

**TESTATE ESTATE OF THE LATE DON ALFONSO DE CASTELLVI,
ADMINISTRATRIX. NATIVIDAD CASTELLVI DE RAQUIZA,
PETITIONER-APPELLEE, VS. JOSE CASTELLVI AND CONSUELO
CASTELLVI, RESPONDENTS ...**

G.R. No. L-17630. October 31, 1963

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal 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— 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.

The record shows that, upon petition filed by the decedent, in Special Proceeding No. 5393 of the Court of First Instance of Pampanga, praying for the adoption of a child, approximately 7-year old, then called Natividad Cano y Soto—now Mrs. Raquiza—the latter was, on September 8, 1934, judicially declared to be the legally adopted daughter of said decedent. Subsequently, or on March 7, 1940, the latter died in Spain, whereupon his brother, Juan initiated this Special Proceeding No. 6824 of the aforementioned Court, for the settlement of the estate of the decedent, as an intestacy. Mrs. Raquiza was then about 13 years of age, and under the care of Emilia A. Trono— hereafter referred to as Trono—who objected to the intestate upon that ground that the decedent had left a last will and testament, which she presented for probate. In said document the decedent declared that he was single and had neither ascendants nor descendants, except his legally adopted daughter, now Mrs. Raquiza, to whom he bequeathed two-thirds of his estate, and that he left the balance thereof, or one-third of said estate, to his aforementioned brother Juan, or, should he predecease the decedent, to their sister Maria Francisca, or, in the event she shall, likewise, predecease him (the decedent), to the children of said Juan, the collateral heirs above referred to.

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 guarddan-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;

* * * * *

"4. That the deceased had inadvertently omitted the Party of the Second Part from his last will and testament, unduly depriving, them of their legitimate 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 Dn. 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;

* * * * *

" (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 * * * to annul the agreement * * * 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 a 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' 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 * * *" 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, or 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.

The main question before us is whether the lower court had authority to pass, in the order appealed from, upon the question whether or not appellants 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.

In this connection it should be noted that the nullity of said agreement is manifested. Indeed, being, as it is, in the nature of a compromise made owing to appellants' opposition to the probate of the decedent's will, said agreement falls squarely within the purview of Art. 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."

Moreover, the agreement had been made without any consideration whatsoever, insofar as Mrs. Raquiza was concerned, for: 1) appellants' opposition to the probate of the will of the decedent, if successful, would have innured to the benefit of Mrs. Raquiza, since the collateral relatives of the decedent, who is survived by a legitimate or adopted child, have no right to succeed him, in case of intestacy (Art. 946, Civil Code of Spain) ; and 2) the share of the acknowledged natural children, if any, is deductible, not from the legitime of Mrs. Raquiza, as the adopted daughter of the decedent, but from the free portion of his estate, which is that bequeathed in said will to his collateral relatives (Arts. 840, and 942, Civil Code of Spain). In other words, appellants' opposition to the probate of the will, if sustained by the lower court, would have automatically excluded said collateral relatives of the decedent as his heirs, with the possibility that the appellee may, in addition to her legitime of two-thirds of the hypothetically intestate estate, get said free portion, if appellants fail to prove their status as alleged acknowledged natural children of the decedent.

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:

"* * * Que en la actualidad tengo otra nina tan solamente protegida por mi, y desde su ninez 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 la permitan sus medios mientras pueda y la extienda la manutencion que sea posible. Y 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 Castellvi y Hortega, and to explicitly convey to Mrs. Raquiza his wish that she protects and supports 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:

"* * * 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 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, had 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).

Appellants maintain, however, that the order of December 11, 1940, approving the disputed agreement, had already become final and executory, no appeal having been taken therefrom and no other remedy having been seasonably availed of for the purpose of setting aside said order. In this connection, appellants allege that, although Trono sought a reconsideration of the order in question, the motion to this effect was not filed until over ten (10) months after the issuance of said order, when the same was already final and executory, according to appellants herein. In further support of this conclusion, appellants Cite the order of August 8, 1946, denying the motion of Mrs. Raquiza of July 16, 1946—praying that the order of December 11, 1940, be set aside and that the agreement in question be nullified—upon the ground that said order of December 11, 1940, had "already acquired finality".

