

**TESTATE ESTATE OF THE LATE DON ALFONSO DE CASTELLVI,
CARMEN M. VDA. DE CASTELLVI, ADMINISTRATRIX, NATIVIDAD
CASTELLVI DE RAQUIZA, PETITIONER-APPELLEE, VS. JOSE
CASTELLVI AND CON...**

G.R. No. L-24501. May 26, 1977

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the order dated January 8, 1965 of the Court of First Instance of Pampanga, Special Proceeding No. 6824, Testate Estate of the Late Don Alfonso de Castellvi, denying the petition for "señalamiento de vista" filed by appellants Jose Castellvi and Consuelo Castellvi, which in effect was a motion to reopen for a "vista de novo" of the proceedings for the probate of will of the decedent Don Alfonso de Castellvi which had already been terminated by an order of December 11, 1940, to enable appellants to continue with their opposition to said probate on the ground that the testator "did not have a sound dispositive mind when his last will and testament was executed" and to prove that they are duly acknowledged natural children of said decedent.

It appears that in the above-mentioned probate proceedings, appellants filed an opposition to the admission of the will of the deceased Don Alfonso. The will named as heirs only Natividad Castellvi de Raquiza, his judicially adopted daughter to the extent of 2/3 of his estate and his collateral relatives for the balance of 1/3, omitting any mention of appellants. Mrs. Raquiza who was then a minor had Emilia A. Trono as her guardian ad-litem.

The other material facts are stated in the decision of this Court in Testate Estate of the late Don Alfonso Castellvi etc. vs. Jose Castellvi et al., 9 SCRA 395, and are not disputed by the parties in this case. To quote from that decision:

"Alleging that they are the acknowledged natural children of the decedent and that the latter 'did not have a sound dispositive mind when his last will and testament was executed', appellants opposed its probate on December 11, 1940. On the same date, Trono was appointed guardian-ad-litem of the present Mrs. Raquiza and, purporting to act on behalf of the latter, as party of the first part, she (Trono) entered into an agreement with the herein appellants, as party of the second part, stipulating, inter alia:

'1. That the Party of the First Part recognizes and acknowledges that the Party of the Second Part are the duly acknowledged natural children of the deceased D. Alfonso de Castellvi during his lifetime, as his own children;

x x x x x x

'4. That the deceased had inadvertently omitted the Party of the Second Part from his last will and testament, unduly depriving them of their legitime as forced heirs;

'5. That in the said last will and testament, the probate of which is now pending in the Hon. Court of First Instance of Pampanga, the deceased had left two-thirds (2/3) of his entire estate to the Party of the First Part, and the remaining one-third (1/3) to his brother D. Juan de Castellvi;

'6. That in consideration of the premises, to do justice and to show fairness to the Party of the Second Part, the herein parties, assisted as above stated, do hereby covenant and agree on the following:

x x x x x x

'(b) That should the provisions of the will and testament be enforced by the Court, i.e., two-thirds (2/3) to the Party of the First Part and the remaining one-third (1/3) to Dn. Juan de Castellvi, then to carry out the just and spirit of this agreement the Party of the First Part shall grant unto the Party of the Second Part one-half (1/2) of that which shall be allotted to her out of the estate;

'(c) And lastly that this agreement shall be submitted to the Court of First Instance of Pampanga to form part of the records of the case therein pending.' (*Italics supplied.*)

"After taking the testimony of one of the attesting witnesses to the will of the decedent, the Court, by an order dated December 11, 1940, admitted said will to probate, directed the 'petitioner' to propose the name of a person for appointment as judicial administrator of the estate of the decedent and approved the agreement above referred to.

"Ten (10) months later, or on September 18, 1941, Trono sought a reconsideration of said order, insofar as it approved the agreement, upon the ground that the same is null and void for the reason that she had allegedly signed it without knowing its contents, that it was devoid of consideration, and that, as Mrs. Raquiza's guardian-ad-litem, she (Trono) had no authority to enter into said agreement. The motion for reconsideration was denied, although the order to this effect and the date on which it was issued do not appear in the records, because so much thereof as existed at the time had been destroyed during the liberation of the Philippines in 1945. Appellee maintains, however, that, pursuant to said order, Trono was estopped from assailing the agreement in question, she having signed the same, and its annulment could be secured at the instance only of Mrs. Raquiza, through another guardian, and that, accordingly, the order contained a proviso 'reserving' to Mrs. Raquiza 'the right x x x to annul the agreement x x x upon reaching' the age of majority 'or upon having another legal guardian'.

