

TESTATE ESTATE OF THE LATE GREGORIO VENTURA: MARIA VENTURA, EXECUTRIX-APPELLANT, MIGUEL VENTURA AND JUANA CARDONA, HEIRS-APPELLANTS, VS. GREGORIA VENTURA AND HER HUSBAND, EXEQUI...*G.R. No. L-26306. April 27, 1988*

Ponente: PARAS, J.

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This is an appeal from the order of the Court of First Instance of Nueva Ecija, Guimba, Branch V in Special Proceedings No. 812, Testate of the late Gregorio Ventura, dated October 5, 1965, removing the appellant Maria Ventura as executrix and administratrix of the estate of the late Gregorio Ventura, and in her place appointing the appellees Mercedes Ventura and Gregoria Ventura as joint administrators of the estate. (Record on Appeal, pp. 120-131.)

Appellant Maria Ventura is the illegitimate daughter of the deceased Gregorio Ventura while Miguel Ventura and Juana Cardona are his son and surviving spouse who are also the brother and mother of Maria Ventura. On the other hand, appellees Mercedes and Gregoria Ventura are the deceased's legitimate children with his former wife, the late Paulina Simpliciano (Record on Appeal, p. 122) but the paternity of appellees was denied by the deceased in his will (Record on Appeal, p. 4).

On December 14, 1953, Gregorio Ventura filed a petition for the probate of his will which did not include the appellees and the petition was docketed as Special Proceedings No. 812 (Record on Appeal, pp. 1-3). In the said will, the appellant Maria Ventura, although an illegitimate child, was named and appointed by the testator to be the executrix of his will and the administratrix of his estate (Record on Appeal, p. 7).

In due course, said will was admitted to probate on January 14, 1954 (Record on Appeal, pp. 8-10). Gregorio Ventura died on September 26, 1955. On October 10, 1955, the appellant Maria Ventura filed a motion for her appointment as executrix and for the issuance of letters testamentary in her favor (Record on Appeal, pp. 10-11). On October 17, 1955, Maria Ventura was appointed executrix and the corresponding letters testamentary was issued in her favor (Record on Appeal, pp. 11-12).

On or about July 26, 1956, Maria Ventura submitted an inventory of the estate of Gregorio Ventura (Record on Appeal, pp. 12-20).

On June 17, 1960, she filed her accounts of administration for the years 1955 to 1960, inclusive. (Record on Appeal, pp. 20-27). Said account of administration was opposed by the spouses Mercedes Ventura and Pedro Corpuz on July 25, 1960 (Record on Appeal, pp. 27-33) and by Exequiel Victorio and Gregoria Ventura on August 5, 1963 (Record on Appeal, pp. 46-50). Both oppositions assailed the veracity of the report as not reflecting the true income of the estate and the expenses which allegedly are not administration expenses. But on January 25, 1961, Maria Ventura filed a motion to hold in abeyance the approval of the accounts of administration

or to have their approval without the opposition of the spouses Mercedes Ventura and Pedro Corpuz and Gregoria Ventura and Exequiel Victorio on the ground that the question of the paternity of Mercedes Ventura and Gregoria Ventura is still pending final determination before the Supreme Court and that should they be adjudged the adulterous children of testator, as claimed, they are not entitled to inherit nor to oppose the approval of the accounts of administration (Record on Appeal, pp. 33-36). Spouses Mercedes Ventura and Pedro Corpuz filed on February 2, 1961 their opposition to the motion to hold in abeyance the approval of the accounts of administration on the ground that Mercedes and Gregoria Ventura had already been declared by the Court of First Instance in Civil Cases No. 1064 and 1476, which cases are supposed to be pending before the Supreme Court, as the legitimate children of Gregoria Ventura, hence, they have reason to protect their interest (Record on Appeal, pp. 36-39). On February 9, 1961, the motion to hold in abeyance the approval of the accounts was denied (Record on Appeal, pp. 39-40).

