

MARIA B. DIAZ, AS SUBSTITUTED BY HER CHILDREN PABLO DIAZ, LOURDES DIAZ-ROQUE, GERVACIO DIAZ, JR., AND MARIO DIAZ, PETITIONERS, VS. THE COURT OF APPEALS, EDUARDO AZARRAGA, ROSARI...

G.R. No. L-42007. June 22, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

ISIDRO Azarraga, who died in 1911, was survived by ten (10) children named (1) Rosario, (2) Natividad, (3) Juan, (4) Amador, (5) Severo, (6) Ester, (7) Leopoldo (8) LEODEGARIO, (9) Filomena and (10) Pastora (not in order of ages). It is not questioned that Filomena (No. 9) was a legitimate child, her mother being Calixta Lozada, wife of ISIDRO. It is neither questioned that children Nos. (1) to (7) were illegitimate children of ISIDRO with his mistress Valentina Abarracoso.

The controversy between the parties is in reference to LEODEGARIO (No. 8) whom petitioner MARIA B. Diaz claims to be the brother in full blood of her mother Filomena (No. 9) and of her aunt Pastora (No. 10). On the other hand, private respondents claim that LEODEGARIO (No. 8) was the illegitimate son of ISIDRO and Valentina Abarracoso and, hence, the brother in full blood of children Nos. (1) to (7). Private respondents further claim that Pastora (No. 10) was an illegitimate daughter of ISIDRO and one Guadalupe Villareiz.

On September 10, 1949, LEODEGARIO (simply referred to hereinafter as the DECEDENT) died intestate (while the Spanish Civil Code was still in effect), leaving no surviving spouse nor descendants. He had properties in Capiz, acquired during his lifetime, which are now the subject matter of this Petition.

On October 15, 1949, MARIA Bellosillo Diaz (the original petitioner herein before she was substituted by her legal heirs as she died during the pendency of the suit), filed in the Court of First Instance of Capiz the basic petition for the issuance of Letters of Administration in her favor for the settlement of the DECEDENT's estate.

On October 25, 1949, one Amador Azarraga filed a formal opposition praying that he, instead of MARIA, be appointed as Administrator.

On March 1, 1950, the Court of origin, after hearing, issued the following Order:

"This is a petition filed by Maria B. Diaz for her appointment as Administrator of the estate of the deceased, Leodegario Azarraga. The petition has been duly published in accordance with law, and an opposition has been filed by Amador Azarraga who claimed that the deceased left other half-sisters and half-brothers not included in the petition. When the case was called for hearing, the oppositor manifested to the Court that if the determination or declaration of heirs be postponed to a later date, they would not object to the appointment of an Administrator in the discretion of the Court."

"From the testimony given in open Court by the petitioner, we deduced the following facts: The Leodegario Azarraga was a resident of Capiz, Capiz for some time previous to the month of September, 1949, that on Sept.

10, 1949 Leodegario Azarraga, while in Manila, accidentally died in said city (Annex 'A'); that the deceased left no will known to his relatives, and therefore, died intestate; that the petitioner Maria B. Diaz is a daughter of the sister of the deceased, and therefore a niece of the late Leodegario Azarraga; that the said Leodegario Azarraga left properties in the Municipality of Pilar consisting of real estate valued at P28,000.00 more or less."

"Considering that Maria B. Diaz was the one who filed the petition and the fact that Pastora Azarraga, a legitimate sister of the deceased is living with her and agreeable to her appointment as administratrix, and considering further that Maria B. Diaz is sufficiently educated and capable of administering the properties of the deceased consisting mostly of residential lots, we believe that she should be appointed as administratrix of the estate."

"WHEREFORE, said Maria B. Diaz is hereby appointed as administratrix of the intestate estate of the late Leodegario Azarraga upon the filing of a bond in the amount of TWO THOUSAND PESOS (P2000.00). Once said bond is approved by the Court, let letters of administration be issued in her favor." (Underlining ours)

On August 17, 1970, or more than twenty years later, Eduardo Azarraga, heir of the original oppositor Amador Azarraga, who died in 1957, filed before the then Court of First Instance of Capiz, Branch I, a petition to remove MARIA as Administratrix for failing, among others, to submit a final accounting of her administration and a project of partition as required by the Court, and prayed that he be appointed instead as Administrator (Special Proceedings No. V-517).

On October 14, 1970, Eduardo Azarraga and his brothers, sisters, nephews and nieces, who are private respondents herein (referred to hereinafter as Oppositors-appellants) filed a petition for declaration as DECEDENT's heirs, which petition they amended on January 12, 1971 to include other alleged heirs.

The question here is to determine who should be the DECEDENT's intestate heir? Is it MARIA B. Diaz, the legitimate daughter of Filomena (No. 9)? Or should it be the other children of ISIDRO (Nos. 1 to 7), who, allegedly, like the DECEDENT, are the illegitimate children of ISIDRO and Valentina Abarracoso?