"On July 14, 1946, Mrs. Raquiza, represented by her husband, Atty. Antonio V. Raquiza, filed a motion praying that said order of December 11, 1940, be set aside and that the agreement adverted to above be declared null and void. This motion was denied on August 8, 1946, upon the ground that the order sought to be reconsidered had 'already acquired finality'.

"Thereupon, or on October 18, 1946, Mrs. Raquiza, assisted by her aforementioned husband and then guardian-ad-litem, filed complaint, docketed as Civil Case No. 47 of the Court of First Instance of Pampanga, against the appellants herein, for the purpose, inter alia, of securing a declaration of nullity of the agreement of December 11, 1940 and of the order of the same date approving it. After the filing of appellants of answer to said complaint, the case was set for hearing on August 6, 1947. Two days prior thereto, the Court received a telegram of counsel for Mrs. Raquiza, praying for postponement of the hearing and stating that the corresponding motion was 'coming'. No such motion, however, had been filed when the case was called for hearing on August 6, 1947, and neither Mrs. Raquiza nor her counsel appeared before the court on that date. Besides, counsel for appellants 'explained to the Court that the parties have practically come into a tentative amicable agreement of the case x x x' and that the non-appearance of Mrs. Raquiza 'and her attorney may possibly be due to this circumstance'. Accordingly, by an order dated August 6, 1947, said case was dismissed 'without prejudice and without pronouncement as to costs.' (Exhibit N, Stipulation.)

"In the meantime, the proceedings in the present case continued. Decedent's brother, Juan, had been appointed administrator of the estate, which, upon the death of Juan, was placed under the administration of his widow, Carmen de Castellvi. After the performance by the latter of the usual acts of administration, and feeling, evidently, that the time had come for the distribution of the net assets of the estate among the heirs of the

decedent, Mrs. Raquiza filed, on March 11, 1958, a motion praying that appellants be excluded from any share in said estate and from further participating in the proceedings. Subsequently, on August 5, 1959, said Administratrix filed a motion praying that the following be declared heirs of the decedent, in the proportion stated after their respective names, to wit: Mrs. Raquiza, one-third of the estate; appellants, one-third of the estate; and the collateral heirs, one-third of the estate. Passing upon these two (2) motions, the lower court issued, on November 11, 1959, the order mentioned at the beginning of this decision, holding that the records do not show that appellants are the acknowledged natural children of the decedent; that appellants have not introduced any evidence on their alleged relationship with the deceased; and that appellants merely rely upon the agreement of December 11, 1940 -- signed by Trono as guardian-ad-litem of Mrs. Raquiza -- which is null and void ab initio. A reconsideration of this order having been denied, appellants interposed the present appeal." (at pp. 398-401.)

Upon the foregoing facts, this Court stated the issue in that case to be "whether lower court has authority to pass, in the order appealed from, upon the question of whether or not appellants (in that case and here) are related to the decedent and entitled to share in his estate, as well as to intervene in this case, considering that the agreement entered into on December 11, 1940, had been approved by an order of the Court of the same date, which had allegedly become final and executory, no appeal having been taken therefrom." (at p. 401.)

The Court then proceeded to examine the circumstances leading to the compromise agreement referred to and arrived at the conclusion that said agreement was null and void for being "within the purview of Article 1814 of the Civil Code of Spain (Art. 2035 of the Civil Code of the Philippines) reading: "No compromise can be made with respect to the civil status of persons, or with regard to matrimonial matters, or future support."

After the finality of the aforesaid decision, the "Petición de Señalamiento de Vista" here in issue was filed by appellants. Said motion reads thus:

"COMPARECEN los opositores Jose Castellvi y Consuelo Castellvi en estas actuaciones de testamentaria del finado Don Alfonso de Castellvi, por medio de sus infrascritos abogados, y a este Honorable Juzgado respetuosamente exponen;

"1. Que en la decision dictada por al Honorable Corte Suprema en la causa G.R. No. L-17630, dicho Honorable Tribunal ha declarado que el 'COMPROMISE AGREEMENT' otorgado por las partes en 11 de Diciembre de 1940, y aprobado por este Hon. Juzgado por virtud de su orden dictada en la misma fecha, nulo y de ningun efecto legal, por ser contrario al Art. 1814 delCodigo Civil Español (Art. 2035 delCodigo Civil de Filipinas);

"2. Que en vista de la referida decision de la Honorable Corte Suprema, la presente testamentaria debe ser tramitada de novo, con el objeto de dar a las partes oportunidad de presentar sus pruebas en apoyo de sus respectivas contenciones.