It appears that on July 12, 1963, the Court set the case for pre-trial on August 7, 1963 in connection with the accounts of the executrix Maria Ventura dated June 17, 1960 and the Motion to Annul Provision of Will dated July 14, 1962 of Mercedes Ventura (Record on Appeal, p. 45).

On October 22, 1963, four motions were filed by Mercedes Ventura and Gregoria Ventura, namely: (1) motion to remove the executrix Maria Ventura which was supplemented on April 27, 1965; (2) motion to require her to deposit the harvest of palay of the property under administration in a bonded warehouse; (3) motion to render an accounting of the proceeds and expenses of administration; and (4) motion to require her to include in the inventory of the estate certain excluded properties (Record on Appeal, pp. 50-53; 71). An opposition to said motions was filed by the heirs Juana Cardona and Miguel Ventura and by the executrix Maria Ventura herself (Record on Appeal, pp. 56-61; 61-70 and 71).

On motion of counsel for Exequiel Victorio and Gregoria Ventura the joint motions to require an Up-to-date Accounting and to Require Executrix Ventura to Include Excluded Properties in Her Inventory were ordered withdrawn (Order dated February 2, 1965, Record on Appeal, p. 73). The other two motions were however set for hearing.

The grounds of aforesaid joint motions to remove the executrix Maria Ventura are: (1) that she is grossly incompetent; (2) that she has maliciously and purposely concealed certain properties of the estate in the inventory; (3) that she is merely an illegitimate daughter who can have no harmonious relations with the appellees; (4) that the executrix has neglected to render her accounts and failed to comply with the Order of the Court of December 12, 1963, requiring her to file her accounts of administration for the years 1961 to 1963 (Record on Appeal, pp. 70 and 75-76) and the Order of June 11, 1964, reiterating aforesaid order of December 12, 1963 (Record on Appeal, p. 76); and (5) that she is with permanent physical defeat hindering her from efficiently performing her duties as an executrix (Record on Appeal, pp. 50-53 and 74-79).

On May 17, 1965, the executrix Maria Ventura finally submitted her accounts of administration covering the period 1961 to 1965 (Record on Appeal, pp. 79-84) which were again opposed by the spouses Exequiel Victorio and Gregoria Ventura on September 21, 1965 and by the spouses Mercedes Ventura and Pedro Corpuz on September 29, 1965 (Record on Appeal, pp. 106-120). On June 2, 1965, the executrix filed her supplemental opposition to the aforesaid four motions, and prayed that the joint supplemental motion to remove the executrix be denied or held in abeyance until after the status of Mercedes and Gregoria Ventura as heirs of the testator is finally decided (Record on Appeal, pp. 85-101). On June 3, 1965, the Court, finding that the estate taxes have not been paid, ordered the administratrix to pay the same within thirty (30) days. On September 13, 1965, the lower court denied the suspension of the proceedings and deferred the resolution of the joint motion to remove executrix Maria Ventura until after the examination of the physical fitness of said executrix to undertake her duties as such.

Also, it ordered the deposit of all palay to be harvested in the next agricultural year and subsequent years to be deposited in a bonded warehouse to be selected by the Court and the palay so deposited shall not be withdrawn without the express permission of the Court (Record on Appeal, pp. 103-105). On September 21, 1965, spouses Exequiel Victorio and Gregoria Ventura filed their opposition to the accounts of administration of Maria Ventura dated May 17, 1965, while that of spouses Mercedes Ventura and Pedro Corpuz was filed on September 29, 1965, both oppositions alleging among others that said accounts do not reflect the true and actual income of the estate and that the expenses reported thereunder are fake, exorbitant and speculative (Record on Appeal, pp. 106-120).

