

ONESIMA D. BELEN, PETITIONER AND APPELLANT, VS. BANK OF THE PHILIPPINE ISLANDS AND MILAGROS BELEN DE OLAGUERA, OPPOSITORS AND APPELLEES.

G.R. No. L-14474. October 31, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from an order, dated May 23, 1958, of the Court of First Instance of Manila in Special Proceedings? No. 9226, denying appellant's petition therein as hereafter discussed.

Briefly, the facts and circumstances that brought about this present appeal may be narrated as follows:

Benigno Diaz executed a codicil on September 29, 1944, the pertinent provisions of which read:

"9.o-En caso de muerte de alguno o de todos los legatarios nom bradbs por mi, seran beneficiarios o sea pasaran los legados a favor solamente de los descendientes y ascendientes legitimos, pero no a los viudos conyuges.

10.o-Transcurridos diez o quince aaios despues de mi muerte todas mis propiedades, muebles o immiebles, derechos y acciones, cuando asi convenga a los legatarios y los precios sean ventajosos, pueden proceder a la venta de todos dando preferencia a los legatarios y de su importe total se deduciran mil pesos (fl,000) para los cuatro hijos de mi difunto hermano Fabian, todos los gastos y reservando una cantidad suficiente y bien calculada para sufragar los gastos para otros diez anos para las mandas y misas. El resto se distribuira a las siguientes personas que aun viven, o a sus descendientes legitimos;

A Isabel M. de Santiago-cincuenta por ciento (50%)

Los hijos de Domingo Legarda-treinta por ciento (30%)

Filomena Diaz-diez por ciento (10%)

Nestor M. Santiago-diez por ciento (10%)."

On November 7, 1944, Benigno Diaz died; and the aforesaid codicil, together with the will, was admitted to probate in Special Proceedings No. 894 of the same Court of First Instance of Manila. The proceedings for the administration of the estate of Benigno Diaz were closed in 1950 and the estate was thereafter put under the administration of the appellee Bank of the Philippine Islands, as trustee for the benefit of the legatees.

Filomena Diaz died on February 8, 1954, leaving two legitimate children, Milagros Belen de Olaguera, married, [with seven (7) legitimate children, and Onesima D. Belen, single.

On March 19, 1958, Onesima D. Belen filed a petition in Special Proceedings No. 9226, contending that the amount that would have appertained to Filomena Diaz under the codicil should now be divided (equally) only between herself and Milagros Belen de Olaguera, as the surviving children of the said deceased, to the exclusion, in other words, of the seven (7) legitimate children of Milagros Belen de Olaguera. The court, in its order of May 23, 1958, denied, as we initially pointed out, Onesima's petition. More specifically, the court said:

"After due consideration of the petition filed by Onesima D. Belen on March 19, 1958, wherein it is prayed that the trustee Bank of the Philippine Islands be directed to deliver to her 'one-half of whatever share is due to the deceased Filomena Diaz as legatee in the will and codicil of the deceased testator Benigno Diaz y Heredia, subject of trusteeship in these proceedings,' this Court finds that said petition should be, as it is hereby, denied in view of the resolution of September 28, 1959, in which resolution the following was declared:

"That the share of Filomena Diaz in the residue of the proceeds of the sale of the properties covered in paragraph 10 of the codicil aforementioned does not and should not form part of her estate; it pertains to her legitimate descendants; and

"That the aforesaid share of Filomena Diaz should be distributed not only between her children, Milagros Belen de Olaguera and Onesima D. Belen, but also among her other legitimate descendants, if any, for descendientes include not only children but also grandchildren, etc., and in this connection, it is not amiss to observe that one may be a descendant and yet not be an heir, and vice versa, one may be an heir and yet not be a descendant."

From this order Onesima D. Belen has appealed to this Court, insisting that (1) the Court below was in error in holding that its former resolution of September 16, 1955 had been affirmed by our decision of February 28, 1958 in the case of Arguelles vs. Belen de Olaguera, G.R. No. L-10164 Feb. 28, 1958; and (2) that the term "sus descendientes legitimados" as used in the codicil, should be interpreted to mean descendants nearest in degree to the original legatee Filomena Diaz. In the present case, they are her two daughters (Milagros and Onesima Belen), thereby excluding the seven grandchildren of said legatee.

As to her first point, the appellant is correct in her view that the trial court's interpretation of clause 10 of the codicil to the will of Benigno Diaz has not been affirmed in our previous decision (G. R. No. L-10164). Perusal of that judgment will show that this Court left the issue open at the time, contenting itself with pointing out that the then appellant Administrator of the estate of Filomena Diaz was not the proper party to raise the particular issue.

As to the actual meaning of the provision-

"El resto se distribuirá a las siguientes personas que aun viven, o a sus descendientes legitimados",

it is undeniable that by this clause the testator ordained a simple substitution (sustitucion vulgar) with a plurality of substitutes for each legatee. This form of substitution is authorized by the first part of Article 860 of the Civil Code (Art. 778 of the Code of 1889):

"Two or more persons may be substituted for one; and one person for two or more heirs."

