

VICENTA TAN, PETITIONER, VS. CITY OF DAVAO, RESPONDENT.

G.R. No. L-44347. September 29, 1988

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This 26-year old case involves what is probably now a valuable lot in the City of Davao whose owner left for China with her entire family in 1923 and never returned. Like all such estates facing escheat proceedings, it is fair game for poseurs and fakers claiming to be the missing heir of the deceased owner.

The spouses Cornelia Pizarro and Baltazar Garcia, during their lifetime, were residents of Davao City. As they were childless, they adopted a three-year old girl whom they named Dominga Garcia and brought up as their own. At the age of nineteen years, Dominga Garcia married a Chinaman, Tan Seng alias Seng Yap, with whom she had three children, named Vicenta, who was born in 1916, Mariano who was born in 1918, and Luis who was born in 1921. In 1923, Dominga Garcia and her three children emigrated to Canton, China. In less than a year, Tan Seng followed his family to his country of origin.

According to the petitioner, Dominga Garcia died intestate in 1955 (Extrajudicial Settlement of the Estate of Dominga Garcia dated May 27, 1966, p. 8, Rollo). She left in the Philippines a 1,966-square-meter lot on Claveria Street, Townsite of Davao, District of Davao, registered in her name under T.C.T. No. 296 (T-2774) of the Registry of Deeds of Davao City. Since her departure for China with her family, neither she, nor her husband, nor any of their children has returned to the Philippines to claim the lot.

Dominga's adoptive parent, Cornelia Pizarro, died in May, 1936. In 1948, her nephew, Ramon Pizarro, occupied a part of Dominga's property and collected the rentals from the owners of other houses occupying the land. Another nephew of Cornelia, Segundo Reyes, in a burst of civic spirit, informed the Solicitor General about the property. The City Fiscal and NBI agents, Antonio Gonzaga and Felix Valencia, investigated Segundo Reyes, Ramon Pizarro and Aurelio Pizarro regarding the whereabouts of Dominga Garcia, Tan Seng, and their children.

During the investigation, Ramon Pizarro alleged that Vicenta Tan, daughter of Dominga, was married and living in Bacolod City, but he did not know her exact address. Aurelio Pizarro, on the other hand, controverted that statement because as far as he knew, Vicenta Tan left for China with her mother and brothers in 1923.

On September 12, 1962, the City of Davao filed a petition in the Court of First Instance of Davao, Branch I (Special Civil Case No. 1220) to declare Dominga Garcia's land escheated in its favor. It alleged that Dominga Garcia and her children are presumed to be dead and since Dominga Garcia left no heir or person by law entitled to inherit her estate, the same should be escheated pursuant to Rule 92 of the Rules of Court (pp. 1-5, Record on Appeal).

The court set the petition for hearing and directed the City to cause (as it did) the publication of its petition in the "Mindanao Times," a newspaper of general circulation in the city and province of Davao, and in the Official Gazette, once a week for six (6) consecutive weeks (pp. 6-8, Record on Appeal).

Ramon Pizarro opposed the escheat petition on the ground that courts are not authorized to declare that a person is presumed to be dead and that Dominga Garcia's being in Red China is not a sufficient ground to deprive her of her property by escheat proceedings (pp. 8-9, Record on Appeal).

On June 15, 1966, Pizarro filed a motion to dismiss the escheat petition (pp. 13-15, Record on Appeal), but he withdrew his motion three days later (p. 15, Record on Appeal).

Numerous incidents delayed the trial of the case, among them: (1) the court's order denying the oppositor's motion to dismiss the escheat petition, which reached the Court of Appeals and the Supreme Court (L-38423); (2) the court's order requiring Pizarro to render an accounting which also reached the Court of Appeals and Supreme Court (L-38642); and (3) the court's order for receivership which reached the Court of Appeals and the Supreme Court (L-39224).

At the trial, the petitioner's evidence on the identity of the land; the fact that the registered owner, Dominga Garcia, and her children and husband had left for China in 1923; that she died intestate in 1955; and that none of her heirs is found in the Philippines, were not seriously disputed.

