

**TESTATE ESTATE OF THE DECEASED LUCIA CESAREA AGATON,
VICENTE ESTORQUE AND SALVADOR ESTORQUE,
PETITIONER-ADMINISTRATOR AND LEGATEE-APPELLANTS, VS.
SIMPLICIO ESTORQUE, OPPOSITOR-A...**

G.R. No. L-19573. June 30, 1970

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

When Lucia Cesarea Agaton died on May 27, 1949, she left a will which was admitted to probate by the Court of First Instance of Capiz in its order of August 13, 1953. In said will she made the following dispositions of her properties:

(a) To her son Simplicio Estorque ?

1. Lot No. 328 of the cadastral survey of Dao, Capiz, with an area of 4,661 square meters and covered by transfer certificate of title No. 1488;
2. Lot No. 1427 of the same cadastral survey, with an area of 5,691 square meters and covered by original certificate of title No. 9639; and
3. One-half of the house owned by the deceased.

(b) To her other son Vicente Estorque -

1/6 of Lot No. 346[1] of the cadastral survey of Dao, Capiz, covered by original certificate of title No. 21374, which lot had an aggregate area of 157,368 square meters.

(c) To her granddaughter Teresita Estorque, daughter of Simplicio, the other half of the house above referred to.

(d) To her grandson Salvador Estorque, son of Vicente, the other 5/6 of lot No. 346.

In connection with lot No. 1427, the devise thereof to Simplicio Estorque was revoked automatically, pursuant to the terms of the will, when the said property was redeemed from the testatrix by the former owner, from whom it had been acquired under a pacto de retro sale.

In the order of the probate court of August 13, 1953, it was declared:

In due time the court appointed two commissioners of appraisal, who thereafter, on April 10, 1954, submitted their report containing the following inventory of the properties left by the deceased:

“(a) Lot No. 328, Dao Cadastre, with an area of 4,673 (4,661 according to description, Exhibits A, A-1), square meters, valued then at P450.00;

“(b) Lot No. 345, Dao Cadastre, with an area of 135,438 square meters, valued at P11,685.00, with 5 coconut

trees and 150 clumps of bamboos, valued then at P25.00 and P750.00, respectively;

“(c) Granary or storehouse of iron roofing without flooring standing on Lot No. 345, valued then at P950.00;

“Por tanto, el Tribunal ordena la legalizacion del documento Exhibit "A" como testamento de la finada Lucia Cesarea Agaton, sujeto, sin embargo, a una reduccion adecuada en la porcion legada a Salvador Estorque para cuyo fin las partes gestionaran del tribunal el nombramiento de los comisionados desinteresados para inspeccionar y avaluar el valor actual de los bienes dejados...” (underscoring supplied)

“(d) Lot No. 330, Dao Cadastre, with an area of 39,359 square meters, valued then at P2,345.00;

“(e) House of iron roofing valued at P2,000.00; and

“(f) 4 carabaos at P200.00 each.

In addition to the abovementioned properties, the estate had a cash balance of P7,404.89 in the possession of the administrator Vicente Estorque as of December 29, 1960.

On March 18, 1961 the court, after eliminating lot No. 330 because it was already registered in the names of the two brothers, Simplicio and Vicente Estorque, issued an order for the division and distribution of the rest of the estate, as follows:

“As far as legally possible the will of the testatrix should be followed. As noted above, the testatrix has left only two heirs has been expressly bettered. (sic). Under the old Civil Code then in force when the testatrix died she was free to dispose or bequeath in favor of the legatees a portion not exceeding one-third of her estate.

“To the legatee Salvador Estorque the testatrix herein bequeathed five-sixth (5/6) of Lot No. 345, referred to in paragraph (b) of the list given above. Since said Lot No. 345 contains an area of 135,438 square meters, the testatrix, therefore, bequeathed to the legatee Salvador Estorque a pro-indiviso portion thereof equivalent in area to 112,865 square meters. This manifestly is in excess of what the law then allowed the testatrix to do without impairing the legitimes of the heirs.

“Since the testatrix specified Lot No. 345 from which to get the portion of her estate to be given as a legacy to her grandson Salvador Estorque, her last will would be fulfilled by assigning to said legatee one third (1/3) of said Lot No. 345 or a pro-indiviso portion thereof equivalent in area to 45,146 square meters together with the granary or storehouse standing thereon.

“With this adjustment made pursuant to the order of this Court of August 13, 1953, the legacies given to the two legatees named herein, as a whole, no longer impair the legitimes reserved by the law for the forced heirs.

“WHEREFORE, it is hereby ordered that the estate left by the decedent LUCIA CESAREA AGATON be divided, partitioned and distributed, as it is hereby divided, partitioned and distributed as follows:

1. For the share of the heir Simplicio Estorque, the following are hereby adjudicated:

- (a) The whole of Lot No. 328 with an area of 4,661 square meters;
- (b) One third (1/3) pro indiviso portion of Lot No. 345, or an area equivalent to 45,146 square meters;
- (c) Two (2) carabaos;
- (d) One-half (1/2) of the cash balance of P7,404.89 in the possession of the administrator herein; and
- (e) One-half (1/2) of the house referred to in paragraph (e) of the list of properties given elsewhere above.