The issue is now squarely before us: do the words "sus descendientes legitimados" refer conjointly to all living descendants (children and grandchildren) of the legatee, as a class; or do they refer to the descendants nearest in degree?

Appellant Onesima Belen contends that the phrase should be taken to mean the relatives nearest in degree to Filomena Diaz; and that the legacy should be therefore divided equally between her and her sister Milagros Belen de Olaguera, to the exclusion of the latter's sons and daughters, grandchildren of the original legatee, Filomena Diaz. As authority in support of her thesis, appellant invokes Article 959 of the Civil Code of the Philippines (reproducing verbatim Article 751 of the Code of 1889):

"A distribution made in general terms in favor of the testator's relatives shall be understood as made in favor of those nearest in degree."

The argument fails to note that this article is specifically limited in its application to the case where the beneficiaries are relatives of the testator, not those of the legatee. In such an event, the law assumes that the testator intended to refer to the rules of intestacy, in order to benefit the relatives closest to him, because, as

Manresa observes,-

"la razon y la logica hacen fundadamente suponer que, al procurar este favorecer a sus parientes, habria de ajustarse mas a su intencion el que gozasen sus bienes aquellas personas mas ligadas al mismo (testador) por los vineulos de la sangre y de la familia" (6 Manresa, Comm., 7th Ed., p. 72).

But the ratio legis (that among a testator's relatives the closest are dearest) obviously does not apply where the beneficiaries are relatives of another person (the legatee) and not of the testator. There is no logical reason in this case to presume that the testator intended to refer to the rules of intestacy, for he precisely made a testament and provided substitutes for each legatee; nor can it be said that his affections would prefer the nearest relatives of the legatee to those more distant, since he envisages all of them in a group, and only as mere substitutes for a preferred beneficiary.

Should Article 959 (old Art. 751) be applied by analogy? There are various reasons against this. The most important one is that under this article, as recognized by the principal commentators on the Code of 1889, the nearest exclude all the farther relatives and the right of representation does not operate. Castan, in his monograph "El derecho de representacion y mecanismos juridicos afines en la sucesion testamentaria" (Reus, 1942), says on this question (pp. 13, 14, 15):

"En el subgrupo iberico de Europa y America predomina, aunque haya excepciones, como ya hemos visto, al criterio de que la representacion, cuando menos en principio, no tiene cabida en la sucesion testamentaria. Asi, por ejemplo, lo establece la doctrina cientffica en Portugal y en la Argentina y lo ha sancionado la jurisprudencia en Cuba.

En igual sentido, en la doctrinji espanola es opinion general que el derecho de representacion, dentro del Codigo civil, no tiene lugar mas que en la sucesion intestada, y en la testamentaria en la parte referente a las legitimas. MUCius SCAevola juzga que la representacion, atraida por la herencia legitima, es repelida por la testada, y apunta, como razon de ello, la de que 'la primer a descansa en la ley de la sangre, en el parentesco con su consiguiente atributo de linea y grado, elementos propios c indispensables para la representaion, en tanto que la segunda se basa exclusivamente en la voluntad del testador, elemento diverso, en el orden legal, al de la naturaleza o de la sangre'. Y el maestro de diego, con orientacion analoga, piensa que 'como el titulo de la sucesion testada es de origen voluntario y caracter personalisimo, es evidente que no hay terminos habiles para el derecho de representacion: los llamamientos son individuales y la premoriencia del instituido, como su incapacidad, aniquilan la institution'

In the second place, the history of Article 751 (of the 1889 Code) shows that the right of representation was deliberately suppressed. Says Castan (op. cit., 24):

"En nuestra Patria opino gaecia goyena 'que debia tener lugar el derecho de representacion aun cuando el testador llame a los parientes mas cercanos", pues 'en lo que no se contraria abiertamente la voluntad del testador, debe observarse el orden de la sucesion legitima, al que se presume que en todo lo demas quiso atemperarse'. Por ello, el art. 562 Proyecto de 1851 quedo redactado asi: "La disposition hecha simple y generalmente a favor de los parientes del testador, se entiende hecha en favor de los mas proximos en grado; pero habra lugar al derecho de representacion con todos sus efectos, con arreglo al titulo siguiente'.