The controversy centers on whether Dominga's daughter, Vicenta Tan, is alive in China or in Hongkong, as alleged by Pizarro who tried to prove it through: (1) supposed pictures of the missing heir (Exhs. 1, 2, and 3); (2) an Extrajudicial Settlement and Adjudication of Dominga's Estate (Exh. 19, pp. 8-9, Rollo) allegedly executed by Vicenta in Hongkong on May 27, 1966; and (3) a Special Power of Attorney (Exh. 20) that she supposedly signed (thumbmarked) in favor of Pizarro on the same date also in Hongkong (pp. 53-56, Rollo).

Pizarro testified that his aunt Cornelia Pizarro gave him the papers pertaining to the land and told him to take care of it before she died in 1936.

On cross-examination, he alleged that in 1960 he met Vicenta on Claveria Street; that she told him to take care of her property because she would come again later; that they met again in Hongkong in 1966; and he recognized her from her pictures (Exhs. 1, 2, and 3).

On still another occasion, Pizarro testified that the title of the land was given to him by Dominga Garcia when she and her husband returned to Davao before the war and borrowed money from him for their trip to China.

Pizarro's witness, a septuagenarian, Arsenio Suazo, who claimed to be a distant relative of Cornelia Pizarro and Dominga Garcia, testified that the last time he saw Vicenta was when she was 5 years old. He identified her as the woman with buck teeth in the pictures (Exhs. 1, 2, and 3) because he remembered that, even as a 5-year-old, "her teeth were not in good form and were somewhat protruding."

Another witness, Ramon Regino, a nephew of Pizarro, calculated that Vicenta was 7 years old when he last saw her. He testified that the pictures (Exhs. 1, 2, and 3) bore a similarity to Vicenta whose face, he recalled, was "somewhat long."

The trial court found Suazo's testimony "not credible" or "improbable" for it was impossible for him to identify the woman in the picture as Vicenta on the basis only of his recollection that she had protruding teeth as a child, because, the court argued, "it is a matter of common knowledge x x x that the teeth of children of five years of age are temporary, and are replaced by permanent teeth at the age of seven or eight years." (p. 185, Record on Appeal.)

The court also found Regino's testimony "incredible, patently incredible" (p. 185, Record on Appeal).

Neither did the trial court believe Pizarro's allegation that the pictures, Exhibits 1, 2, and 3, were those of Vicenta Tan. The court observed that the woman in the picture, who supposedly made the Extrajudicial Settlement and

Special Power of Attorney (Exhs. 19 and 20) did not know how to sign her name, thus contradicting Pizarro's statement that Vicenta, at age 7, already knew how to write and that when they met in Hongkong, they conversed in Chavacano and in English. On the other hand, the court pointed out, since Vicenta left for China in 1923 when she was only 7 years old, and as she grew up in China, it could not be true that she spoke Chavacano and could write in the Latin alphabet (p. 194, Record on Appeal).

The court did not believe that Pizarro and Vicenta met in Davao in 1960, for if that were true, he did not need to be shown the scar on Vicenta's thigh in order for him to recognize her. Furthermore, it is improbable that a woman whom he had not seen for 43 years would bare her thigh to him.

The trial court pointed out in its decision that:

"x x x. There is no proof that Vicenta Tan, daughter of Dominga Garcia, was the one who in fact sent the picture other than the claim of Pizarro that he received the same from her. Likewise, there is no proof that the woman in Exhibit 1 is Vicenta Tan, daughter of Dominga Garcia, except the testimony of Pizarro that he received the picture from her. An impostor might have sent her picture to Pizarro foist herself upon him as the daughter of Dominga Garcia. And this is the woman whom Pizarro met in Hongkong." (p. 196, Record on Appeal.)

The trial court found that Pizarro's testimonies "ring with untruthfulness; they are replete with inconsistencies" (p. 17, Record on Appeal) and the witnesses who corroborated him were "unworthy of belief" (p. 198, Record on Appeal).

