. That during the interval of time that there is no qualified devisee, as contemplated above, the administration of the ricelands would be under the responsibility of the incumbent parish priest of Victoria and his successors, and

7. That the parish priest-administrator of the ricelands would accumulate annually the products thereof, obtaining or getting from the annual produce five percent thereof for his administration and the fees corresponding to the twenty masses with prayers that the parish priest would celebrate for each year, depositing the balance of the income of the devise in the bank in the name of his bequest.

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From the foregoing testamentary provisions, it may be deduced that the testator intended to devise the ricelands to his nearest male relative who would become a priest, who was forbidden to sell the ricelands, who would lose the devise if he discontinued his studies for the priesthood, or having been ordained a priest, he was excommunicated, and who would be obligated to say annually twenty masses with prayers for the repose of the souls of the testator and his parents.

On the other hand, it is clear that the parish priest of Victoria would administer the ricelands only in two situations: one, during the interval of time that no nearest male relative of the testator was studying for the priesthood and two, in case the testator's nephew became a priest and he was excommunicated.

What is not clear is the *duration* of "*el intervalo de tiempo que no haya legatario acondicionado,*" or how long after the testator's death would it be determined that he had a nephew who would pursue an ecclesiastical vocation. It is that patent ambiguity that has brought about the controversy between the parish priest of Victoria and the testator's legal heirs.

Interwoven with that equivocal provision is *the time when the nearest male relative who would study for the priesthood should be determined.* Did the testator contemplate only his nearest male relative *at the time of his death*? Or did he have in mind any of his nearest male relatives at *anytime after his death*?

We hold that the said bequest refers to the testator's nearest male relative *living at the time of his death* and not to any *indefinite time thereafter*. "In order to be capacitated to inherit, the heir, devisee or legatee must be living at the moment the succession opens, except in case of representation, when it is proper" (Art. 1025, Civil Code).

The said testamentary provisions should be sensibly or reasonably construed. To construe them as referring to the testator's nearest male relative at *anytime after his death* would render the provisions difficult to apply and create

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uncertainty as to the disposition of his estate. That could not have been his intention.

In 1935, when the testator died, his nearest legal heirs were his three sisters or second-degree relatives, Mrs. Escobar, Mrs. Manaloto and Mrs. Quiambao. Obviously, when the testator specified his nearest male relative, he must have had in mind his nephew or a son of his sister, who would be his third-degree relative, or possibly a grandnephew. But since he could not prognosticate the exact date of his death or state with certitude what category of nearest male relative would be living at the time of his death, he could not specify that his nearest male relative would be his nephew or grandnephews (the sons of his nephew or niece) and so he had to use the term "nearest male relative."

It is contended by the legal heirs that the said devise was in reality intended for Ramon Quiambao, the testator's nephew and godchild, who was the son of his sister, Mrs. Quiambao. To prove that contention, the legal heirs presented in the lower court the affidavit of Beatriz Gamalinda, the maternal grandmother of Edgardo Cunanan, who deposed that after Father Rigor's death, her own son, Valentin Gamalinda, Jr., did not claim the devise, although he was studying for the priesthood at the San Carlos Seminary, because she (Beatriz) knew that Father Rigor had intended that devise for his nearest male relative *belonging to the Rigor family* (pp. 105-114, Record on Appeal).

Mrs. Gamalinda further deposed that her own grandchild, Edgardo G. Cunanan, was not the one contemplated in Father Rigor's will and that Edgardo's father told her that he was not consulted by the parish priest of Victoria before the latter filed his second motion for reconsideration which was based on the ground that the testator's grandnephew, Edgardo, was studying for the priesthood at the San Jose Seminary.

Parenthetically, it should be stated at this juncture that Edgardo ceased to be a seminarian in 1961. For that reason, the legal heirs apprised the Court of Appeals that the probate court's order adjudicating the ricelands to the parish priest of Victoria had no more leg to stand on (p. 84, Appellant's brief).

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Of course, Mrs. Gamalinda's affidavit, which is tantamount to evidence *aliunde* as to the testator's intention and which is hearsay, has no probative value. Our opinion that the said bequest refers to the testator's nephew who was living at the time of his death, when his succession was opened and the successional rights to his estate became vested, rests on a judicious and unbiased reading of the terms of the will.