On October 5, 1965, the court a quo, finding that the executrix Maria Ventura has squandered the funds of the estate, was inefficient and incompetent, has failed to comply with the orders of the Court in the matter of presenting up-to-date statements of accounts and neglected to pay the real estate taxes of the estate, rendered the questioned decision, the dispositive portion of which reads:

“WHEREFORE, Maria Ventura is hereby removed as executrix and administratrix of the estate and in her place Mercedes Ventura and Gregoria Ventura are hereby appointed joint administratrices of the estate upon filing by each of them of a bond of P7,000.00. Let letters of administration be issued to Mercedes Ventura and Gregoria Ventura upon their qualification.

“IT IS SO ORDERED.”

(Record on Appeal, pp. 120-131).

Hence, this appeal.

In their brief, appellants Maria Ventura and spouses Juana Cardona and Miguel Ventura assign the following errors allegedly committed by the probate court:

"ASSIGNMENT OF ERRORS

I

“The lower court erred in ordering the removal of Maria Ventura as executrix and administratrix of the will and estate of the deceased Gregorio Ventura without giving her full opportunity to be heard and to present all her evidence.

II

The lower court erred in finding that the executrix Maria Ventura had squandered and dissipated the funds of the estate under her administration.

III

The lower court erred in finding that the executrix Maria Ventura was inefficient and incompetent.

IV

That, considering the circumstances surrounding the case, the lower court erred in finding that the failure of Maria Ventura to submit her periodical accounting had justified her removal as executrix.

V

The lower court erred in considering as an established fact that the appellees Mercedes Ventura and Gregoria Ventura are the legitimate daughters of the deceased Gregorio Ventura.

VI

The lower court erred in finding that the devises and bequests in favor of Maria Ventura and Miguel Ventura as specified in paragraph 8 of the last Will and Testament of the late Gregorio Ventura have ipso facto been

annulled.

VII

The lower court erred in allowing the appellees Mercedes Ventura and Gregoria Ventura to intervene in the hearing of the accounts of administration submitted by the executrix Maria Ventura and/or in not suspending the hearing of the said accounts until the said appellees have finally established their status as legitimate children of the deceased Gregorio Ventura.

VIII

The lower court erred in appointing (even without a proper petition for appointment and much less a hearing on the appointment of) the appellees Mercedes Ventura and Gregoria Ventura who have an adverse interest as joint administratrices of the estate of the deceased Gregorio Ventura.

IX

The lower court erred in not appointing the surviving widow, Juana Cardona, or Miguel Ventura, as administratrix of the estate of Gregoria Ventura in case the removal of Maria Ventura as executrix and administratrix thereof is legally justified.

X

Considering that there are in fact two (2) factions representing opposite interests in the estate, the lower court erred in not appointing Juana Cardona, or Miguel Ventura, as one of the two (2) administratrices.”

(Joint Brief for the Appellants, pp. 1-4)

On July 19, 1967, Atty. Arturo Tolentino (representing appellees Mercedes Ventura and Pedro Corpuz) and Atty. Jose J. Francisco (representing Gregoria and Exequiel Victoria), having failed to submit their respective briefs within the period for the purpose, which expired on July 2 and May 29, 1967, respectively, the Supreme Court Resolved to consider this case submitted for decision WITHOUT SAID APPELLEES’ BRIEF (Rollo, p. 152).

The crucial issue in this case is whether or not the removal of Maria Ventura as executrix is legally justified. This issue has, however, become moot and academic in view of the decision of this court in related cases.

At the outset, it is worthy to note that aside from the instant special proceedings, there are two other civil cases involving the estate of the deceased Gregorio Ventura, namely, Civil Cases Nos. 1064 and 1476. Civil Case No. 1064 was filed on December 2, 1952 by herein appellee Gregoria Ventura in the Court of First Instance of Nueva Ecija, Branch I, against the other appellees herein Mercedes Ventura and their father, Gregorio Ventura. Later Mercedes Ventura joined cause with Gregoria Ventura. (Record on Appeal, p. 95). Gregoria and Mercedes Ventura claimed that they are the legitimate children of Gregorio Ventura and his wife Paulina Simpliciano, who died in 1943, and asked that one-half of the properties described in the complaint be declared as the share of their mother in the conjugal partnership, with them as the only forced heirs of their mother Paulina (Joint Brief for the Appellants, pp. 53-68).