On March 23, 1972, the trial court rendered judgment whose dispositive portion is quoted below:

"WHEREFORE, the land in the name of Dominga Garcia covered by Transfer Certificate of Title No. 296 (T-2774) of the Register of Deeds of Davao City, as well as the rentals thereon, shall escheat and the same are hereby assigned to the City of Davao for the benefit of public schools and public charitable institutions and centers in the said city.

"Ramon Pizarro shall make an accounting of the income he collected from himself and those who are occupying the land from the time he took possession of it in 1936 when his aunt Cornelia Pizarro died until the City of Davao takes possession of the property and shall deliver the same to the city.

"Ramon Pizarro shall likewise deliver to the City of Davao the owner's duplicate of Transfer Certificate of Title No. 296 (T-2774) which is in his possession, without costs." (p. 198, Record on Appeal.)

Pizarro appealed to the Court of Appeals (CA-G.R. No. L-51786-R). He passed away on June 16, 1975 during the pendency of the appeal.

On August 19, 1975, a certain Luis Tan, alias Chen Yek An, claiming to be the long missing son of Dominga Garcia, filed a motion for intervention in the Court of Appeals. He alleged that he had been living in mainland China; that he failed to come to the trial because of a government prohibition barring his entry to the Philippines; that after diplomatic relations with China were restored, he returned to this country to oppose the escheat proceedings on the properties of his mother, Dominga Garcia.

The City of Davao opposed the motion for intervention for tardiness. The Court of Appeals disallowed it because the trial had long been terminated, and the intervention, if allowed, would unduly delay the adjudication of the rights of the original parties (p. 26, Rollo).

On April 2, 1976, the Court of Appeals affirmed the appealed decision of the trial court. Vicenta Tan and/or her attorney-in-fact, Ramon Pizarro, appealed by petition for certiorari to this Court, alleging that the Court of Appeals erred:

- in ruling that the City of Davao had personality to file the escheat petition; and
- in declaring that petitioner Vicenta Tan may be presumed dead.

We find no merit in the petition for review.

With respect to the argument that only the Republic of the Philippines, represented by the Solicitor-General, may file the escheat petition under Section 1, Rule 91 of the Revised (1964) Rules of Court, the Appellate Court correctly ruled that the case did not come under Rule 91 because the petition was filed on September 12, 1962, when the applicable rule was still Rule 92 of the 1940 Rules of Court which provided:

"Sec. 1. When and by whom petition filed. - When a person dies intestate, seized of real or personal property in the Philippines, leaving no heirs or person by law entitled to the same, the municipality or city where the deceased last resided, if he resided in the Philippines; or the municipality or city in which he had estate if he resided out of the Philippines, may file a petition in the court of first instance of the province setting forth the facts, and praying that the estate of the deceased be declared escheated." (Underlining supplied.)

Rule 91 of the Revised Rules of Court, which provides that only the Republic of the Philippines, through the Solicitor General, may commence escheat proceedings, did not take effect until January 1, 1964. Although the escheat proceedings were still pending then, the Revised Rules of Court could not be applied to the petition because to do so would work injustice to the City of Davao. Rule 144 of the 1964 Rules of Court contains this "saving" clause:

"These rules shall take effect on January 1, 1964. They shall govern all cases brought after they take effect, and also all further proceedings in cases pending, except to the extent that in the opinion of the court, their application would not be feasible or would work injustice, in which event the former procedure shall apply."

The Court of Appeals should have dismissed the appeal of Vicenta Tan and Ramon Pizarro earlier because the records show that Vicenta was never a party in the escheat proceedings. The trial court's order dated February 4, 1972 ordering that she be substituted for Ramon Pizarro as oppositor (p. 16, Record on Appeal) was set aside by the same court in its Order of March 23, 1972 (p. 178, Record on Appeal) which was not appealed.

Vicenta Tan, if she still exists, was never served with summons extraterritorially under Section 17, Rule 14 of the Rules of Court. She never appeared in the trial court by herself, or counsel and never filed a pleading therein, hence, she never submitted to the court's jurisdiction.