Upon the other hand, Mrs. Raquiza asserts the contrary, invoking, in support thereof, the pre-war order of the lower court denying Trono's motion for reconsideration of September 18, 1941, upon the ground that, having signed the agreement of December 11, 1940, Trono was in estoppel to question its validity, but allegedly reserving to Mrs. Raquiza the right to seek the annulment of said agreement upon becoming of age "or upon having a legal guardian". Although appellants now contend that the existence of this reservation has not been duly established, because copy of the aforementioned order has not been introduced in evidence, we are inclined to believe that Mrs. Raquiza's aforementioned allegation is true, not only because appellants have not denied its veracity—although they should know the truth about it, for being parties in the proceedings, they must have received copy of the order in question—but, also, because, when Mrs. Raquiza filed, on July 14, 1946, her motion for reconsideration of the order of December 11, 1940 (approving the agreement of the same date) specifically alleging that her right to file said motion had been reserved by the Courts in its order denying Trono's motion for reconsideration of September 18, 1941, appellants did not deny the truth of this' allegation—although the facts must have been fresher in their minds at that time (1946)—and merely averred that the reconsideration of said

order of December 11, 1940, had already been previously denied.

Regardless of the foregoing, appellants appear to rely, in effect, upon the proposition that their status as alleged acknowledged natural children of the decedent, and their right to take part as such in these proceedings and to receive one-third (1/3) of the estate of the deceased as their legitime are already res judicata in view of said order of December 11, 1940, approving the contested agreement of the same date. We find this contention untenable.

To begin with, the order of December 11, 1940 did not contain any declaration concerning either the status or filiation of appellants or their right to share in the estate of the decedent or to intervene in the case. Whether appealed or reconsidered or not, said order can not be deemed, therefore, to have settled any of these issue.

Secondly, the agreement in question merely provided that the same be attached to the record. The parties there to did not ask the court to render a judgement or issues an order in conformity with the provisions thereof and enjoining compliance therewith, or even to approve it. Neither did they contemplate a judgment or an order in this case declaring that appellants are the acknowledged natural children of the decedent and adjudicating to them one-third (1/3) of his estate. On the contrary, it stipulated "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" (Mrs. Raquiza) "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"—Mrs. Raquiza—"shall grant unto the Party of the Second Part"—appellants herein—"one-half" (1/2) of that which shall be allotted to her out of the estate." In other words, the parties to the agreement envisioned a judicial adjudication of two-thirds (2/3) of the estate to Mrs. Raquiza and of the remaining one-third (1/3) to the collateral heirs, and, thereafter, an assignment by Mrs. Raquiza of "one-half" (1/2) of the share thus "allotted to her" by the court in favor of the appellants herein.

Thirdly, the judicial approval of the agreement was made in the order allowing the will to probate. Under our rules on pleadings, practice and procedure, that was not the time for the court to settle the question as to who are the heirs of the decedent and what their, respective shares in his estate shall be. An administrator thereof had not as yet been appointed. In fact, said order directed the petitioner in the case to propose the name of a person for appointment as such administrator. There being no one as yet with authority to look for and take possession of the properties of the decedent, administer the same, pay the outstanding obligations of the deceased and collect all debts due to him, and see to it that the interest of all parties concerned be duly protected, the Court was still without authority to proceed with the distribution of the estate. In other words, it had no jurisdiction to determine tile persons entitled to participate therein and their respective shares in the net assets of the estate, the existence of which net assets was still undetermined, and could not possibly be determined at that time.

It is lastly argued that the status of appellants herein as alleged natural children of the decedent had been admitted by Mrs. Raquiza in several incidents in this case. More particularly: (a) on several occasions (on May 13 and December 1, 1947 and September 10, 1948), she—thru either her guardian-ad-litem or her counsel—had consented to the division of certain funds belonging to the estate of the decedent into three (3) equal parts—one for her, one for the collateral heirs and another for appellants; (b) a manifestation filed by her on November 23, 1955, contains, inter alia, a reference to the appellants as heirs. of the decedent; (c) in two (2) documents (an agreement with the Philippine Trust Co., dated September 27, 1955 and a petition dated October 1, 1957) Mrs. Raquiza averred that she is entitled to one-third (1/3) of the estate of the decedent; and (d) she gave her conformity to two (2) accounts of the administratrix, which included some payments made to the appellants. It would appear, however, that Mrs. Raquiza was then badly in need of funds, and that she could not, or believed she could not have obtained said funds from the estate of the decedent at least, as expeditiously as desired unless appellants consented thereto. In any event, since the express agreement on appellants' status is null and void, as contrary to a positive statutory injunction, the aforementioned implied admission can neither carry more weight than said

agreement nor cure the nullity thereof. The conformity of Mrs. Raquiza to the share in said fund given to the appellants and to the amounts received by them from the administratrix, according to said accounts, imply, at most, a waiver of her right to the specific share and amounts involved in the incidents aforementioned, and no more.

Wherefore, the order appealed from is hereby affirmed, with costs against the appellants. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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