Subsequently, Civil Case No. 1476 was filed by Alipio, Eufracia and Juliana, all surnamed Simpliciano, against Gregorio Ventura and the two sisters, Mercedes and Gregoria Ventura, before the Court of First Instance of Nueva Ecija, Branch I. They alleged that as the only children of Modesto Simpliciano, sole brother of Paulina Simpliciano, they, instead of Mercedes and Gregoria Ventura, whom they claimed are adulterous children of Paulina with another man, Teodoro Ventura and as such are not entitled to inherit from her, are the ones who should inherit the share of Paulina Simpliciano in the conjugal partnership with Gregoria Ventura (Joint Brief For The Appellants, pp. 69-79).

It appears that on November 4, 1959, after a joint hearing of Civil Cases Nos. 1064 and 1476, the lower court rendered its judgment, the dispositive portion of which reads as follows:

“WHEREFORE, judgment is hereby rendered declaring Mercedes Ventura and Gregoria Ventura to be the legitimate daughters of Paulina Simpliciano and Gregorio Ventura; declaring that as such legitimate daughters of Paulina Simpliciano they are entitled to 1/2 of the properties describe in paragraph six of the complaint; ordering the defendant Maria Ventura, as administratrix of the estate of Gregorio Ventura to pay to Mercedes Ventura and Gregoria Ventura the amount of P19,074.09 which shall be divided equally between Mercedes and Gregoria Ventura ... declaring that Mercedes Ventura and Pedro Corpuz are the exclusive owners of the properties described in the certificates of Title Nos. T-1102, T-1212, T-1213, T-1214, Exhibits 32, 33, 34 and 35, respectively; ordering Mercedes Ventura and Pedro D. Corpuz to pay to the conjugal partnership of Gregoria Ventura and Paulina Simpliciano the sum of P100,000.00, one-half of which shall pertain to the estate of Gregorio Ventura and the other half to the estate of Paulina Simpliciano to whom Mercedes and Gregoria Ventura have succeeded, to be divided between Mercedes and Gregoria in equal parts; and dismissing Civil Case No. 1476. The parties are urged to arrive at an amicable partition of the properties herein adjudicated within twenty days from receipt of this decision. Upon their failure to do so, the Court shall appoint commissioners to divide the properties in accordance with the terms of the decision. Without pronouncements as to costs.” (Underscoring supplied). (Joint Brief for the Appellants, pp. 37-38.)

Thereafter, on July 14, 1962, Mercedes Ventura filed a motion to annul the provisions of the will of the deceased Gregorio Ventura in Special Proceedings No. 812, which motion was opposed by Miguel Ventura and Juana Cardona and later by Maria Ventura. They claimed that the decision dated November 4, 1959 in Civil Cases Nos. 1064 and 1476 was not yet final.

On February 26, 1964, the trial court annulled the institution of the heirs in the probated will of Gregorio Ventura. The motion for reconsideration of the aforesaid order filed by executrix Maria Ventura was denied on June 11, 1964.

Accordingly, Maria Ventura appealed the February 26, 1964 and June 11, 1964 orders of the probate court in Special Proceedings No. 812 before the Supreme Court and was docketed as G.R. No. L-23878. On May 27, 1977, this Court, through then Associate Justice Antonio P. Barredo, ruled, as follows:

"And so, acting on appellees' motion to dismiss appeal, it is Our considered opinion that the decision in Civil Cases Nos. 1064 and 1476 declaring that appellees Mercedes and Gregoria Ventura are the legitimate children of the deceased Gregorio Ventura and his wife, Paulina Simpliciano, and as such are entitled to the annulment of the institution of heirs made in the probated will of said deceased became final and executory upon the finality of the order approving the partition directed in the decision in question. We need not indulge in any discussion as to whether or not, as of the time the orders here in question were issued by the trial court said decision had the nature of an interlocutory order only. To be sure, in the case of *Miranda*, aforementioned, the opinion of the majority of the Court may well be invoked against appellant's pose. In any event, even if the Court were minded to modify again *Miranda* and go back to *Fuentebella* and *Zaldariaga*, - and it is not, as of now - there can be no question that the approval by the trial court in Civil Cases Nos. 1064 and 1476 of the partition report of the commissioners appointed for the purpose, one of whom, Emmanuel Mariano, is the husband of appellant, put a definite end to those cases, leaving nothing else to be done in the trial court. That order of approval is an appealable one, and inasmuch as no appeal has been taken from the same, it is beyond dispute that the decision in controversy has already become final and executory in all respects. Hence, the case at bar has become moot and academic." (*Ventura vs. Ventura*, 77 SCRA 159, May 27, 1977)

Under Article 854 of the Civil Code, “the preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious,” and as a result, intestacy follows, thereby rendering the previous appointment of Maria Ventura as executrix moot and academic. This would now necessitate the appointment of another administrator, under the following provision:

Section 6, Rule 78 of the Rules of Court:

"When and to whom letters of administration granted. - If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case may be or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;"

xxx xxx xxx

In the case at bar, the surviving spouse of the deceased Gregorio Ventura is Juana Cardona while the next of kin are: Mercedes and Gregoria Ventura and Maria and Miguel Ventura. The "next of kin" has been defined as those persons who are entitled under the statute of distribution to the decedent's property (*Cooper vs. Cooper*, 43 Ind. A. 620, 88 NE 341). It is generally said that "the nearest of kin, whose interest in the estate is more preponderant, is preferred in the choice of administrator. 'Among members of a class the strongest ground for preference is the amount or preponderance of interest. As between next of kin, the nearest of kin is to be preferred'". (*Cabanas, et al. vs. Enage, et al.*, 40 Off. Gaz. 12 Suppl. 227; citing 12 Am. Jur. Sec. 77, p. 416, cited in Francisco Vicente J., *The Revised Rules of Court in the Philippines Vol. V-B, 1970 Ed.*, p. 23).

As decided by the lower court and sustained by the Supreme Court, Mercedes and Gregoria Ventura are the legitimate children of Gregorio Ventura and his wife, the late Paulina Simpliciano. Therefore, as the nearest of kin of Gregorio Ventura they are entitled to preference over the illegitimate children of Gregorio Ventura, namely: Maria and Miguel Ventura. Hence, under the aforesated preference provided in Section 6 of Rule 78, the person or persons to be appointed administrator are Juana Cardona, as the surviving spouse, or Mercedes and Gregoria Ventura as nearest of kin, or Juana Cardona and Mercedes and Gregoria Ventura in the discretion of the Court, in order to represent both interests.

PREMISES CONSIDERED, the appeal interposed by appellants Maria Ventura, Juana Cardona and Miguel Ventura is hereby DISMISSED.

SO ORDERED.

Padilla and Sarmiento, JJ., concur.

Yap, C.J., joins J., Melencio-Herrera in her dissenting opinion.

DISSENTING OPINION**MELENCIO-HERRERA, J.:**

Consistent with my "concurrence in the result" in *Acain vs. IAC, et als.*, G. R. No. 72706, October 27, 1987, preterition results in total intestacy if it was mistakenly made or through inadvertence. In this case there was no mistake nor oversight whatsoever. The testator himself sought the probate of his Will during his lifetime wherein he not only excluded his "forced heirs" but even denied paternity.

Under the circumstances, the omission being obviously intentional, the effect is a defective disinheritance covered by Article 918 of the Civil Code under which the institution of heir is not wholly void but only in so far as it prejudices the legitimates of the persons disinherited. The nullity is partial unlike in the preterition where the nullity is total.

This conclusion further finds support in the prevailing spirit in the codal provisions on succession, which is to make the intention of the testator prevail (e.g., Articles 783, 790, 848, 852, 861, Civil Code).

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