Every action must be prosecuted and defended in the name of the real party-in-interest (Sec. 2, Rule 3, Rules of Court; *Ferrer vs. Villamor*, 60 SCRA 106; *Filipinas Industrial Corp. vs. San Diego*, 23 SCRA 706; 1 Moran 144). Ramon Pizarro, the alleged administrator of Dominga Garcia's property, was not a real party in interest. He had no personality to oppose the escheat petition.

The Court of Appeals did not err in affirming the trial court's ruling that Dominga Garcia and her heirs may be presume dead in the escheat proceedings as they are, in effect proceedings to settle her estate. Indeed, while a petition instituted for the sole purpose of securing a judicial declaration that a person is presumptively dead cannot be entertained if that were the only question or matter involved in the case, the courts are not barred from declaring an absentee presumptively dead as an incident of, or in connection with, an action or proceeding for the settlement of the intestate estate of such absentee. Thus ruled this Court in *In re Szatraw*, 81 Phil. 461:

"x x x. This presumption x x x may arise and be invoked and made in a case, either in an action or in a special proceeding, which is tried or heard by, and submitted for decision to, a competent court. Independently of such an action or special proceeding, the presumption of death cannot be invoked, nor can it be made the subject of an action or special proceeding." (Emphasis added.)

Direct evidence proving that Dominga Garcia, her husband and her children are in fact dead, is not necessary. It may be presumed under Article 390 of the New Civil Code which provides:

"ART. 390. After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes, except for those of succession.

"The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of ten years. . ."

The Court of Appeals found that the City of Davao was able to prove the facts from which the presumption arises. It said:

"x x x. Its evidence preponderantly shows that in 1923 Dominga Garcia and her family left the Philippines bound for China. Since then until the instant petition was filed on September 12, 1962, a period covering about 39 years, nothing had been heard about them. It is not known whether all or any of them is still alive at present. No heir, devisee or any other person entitled to the estate of Dominga Garcia has appeared and claimed the same up to this time except Luis Tan whose status as alleged heir has still to be proven in the proper court.

"The assertion of appellant Pizarro that in 1960 he met and talked with Vicenta Tan in Claveria, Davao City, before she went to China, and again in 1966, when he went to Hongkong, was not believed by the court below. After assessing and evaluating the evidence, we find no sufficient cause to disturb the conclusion of the trial court made on a finding of fact based on conflicting testimony and depending largely upon the credibility of witnesses who testified before it. In our review of the evidence, we have not come across any material fact or circumstance which the court a quo has overlooked and failed to consider, or has misunderstood and misapplied, and which if properly appreciated and accurately weighed would change the result of this litigation.

For one thing, if it is true that Vicenta Tan left the Philippines only in 1960, as oppositor Pizarro would like the court to believe, it has not been explained why he omitted to secure copies of her departure papers from either the Department of Foreign Affairs, the Bureau of Immigration or the former Chinese Embassy, and present them to the court to establish her existence as late as 1960.

For another, if it is also true that he met her in Hongkong in 1966, we are at a loss why he failed to arrange for her return to the Philippines. We do not believe it would have been difficult to do so, considering that she had been a resident of this country for more than 40 years and had been absent for only about six years and that her return was imperative on account of a court action against her property which required her personal presence. But even if this were impossible, oppositor Pizarro would not be left without any other remedy. He could have arranged for the taking of her deposition in Hongkong by means of letters rogatory under Sections 11 and 12, Rule 24 of the Revised Rules of Court, in the same manner that, according to him, he arranged their meeting in the Crown Colony sometime in 1966.

The unexplained failure of oppositor Pizarro to take advantage of any of these remedies available to him heavily tilts the scale against the credibility of his claim." (pp. 30-31, Rollo.)

These factual findings of the Court of Appeals are binding on Us. They may not be disturbed in this petition for review where only legal questions may be raised (Sec. 2, Rule 45).

WHEREFORE, finding no reversible error in the decision of the Court of Appeals in CA-G.R. No. 51786-R, the petition for review is denied for lack of merit.

SO ORDERED.

Narvasa, Cruz, Gancayco, and Medialdea, JJ., concur.

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