

## JUAN PALACIOS, PETITIONER AND APPELLANT, VS. MARIA CATIMBANG PALACIOS, OPPOSITOR AND APPELLEE.

*G. R. No. L-12207. December 24, 1959*

Ponente: BAUTISTA ANGELO, J.

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### BAUTISTA ANGELO, J.:

Juan Palacios executed his last will and testament on June 25, 1946 and availing himself of the provisions of the new Civil Code, he filed on May 23, 1956 before the Court of First Instance of Batangas a petition for its approval. In said will, he instituted as his sole heirs his natural children Antonio C. Palacios and Andrea C. Palacios.

On June 21, 1956, Maria Catimbang filed an opposition to the probate of the will alleging that she is the acknowledged natural daughter of petitioner but that she was completely ignored in said will thus impairing her legitime.

After the presentation of petitioner's evidence relative to the essential requisites and formalities provided by law for the validity of a will, the court on July 6, 1956 issued an order admitting the will to probate. The court, however, set a date for the hearing of the opposition relative to the intrinsic validity of the will and, after proper hearing concerning this incident, the court issued another order declaring oppositor to be the natural child of petitioner and annulling the will insofar as it impairs her legitime, with costs against petitioner.

From this last order, petitioner gave notice of his intention to appeal directly to the Supreme Court, and accordingly, the record was elevated to this Court.

It should be noted that petitioner instituted the present proceeding in order to secure the probate of his will availing himself of the provisions of Article 838, para graph 2, of the new Civil Code, which permit a testator to petition the proper court during his lifetime for the allowance of his will, but to such petition one Maria Catimbang filed an opposition alleging that she is the acknowledged natural daughter of petitioner but that she was completely ignored in the will thus impairing her legitime. In other words, Maria Catimbang does not object to the probate of the will insofar as its due execution is concerned or on the ground that it has not complied with the formalities prescribed by law; rather she objects to its intrinsic validity or to the legality of the provisions of the will.

We hold that such opposition cannot be entertained in this proceeding because its only purpose is merely to determine if the will has been executed in accordance with the requirements of the law, much less if the purpose of the opposition is to show that the oppositor is an acknowledged natural child who allegedly has been ignored in the will for such issue cannot be raised here but in a separate action. This is especially so when the testator, as in the present case, is still alive and has merely filed a petition for the allowance of his will leaving the effects thereof after his death.

This is in line with our ruling in *Montañanovs. Suesa*, 14 Phil., 676, wherein we said: "The authentication of the

will decides no other questions than such as touch upon the capacity of the testator and the compliance with those requisites or solemnities which the law prescribes for the validity of a will. It does not determine nor even by implication prejudice the validity or efficiency of the provisions; that may be impugned as being vicious or null, notwithstanding its authentication. The questions relating to these points remain entirely unaffected, and may be raised even after the will has been authenticated."

On the other hand, "after a will has been probated during the lifetime of a testator it does, not necessarily mean that he cannot alter or revoke the same before his death. Should he, make a new will, it would also be allowable on his petition, and if he should die before he has had a chance, to present such petition, the ordinary probate proceedings after the testator's death would be in order" (Report of the Code Commission, pp. 53-54).

The reason for this comment is that the rights to the succession are transmitted from the moment of the death of the decedent (Article 777, new Civil Code).

It is clear that the trial court erred in entertaining the opposition and in annulling the portion of the will which allegedly impairs the legitime of the oppositor on the ground that, as it has found, she is an acknowledged natural daughter of the testator. This is an extraneous matter which should be threshed out in a separate action.

Wherefore, the order appealed from is set aside, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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