Had the testator intended that the "*cualquier pariente mio varon mas cercano que estudie la carrera eclesiastica*" would include indefinitely anyone of his nearest male relatives *born after his death*, he could have so specified in his will. He must have known that such a broad provision would suspend for an unlimited period of time the efficaciousness of his bequest.

What then did the testator mean by "*el intervalo de tiempo que no haya legatario acondicionado*?" The reasonable view is that he was referring to a situation whereby his nephew living at the time of his death, who would like to become a priest, was still in grade school or in high school or was not yet in the seminary. In that case, the parish priest of Victoria would administer the ricelands before the nephew entered the seminary. But the moment the testator's nephew entered the seminary, then he would be entitled to enjoy and administer the ricelands and receive the fruits thereof. In that event, the trusteeship would be terminated.

Following that interpretation of the will, the inquiry would be whether at the time Father Rigor died in 1935 he had a nephew who was studying for the priesthood or who had manifested his desire to follow the ecclesiastical career. That query is categorically answered in paragraph 4 of appellant priest's petitions of February 19, 1954 and January 31, 1957. He unequivocally alleged therein that "no nearest male relative of the late (Father) Pascual Rigor has ever studied for the priesthood" (pp. 25 and 35, Record on Appeal).

Inasmuch as the testator was not survived by any nephew who became a priest, the unavoidable conclusion is that the bequest in question was ineffectual or inoperative. Therefore,

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the administration of the ricelands by the parish priest of Victoria, as envisaged in the will, was likewise inoperative.

The appellant in contending that a public charitable trust was constituted by the testator in is favor assumes that he was a trustee or a substitute devisee. That contention is untenable. A reading of the testamentary provisions regarding the disputed bequest not support the view that the parish priest of Victoria was a trustee or a substitute devisee in the event that the testator was not survived by a nephew who became a priest.

It should be understood that the parish priest of Victoria could become a trustee only when the testator's nephew living at the time of his death, who desired to become a priest, had not yet entered the seminary or, having been ordained a priest, he was excommunicated. Those two contingencies did not arise, and could not have arisen, in this case because no nephew of the testator manifested any intention to enter the seminary or ever became a priest.

The Court of Appeals correctly ruled that this case is covered by Article 888 of the old Civil Code, now Article 956, which provides that if "the bequest for any reason should be inoperative, it shall be merged into the estate, except in cases of substitution and those in which the right of accretion exists" ("*el legado x x x por qualquier causa, no tenga efecto, se refundira en la masa de la herencia, fuera de los casos de sustitucion y derecho de acrecer*").

This case is also covered by Article 912(2) of the old Civil Code, now Article 960(2), which provides that legal succession takes place when the will "does not dispose of all that belongs to the testator." There being no substitution nor accretion as to the said ricelands, the same should be distributed among the testator's legal heirs. The effect is as if the testator had made no disposition as to the said ricelands.

The Civil Code recognizes that a person may die partly testate and partly intestate, or that there may be mixed succession. The old rule as to the indivisibility of the testator's will is no longer valid. Thus, if a conditional legacy does not take effect,

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there will be intestate succession as to the property covered by the said legacy (*Macrohon Ong Ham vs. Saavedra*, 51 Phil. 267).

We find no merit in the appeal. The Appellate Court's decisions is affirmed. Cost against the petitioner.

SO ORDERED.

Fernando (Actg. C.J.), Barredo (Actg. Chairman), Antonio, Concepcion Jr., and *Santos, JJ.*, concur.

Abad Santos, J., took no part.

SECOND DIVISION

[G.R. No. L-24107. April 30, 1979]

MELITONA *VDA. DE* ARCEO, EUSEBIO, JR., ARACELI, RUBEN, CORAZON, DOROTHY, DANILO, all surnamed ARCEO, the last two minors herein represented by their mother MELITONA *VDA. DE* ARCEO, and JESUS, HONORITO, MENECENA, RAYMUNDA, MACARIO, FATIMA, and RAMON, all surnamed ARCEO, all minors herein represented by their mother MARTINIANA MONTEAGUNDO, *plaintiffs-appellants, vs.* **LAURO L. GO and JACINTA S. GO,** *defendants-appellees.*

SYLLABUS

CIVIL LAW; PRESCRIPTION OF ACTIONS; ACTION QUESTIONING NATURE OF ORIGINAL TRANSACTION PRESCRIBES IN TEN YEARS. — The right of action to question the nature of the original transaction as well as any