2. For the share of the heir Vicente Estorque the following are hereby adjudicated:

- (a) One third (1/3) pro-indiviso portion of Lot No. 345, or an area equivalent to 45,146 square meters;
- (b) Two (2) carabaos;
- (c) One-half (1/2) of the cash balance of P7,404.89 in the possession of the administrator herein.

3. For the share of the legatee Salvador Estorque, the following are hereby adjudicated:

- (a) One third (1/3) pro-indiviso portion of Lot No. 345, with an area equivalent to 45,146 square meters; and
- (b) The granary or storehouse standing on Lot No. 345, referred to in paragraph (c) of the list of properties given elsewhere above.

4. For the share of the legatee Teresita Estorque, the following are hereby adjudicated:

- (a) One-half (1/2) of the house referred to in paragraph (e) of the list of properties given elsewhere above.

This proceeding is hereby declared closed and terminated."

Vicente Estorque and his son Salvador moved to reconsider the adjudication thus made, assailing in particular the division of Lot No. 345 into three equal parts instead of in accordance with the will of the deceased, wherein 1/6 was bequeathed to Vicente and 5/6 to Salvador. The motion for reconsideration was denied, and these two brought the case to us on appeal.

Appellants contend that the division of said lot as made by the testatrix in her will should not be disturbed; that the shares of her two sons Simplicio and Vicente consisted only of the short legitime, or 1/3 of the estate; and that the share willed to Salvador was in the nature of a mejora, did not impair that short legitime, and was therefore valid.

The value of the properties left by the testatrix, as inventoried by the commissioners appointed by the lower court, including the cash balance of P7,404.89 and excluding lot 330 of the Dao cadastre, was P24,064.89. Of this amount, two-thirds corresponded to the long legitime, or P16,043.24, of which one-half, or P8,021.62, was available for betterment. The remaining one-third, or P8,021.62, was the freely disposable portion.

There can be no dispute that the value of the properties willed to the two grandchildren, Salvador and Teresita Estorque, was more than the free portion. The share of Salvador alone, consisting of 5/6 of lot No. 345, had a value of P10,383.30. That given to Teresita was worth P1,000.00. Appellants, however, contend that insofar as the share of Salvador exceeded the free portion it was given in concept of mejora or betterment, pursuant to the second paragraph of Article 808 of the Spanish Civil Code, which provides:

ART. 808. The legitime of legitimate children and descendants consists of two-thirds of the hereditary estate of the father and of the mother.

Nevertheless, the latter may dispose of one of the two-thirds forming the legitime in order to apply it as a betterment to their legitimate children or descendants.

They may freely dispose of the remaining third."

Under the appellants' theory the disposition in favor of Salvador Estorque is valid since it does not impair the strict legitime of either of the testatrix' children. The question is, was the bequest to him a mejora? According to Article 828 of the same Code, "the bequest or legacy made by the testator to one of the children or descendants shall not be considered a betterment (mejora) except where the testator has expressly declared that such is his will or when it cannot be included in the free portion."

The will of the deceased Lucia Cesarea Agaton is in the Visayan dialect and the bequest to Salvador Estorque reads: "kag ang nabilen nga lima ka bahin (5/6) akon ginahatag ng iya panubli-on sa alila ko nga apo nga si Salvador Estorque." The word "panubli," the appellants point out, is the nearest equivalent in the Visayan dialect to the concept of mejora or betterment. We find no denial of the assertion in the brief for the appellees. In any event, Article 828, above-quoted, also considers as mejora such bequest or legacy to a child or descendant as cannot be included in the free portion, as long, of course, as the strict legitime of the compulsory heirs is not impaired thereby.

The appellees argue that since Salvador Estorque is not himself a compulsory heir of the testatrix, no mejora could validly be given to him, inasmuch as the mejora is part of the long legitime, which is destined exclusively for compulsory heirs - the two sons, Vicente and Simplicio - in the present case. The language of Article 808 is that the parents "may dispose of one of the two-thirds forming the legitime in order to apply it as a betterment to their legitime children or descendants." The preponderant weight of authority is to the effect that a descendant who is not a forced heir can be given a mejora; for example, a grandchild whose father still lives and is entitled to the legitime. (Manresa, Vol. VI, 7th ed., pp. 486-489; Scaevola, *Codigo Civil*, Tomo 14, pp. 508-509; Puig Brutau, *Derecho Civil*, Tomo V, Vol. 30 pp. 62-64; Decision of the Supreme Court of Spain, December 19, 1903). The said decision, after tracing the history of Spanish legislation on the subject, particularly Law 18 of Toro, which granted such right expressly, concludes that "there is no provision in the Law of Bases or in the (Civil) Code which is contrary to what has been traditionally followed, as would have been undoubtedly expressed were it really intended to change or modify such important piece of legislation..."

In view of the foregoing considerations, as well as of the rule that as far as legally possible the expressed desire of the testator must be followed, the dispositions of her properties made by the deceased Lucia Cesarea Agaton in her will must be upheld as valid. In addition to the shares of the two compulsory heirs, as stated in the will, they are each entitled to one-half of the other properties not disposed of therein, namely, the four carabaos and the cash balance of P7,404.89.

Wherefore, the order of the trial court dated March 18, 1961 is set aside, and the case is remanded for the partition of the estate as above indicated as well as for such further proceedings as may be necessary in connection therewith. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Castro, Fernando, Teehankee, and Barredo, JJ., concur.
Villamor, J., is on leave.

[1] Referred to by the parties herein as in reality Lot No. 345.

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