Oppositors-appellants' submission is that since the DECEDENT was an illegitimate issue of ISIDRO and Valentina Abarracoso, MARIA, who is a daughter of Filomena (No. 9), a legitimate issue of ISIDRO and his wife Calixta Lozada, is barred from inheriting from the DECEDENT by virtue of Article 943 of the Spanish Civil Code,[1] (Article 992 of the present Civil Code). MARIA's version, on the other hand, is that the DECEDENT was a legitimate son of ISIDRO and his wife Calixta Lozada, hence it is she, considering the waiver in her favor by her aunt Pastora (No. 10), who is entitled to inherit from the DECEDENT.

On October 9, 1971, the Court of origin, in its Decision, denied Oppositors-appellants' petition for a declaration of heirship in their favor, and instead, declared Pastora (No. 10) and MARIA as the persons entitled to inherit ab intestato to the DECEDENT's estate.

Oppositors-appellants filed a timely appeal to the then Court of Appeals, which, in a Decision promulgated on November 12, 1974,[2] affirmed the appealed judgment in toto.

Oppositors-appellants sought reconsideration and succeeded in securing a reversal from a Special Division of Five, which rendered a new Decision on May 22, 1975,[3] holding thus:

"WHEREFORE, finding the motion for reconsideration meritorious, the same is granted. The decision of Nov. 12, 1974 is hereby set aside and a new one entered as follows:

1. Declaring the oppositors-appellants as the legal heirs of the deceased Leodegario Azarraga;
2. Declaring the aforementioned heirs co-owners in equal shares of the properties left by the said deceased;

3. Removing appellee Maria B. Diaz as administratrix of the estate of the deceased Leodegario Azarraga and appointing in her stead Eduardo Azarraga;

4. Ordering appellee Maria B. Diaz, to deliver and relinquish to the new administrator the possession of all the properties left by the deceased Leodegario Azarraga and to submit to the lower court an accounting of her stewardship of the estate of the deceased Leodegario Azarraga. Whether the new administrator Eduardo Azarraga will serve with or without bond is left to the sound discretion of the lower Court.

"SO ORDERED."

MARIA's first Motion for Reconsideration of the fore-going Decision was denied, likewise by a Special Division of Five.[4] A second Motion for Reconsideration met the same fate with respondent Court also voting three to two.[5]

Hence, this petition, centering on the focal question of whether or not respondent Appellate Court committed grave abuse of discretion in reversing itself an finding that the DECEDENT is an illegitimate son of ISIDRO and that it is the collateral relatives, the oppositors-appellants who stand to inherit his entire estate.

We are constrained to reverse. We agree with the Trial Court that the preponderance of evidence sustains a finding of the DECEDENT's legitimacy. His school records from the University of Sto. Tomas dated March 18, 1897 (Exhibits "Q", "Q-1" to "Q-5"); from 1903 - 1904, as a senior student in the College of Law (Exhibits "R", "R-1" to "R-3"); and that of March 18, 1908 (Exhibit "A"), show that he was enrolled as "Leodegario Azarraga y Lozada". Although those records by themselves are not proof of legitimate filiation, they constitute strong evidence thereof.

True, his Certificate of Admission to the Philippine Bar on April 16, 1904 (Exhibit "H") names him simply as "Leodegario Azarraga". It cannot be concluded therefrom, however, that he was not the legitimate son of Isidro Azarraga and Calixta Lozada. The several letters wherein he signed simply as "Leodegario Azarraga" neither disprove legitimacy. Even nowadays, the dropping of the maternal surname in correspondence or written documents is commonplace for convenience and/or brevity.

Oppositors-appellants' explanation that the name Lozada was used by the DECEDENT at the instance of their father, ISIDRO, who was anxious to cover up the DECEDENT's illegitimacy from the priests of the University of Sto. Tomas, and that they, too, were told to use Lozada as their middle name but that the DECEDENT and they dropped that name after the death of their father on May 2, 1911, is belied by Court records which show that even in 1908, the DECEDENT, as counsel of record in several cases, had simply used "Leodegario Azarraga" and had already dropped Lozada.[6]

The Last Will and Testament of Pastora Azarraga, executed on August 3, 1961, which, although standing alone does not establish DECEDENT's legitimacy, enhances that conclusion. That Will was duly probated on January 9, 1967 without objection and specifically indicates that the DECEDENT (No. 8), Pastora (No. 10) and Filomena (No. 9) [petitioner's mother] are "brother and sisters of the full blood they being children of Isidro Azarraga and Calixta Lozada".