Con poco acierto, a nuestro juicio, los autores del vigente Codigo han suprhnido e?ta ultima salvedad del Proyecto del 51, y con ello han instaurado una norma rigida, distanciada de lo que exige la equidad y de lo que suelen establecer los Codigos extranjeros. Los com-mentaristas convienen en que la supresion ha sido intencionada, y por consiguiente el proposito del legislador es que en esta clase de llamamientos no se da el derecho de representaci6n. Dice Manresa que el art. 751 'tiene por favorecidos con tal institucion, no a los parientes de mejor derecho, sino a los mas proximos en grado y, por lo tanto, los de primer grado excluiran a los de segundo y, asi sucesivamente, toda vez que la proximidad del parentesco se aprecia en esta forma con

arreglo al art. 915'. La misma interpretacion dan al articulo de referencia NAVARRO AMANDI, MUCIUS SCAEVOLA, SANCHEZ ROMAN y VALVERDE."

The result would be that by applying to the descendants of Filomena Diaz the "nearest relatives" rule of Article 959, the inheritance would be limited to her children, or anyone of them, excluding the grandchildren altogether. This could hardly be the intention of the testator who, in the selfsame clause 10 of his codicil (ante), speaks of "cuatro hijos de mi difunto hermano Fabian" and of "los hijos de Domingo Legarda," as well as of "descendientes legitimos" of the other legatees, to us indicating clearly that he understood well that hijos and descendientes are not synonymous terms. Observe that, in referring to the substitutes of Filomena Diaz, Nestor Santiago and Isabel M. de Santiago, the testator, does not even use the description "sus hijos 6 descendientes," but only "descendientes".

It is suggested that "descendientes legitimos" could mean the nearest descendant but with right of representation in favor of the more distant relatives. Unquestionably, the testator was at liberty to provide a series of successive substitutions in the order of proximity of relationship to the original legatee. And he, likewise, was free to ordain that the more distant descendants should enjoy the right of representation as in intestate succession. But to arrive at such conclusion, we must declare that the testator had:

(a) Rejected, or intended to reject, the right of accretion among co-heirs and co-legatees, as established for testamentary successions by Articles 1016 (old Art. 982) and 1019, and intended to replace such accretion with representation:

"Art. 1016. In order that the right of accretion may take place in a testamentary succession, it shall be necessary:

(1) That two or more persons he called to the same inheritance, or to the same portion thereof, pro indiviso; and

(2) That one of the persons thus called die before the testator or renounce the inheritance, or be incapacitated to receive it.

* * * * *

Art. 1019. The heirs to whom th^a portion goes by the right of accretion take it in the same proportion that they inherit."

(b) Refused, likewise, the rule of Article 846 (reproduced from Article 765 of the Code of 1889) providing that:

"Heirs instituted without designation of shares shall inherit- in equal parts",

which would not obtain if the right of representation were to apply;

(c) Rejected finally the rule of Article 1022 (old Art. 986), that vacancies in the free part should be filled according to the rules of accretion, or substitution (not representation); and in default of these two, ultimately inherited by the testator's own heirs intestate:

"Art. 1022. In testamentary succession, when the right of accretion does not take place, the vacant portion of the instituted heirs, if no substitute has been designated, shall pass to the legal heirs of the testator, who shall receive it with the same charges and obligations."

There is no doubt that, the testator's intention being the cardinal rule of succession in the absence of compulsory (forced) heirs, he could have rendered inoperative all the articles mentioned, if he had so desired. But without any other supporting circumstances, we deem it extremely conjectural to hold that by the simple expression "6 a sus

descendientes legitimus," the testator Benigno Diaz did intend to circumvent all the legal provisions heretofore quoted. It was incumbent upon appellant to prove such intention on the part of the testator; yet she has not done so.

It is interesting to note that even under the Anglo-Saxon doctrine, the courts are divided on the question whether a bequest to "relatives" or "issue," made in general terms, gives rise to a succession per capita or per stirpes. In *Wyeth, et al., vs. Crane*, 174 N.E. 871, the Supreme Court of Illinois said:

"The meaning of the word 'descendants', when used in a will or deed to designate a class to take property passing by the will or deed, has been frequently considered and decided by the courts of England and the United States. The established rule in England from an early date was that the word 'descendants' or the word 'issue', unexplained by anything in the context of the instrument, means all persons descending lineally from another, to the remotest degree, and includes persons so descended, even though their parents are living, and that such descendants take per capita and not per stirpes."

"The courts of this country are divided on the question of whether in case of a gift or conveyance to 'descendants' or 'issue', children take concurrently with their parents. The so-called 'English rule' has been adhered to in New York, New Jersey, and Tennessee. * * * On the other hand, the courts of Massachusetts, Maine, Rhode Island and South Carolina have held that, in case of a gift or conveyance to descendants or issue, unexplained by anything in the context of the instrument, children do not take concurrently with their parents."

We conclude that in the absence of other indications of contrary intent, the proper rule to apply in the instant case is that the testator, by designating a class or group of legatees, intended all members thereof to succeed per capita, in consonance with article 846. So that the original legacy to Filomena Diaz should be equally divided among her surviving children and grandchildren.

The order appealed from is affirmed, with costs to the appellant.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Gutierrez David, and Paredes, JJ., concur.

Order affirmed.

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