"POR TANTO, dichos opositores Jose Castellvi y Consuelo Castellvi, a este Honorable Juzgado respetuosamente suplican se sirva señalar dia para la vista de novo de esta Testamentaria, de ser posible dentro de la primera quincena del proximo mes de Mayo, 1964.

"Manila, Filipinas (para San Fernando, Pampanga).

"Abril 22, 1964. (Pp. 22-23, Rec. on Appeal.)

This motion was opposed by the heirs of Juan Castellvi, the collateral relatives referred to in the will. And as already stated, after due hearing, the court a quo denied appellants' motion, hence, this appeal.

The main burden of appellants' theory in this appeal is that inasmuch as the above-mentioned and partly quoted decision declared the compromise agreement of December 11, 1940 void, and considering that their opposition to

the probate of the will of the deceased was withdrawn by them in consideration of the acknowledgment made in said agreement by Mrs. Raquiza of their status as "duly acknowledged natural children of the deceased Don Alfonso de Castellvi during his lifetime, as his own children", and that they desisted from presenting proof as to their status as such acknowledged natural children because of Mrs. Raquiza's admission, which she in turn made to make them refrain from questioning the legality of her adoption, which according to them was legally defective, it should follow, upon the nullification of that agreement, that the admission of Don Alfonso's will made on the basis agreement should also be set aside. Appellants contend that were it not for the withdrawal of their opposition, which they did because of the considerations stated in the agreement, that will could not have been probated on the basis of the testimony of only one attesting witness, it being the law that all the three attesting witnesses must indispensably be presented and must testify, when there is an opposition to the admission thereof, citing Section 11 of Rule 77 (Rules of 1940) and cases applying the same, *Fernandez vs. Tantoco*, 49 Phil. 380, *Tolentino vs. Francisco*, 57 Phil. 742 and *Unson vs. Abella*, 43 Phil. 496). In other words, appellants maintain that because of the annulment of the compromise agreement, "it becomes ineluctable that the oppositors' opposition to the probate of the will be deemed reinstated. If this were not the effect, the rights of your appellants would surely be prejudiced, not to mention the fact that the opposing parties would benefit from an act which this Honorable Court declared to be illegal from its inception. Therefore, it behooves upon this Honorable Court, as a Court of last resort, to remedy the situation by allowing your oppositors to prove the allegations of their opposition to the probate of the subject last will and testament." (at p. 13, Brief of Appellants.)

At first blush, appellants' contention would appear cogent and persuasive. Upon further reflection, however, a fundamental flaw therein readily becomes apparent. As we see the situation of appellants, the decisive question as far as they are concerned is, since they have voluntarily entered into a compromise agreement "expressly prohibited or declared void by law" (Article 1409, Civil Code), may they recall, withdraw or otherwise render ineffective what they have already done in performance of their part in the illegal bargain? We believe that they cannot. In other words, having withdrawn their opposition to the will in question by virtue of that agreement, subsequently voided by this Court for being contrary to law, can they now ask that the approval of said will be set aside in order that on account of their contemplated revival of their opposition, the proponents may be compelled to comply with the requirements of the aforementioned provision of the Rules making the presentation of all of the three attesting witnesses to the will indispensable for its probate? We do not think they can. True it is that a compromise agreement on the civil status of persons is not a criminal offense in which the parties to the contract, being in *pari delicto*, are left where they are found, but there is Article 1412 of the Civil Code (formerly Article 1306 of the Civil Code of Spain in force in 1940) which provides similarly as follows:

"ART. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

- (1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;
- (2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise. (1306)"

In effect, in compliance with the compromise agreement, appellants agreed that the probate of the will be made on the basis of the testimony of only one of the attesting witnesses thereto, and because there was no other opposition, the court proceeded to act pursuant to Sec. 5 of Rule 77 allowing probate upon the testimony of only one attesting witness. Now, since the agreement has been declared contrary to law and void, under the foregoing provision of the Civil Code, they may no longer continue with their opposition.