Oppositors-appellants contend that said Will cannot prove pedigree for being self-serving and for not being ante litem motam as mandated by Section 33, Rule 130 of Rules of Court.⁶ Be that as it may, it is not being considered as independent evidence but collectively with other evidence on record. Besides, the actual controversy herein may be said to have arisen only in 1970 when oppositors-appellants filed their Petition for declaration of heirship. In the opposition filed by Amador Azarraga to the basic petition for Letters of Administration filed by MARIA in 1949, and even when Pastora expressed her conformity on November 15, 1949 to MARIA's appointment as

administratrix (Exhibit "I"), Pastora had already mentioned that she was the only living sister of the DECEDENT. The Court Order of March 1, 1950 also mentioned Pastora as the "legitimate sister" of the DECEDENT. No objection was heard to said declarations until twenty years later. Oppositors-appellants, therefore, cannot now be heard to aver that Pastora was the illegitimate daughter of ISIDRO and one Guadalupe Villareiz.

To offset MARIA's documentary evidence, oppositors--appellants presented a copy of the Decision of the then Court of First Instance of Capiz in a land registration case (Expediente No. 53, G.L.R.O. Record No. 14529) where it appears that MARIA was referred to as the "universal heir" of Isidro Azarraga. That, they allege, points to the conclusion that MARIA is the only legitimate heir of Isidro Azarraga and that the DECEDENT and Pastora were deprived of their suc-cessional rights by reason of their illegitimacy. The fallacy is evident because a universal heir is not synonymous with sole forced heir. Besides, the same Decision also mentions a distribution among the heirs in that "Los bienes del finado Isidro Azarraga fueron debidamente distribuidos entre sus herederos en el proyecto de reparticion que se ha presentado en dicha testamentaria y que fue debidamente aprobado por este Juzgado" (Exhibit "K").

Significant also in this regard is the narration of facts in *Sison vs. Azarraga*, 30 Phil. 129 (1915), of which case we can take judicial notice, eloquently showing that not only had the DECEDENT been already given his share of the inheritance but that he was also appointed executor of his father Isidro's estate, as well as a guardian of petitioner and her brother Jesus. To quote:

"On April 27, 1911, Isidro Azarraga executed his final will and testament, in which he appointed his son Leodegario Azarraga x x x executor, and distributed his property among his children and other relatives, the said Leodegario receiving a certain number of carabaos (clause 5 of the will) and a legacy of P8,115.72 for the valuable services rendered to the testator (clause 6); he further instituted as his sole and universal heirs his two grandchildren called Maria Felisa and Jesus, both surnamed Bellosillo y Azarraga, children of the deceased spouses Ignacio Bellosillo and Filomena Azarraga, the last named being the testator's daughter (clause 4). Said testator also directed that his son Leodegario Azarraga and his son-in-law Miguel Robledo be apointed guardians of his said grandchildren without being required to furnish bond therefor x x x" (Italics ours).

The foregoing is an additional index of legitimacy of the DECEDENT and serves to corroborate MARIA's testimony that it was her uncle, the said DECEDENT, who attended to her personal and proprietary interests, which declaration was disbelieved by respondent Appellate Court.

In the overall, the presumption in DECEDENT's favor of legitimacy has not been successfully contradicted nor overcome by oppositors-appellants' testimonial or documentary evidence.

In reversing its original Decision, respondent Appellate Court misappreciated the chain of circumstances detailed by the totality of the evidence. Instead, it isolated piece-meal evidence and held each of them to be insufficient and inconclusive to prove legitimacy thereby leading it to an erroneous conclusion.

WHEREFORE, the Decision of respondent Court of Appeals, dated May 22, 1975, is hereby set aside, and its Decision of November 12, 1974 affirming in toto the judgment of the Court of First Instance of Capiz, Branch I, is hereby reinstated.

Costs against private respondents.

SO ORDERED.

Teehankee, (Chairman), Plana, Relova, Gutierrez, Jr., and De La Fuente, JJ., concur.

[1] "ARTICLE 943. A natural or a legitimated child has no right to succeed ab intestato the legitimate children and relatives of the father or mother who has acknowledged it; nor shall such children or relatives so inherit from the natural or legitimated child.

[2] Penned by Justice Ramon G. Gaviola, Jr. and concurred in by Justices Luis B. Reyes and Pacifico P. de Castro.

[3] Justice Crisolito Pascual penned the new Decision; which was concurred in by Justices Luis B. Reyes and Pacifico P. de Castro. Justices Ramon G. Gaviola, Jr. and Conrado M. Vasquez dissented.

[4] Justice Luis B. Reyes penned the Resolution, concurred in by Justices Pacifico P. de Castro and Francisco Tantuico, Jr. vice Justice Crisolito Pascual, who had inhibited himself for personal reasons. Justices Ramon G. Gaviola, Jr. and Conrado M. Vasquez maintained their dissent.

[5] Special Division of Five composed of Justices Ramon C. Fernandez, Luis B. Reyes, Ramon G. Gaviola, Jr. Conrado M. Vasquez, and Mama Busran.

[6] see *Suilliong & Co., et al vs. Silvina Chutayasan*, 12 Phil. 13, November 8, 1908; *Manuel Guevarra vs. Carmen de Pascual*, 12 Phil. 311, December 22, 1908.

[6] "Act or declaration about pedigree - The act or declaration of a person deceased, or outside of the Philippines, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where those facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree."

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