This is not to mention anymore the point stressed by appellees that in the decision of this Court referred to earlier, appellants have been declared as having "no right to take part" in the subject probate proceedings. As stated in the said decision, the appeal of appellants in that case was "from an order of the Court of First Instance of Pampanga declaring that Jose Castellvi y Bundalian and his sister Consuelo Castellvi y Bundalian -- hereafter referred to as the appellants -- have no right either to share in the estate of the deceased Alfonso de Castellvi y Hortega -- hereafter referred to as the decedent -- or to take part in the present case, and that Natividad Castellvi de Raquiza -- hereafter referred to as Mrs. Raquiza -- and the Heirs of Juan de Castellvi y Hortega -- hereafter referred to as the collateral heirs -- are the heirs of said decedent and, as such, entitled to divide his estate as follows: two-thirds (2/3) for Mrs. Raquiza and one-third (1/3) for the collateral heirs." (at p. 397) And in the dispositive portion, it is adjudged, "Wherefore, the order appealed from is hereby affirmed." Clearly, there was indeed a ruling in that decision against allowing appellants to take part in the proceedings below and to assert and prove their alleged relationship to the deceased. With this consideration in mind, We cannot see our way clear to practically reversing that decision and holding now that appellants may still intervene in the proceedings below.

Furthermore, in the same decision, the Court already indicated more or less how the quest of appellants for recognition their supposed right as acknowledged natural children of the deceased will more or less be frustrated because of inherent weakness of evidentiary support. The pertinent portion of the decision states:

"Again, the records indicate that appellants had very slim chances, if any, of establishing their aforementioned allegation. To begin with, the will of the decedent explicitly states that he had neither surviving ascendants nor descendants, except herein appellee as his judicially adopted daughter. Secondly, the statement in the agreement in question to the effect 'that the deceased had inadvertently omitted' appellants herein, cannot be true, for the decedent declared in said instrument:

'x x x Que en la actualidad tengo otra niña tan solamente protegida por mi, y desde su niñez la he permitido aun sin autorizacion formal o judicial, usar mi apellido en tal forma que se le conoce ahora por AMPARO DE CASTELLVI y HORTEGA. Es mi deseo que mi hija adoptiva NATIVIDAD DE CASTELLVI y HORTEGA la ampare y la cuide hasta donde le permitan sus medios mientras pueda y la extienda la manutencion que se posible. Yy mientras esta protegida mia es menor de edad, es mi voluntad que su tutoria sea igual que la de mi hija, segun como se expresa en los parrafos anteriores.'

"Having been careful enough to specifically mention his protegee, Amparo de Castelivi y Hortega, and to explicitly convey to Mrs. Raquiza his wish that she protect and support Amparo to the extent that her (Mrs. Raquiza's) resources may permit it, the decedent could not have possibly forgotten or 'inadvertently omitted' appellants herein, were they, his own flesh and blood, as appellants would have us believe.

"Lastly, Art. 131 of the Civil Code of Spain, which was in force in the Philippines at the time of decedent's demise, provided that:

'x x x The acknowledgment of a natural child must be made in the record of birth, in a will, or in some other public document.'

"In the case at bar, the will of the decedent does not merely fail to support the appellants' pretense. It, also, refutes the same. Furthermore, appellants do not even intimate that their pretense is borne out by their record of birth, or by a statement before a court of record, or by any authentic instrument. Neither do they claim that they were minors at the time of the death of their alleged father, or that, subsequently thereto, a document, unknown before, has been found in which he expressly recognized them as his natural children, which are the only cases in which an action for recognition may be brought after the death of the alleged natural father or mother (Art. 137, Civil Code of Spain). (at p. 402.)

And so, even if in strict sense, the most that We can decide here is that appellants are already precluded from

taking part or intervening in the proceedings below in so far as the probate of the will is concerned, which naturally does not comprehend any ruling as to whether or not said appellants may still be entitled to attack the substantive validity of the provisions and dispositions of that will, the appellants would be well advised to reassess their chances more carefully, if only to avoid further useless judicial litigation that would occupy the time and effort of the courts which can be better utilized for the adjudication of more meritorious cases.

IN VIEW OF ALL THE FOREGOING and the considerations informing the order appealed from, as indicated therein, the said order is affirmed, with costs against appellants.

Fernando, Antonio, Aquino, and Martin, JJ., concur.

Concepcion, Jr., J., on leave.

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