

REMEDIOS NUGUID, PETITIONER AND APPELLANT VS. FELIX NUGUID AND PAZ SALONGA NUGUID, OPPOSITORS AND APPELLEES.

G. R. No. L-23445. June 23, 1966

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Rosario Nuguid, a resident of Quezon City, died on December 30, 1962, single, without descendants, legitimate or illegitimate. Surviving her were her legitimate parents, Felix Nuguid and Paz Salonga Nuguid, and 6 brothers and sisters, namely: Alfredo, Federico, Remedios, Conrado, Lourdes and Alberto, all surnamed Nuguid.

On May 18, 1963, petitioner Remedios Nuguid filed in the Court of First Instance of Rizal a holographic will allegedly executed by Rosario Nuguid on November 17, 1951, some 11 years before her demise. Petitioner prayed that said will be admitted to probate and that letters of administration with the will annexed be issued to her.

On June 25, 1963, Felix Nuguid and Paz Salonga Nuguid, concededly the legitimate father and mother of the deceased Rosario Nuguid, entered their opposition to the probate of her will. Ground therefor, inter alia, is that by the institution of petitioner Remedios Nuguid as universal heir of the deceased, oppositors - who are compulsory heirs of the deceased in the direct ascending line - were illegally preterited and that in consequence the institution is void.

On August 29, 1963, before a hearing was had on the petition for probate and objection thereto, oppositors moved to dismiss on the ground of absolute preterition.

On September 6, 1963, petitioner registered her opposition to the motion to dismiss. The court's order of November 8, 1963, held that "the will in question is a complete nullity and will perforce create intestacy of the estate of the deceased Rosario Nuguid" and dismissed the petition without costs. A motion to reconsider having been thwarted below, petitioner came to this Court on appeal.

- Right at the outset, a procedural aspect has engaged our attention. The case is for the probate of a will. The court's area of inquiry is limited - to an examination of, and resolution on, the extrinsic validity of the will. The due execution thereof, the testatrix's testamentary capacity, and the compliance with the requisites or solemnities by law prescribed, are the questions solely to be presented, and to be acted upon, by the court. Said court - at this stage of the proceedings - is not called upon to rule on the intrinsic validity or efficacy of the provisions of the will, the legality of any devise or legacy therein.[1]

A peculiar situation is here thrust upon us. The parties shunted aside the question of whether or not the will should be allowed probate. For them, the meat of the case is the intrinsic validity of the will. Normally, this comes only after the court has declared that the will has been duly authenticated.[2] But petitioner and oppositors, in the court below and here on appeal, travelled on the issue of law, to wit: Is the will intrinsically a nullity?

We pause to reflect. If the case were to be remanded for probate of the will, nothing will be gained. On the contrary, this litigation will be protracted. And for aught that appears in the record, in the event of probate or if the

court rejects the will, probability exists that the case will come up once again before us on the same issue of the intrinsic validity or nullity of the will. Result: waste of time, effort, expense, plus added anxiety. These are the practical considerations that induce us to a belief that we might as well meet head-on the issue of the nullity of the provisions of the will in question.[3] After all, there exists a justiciable controversy crying for solution.

- Petitioner's sole assignment of error challenges the correctness of the conclusion below that the will is a complete nullity. This exacts from us a study of the disputed will and the applicable statute.

Reproduced hereunder is the will:

"Nov. 17, 1951

I, ROSARIO NUGUID, being of sound and disposing mind and memory, having amassed a certain amount of property, do hereby give, devise, and bequeath all of the property which I may have when I die to my beloved sister Remedios Nuguid, age 34, residing with me at 38-B Iriga, Q.C. In witness whereof, I have signed my name this seventh day of November, nineteen hundred and fifty-one.

(Sgd.) Illegible

T/ ROSARIO NUOUID"

The statute we are called upon to apply is Article 854 of the Civil Code which, in part, provides:

"Art. 854. The preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; the devises and legacies shall be valid insofar as they are not inofficious, ***"

Except for inconsequential variation in terms, the foregoing is a reproduction of Article 814 of the Civil Code of Spain of 1889, which is similarly herein copied, thus -

"Art. 814. The preterition of one or all of the forced heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall void the institution of heir; but the legacies and betterments[4] shall be valid, in so far as they are not inofficious, ***"

A comprehensive understanding of the term preterition employed in the law becomes a necessity. On this point Manresa comments:

"La pretericion consiste en omitir al heredero- en el testamento. O no se le nombra siquiera, o aun nombrandole como padre, hijo, etc., no se le instituye heredero ni se le deshereda expresamente, ni se le asigna parte alguna de los bienes, resultando privado de un raodo tacito de su derecho a legitima.

Para que exista pretericion, con arreglo al articulo 814, basta que en el testamento omita el testador a uno cualquiera de aquellos a quienes por su muerte corresponde la herencia forrsosa. Se necesita, pues, a) Que la omision se refiera a un heredero forzoso. b) Que la omision sea completa; que el heredero forzoso nada reciba en el testamento."[5]

It may now appear trite but nonetheless helpful in giving us a clear perspective of the problem before us, to have on hand a clear-cut definition of the word annul:

"To 'annul' means to abrogate, to make void; In re Morrow's Estate, 54 A. 342, 204 Pa. 484."[6]

"The word 'annul' as used in statute requiring court to annul alimony provisions of divorce decree upon wife's remarriage means to reduce to nothing; to annihilate; obliterate; blot out; to make void or of no effect; to nullify; to abolish. N.J.S.A. 2:50 - 38 (now N.J.S.2A:34-25). Madden vs. Madden, 40 A.2d 611, 614, 136 N.J. Eq. 132."[7]

"ANNUL. To reduce to nothing; annihilate; obliterate; to make void or of no effect; to nullify; to abolish; to do away with. Ex parte Mitchell, 123 W. Va. 283, 14 S.E. 2d. 771, 774." [8]

And now, back to the facts and the law. The deceased Rosario Nuguid left no descendants, legitimate or illegitimate. But she left forced heirs in the direct ascending line - her parents, now oppositors Felix Nuguid and Paz Salonga Nuguid. And, the will completely omits both of them: They thus received nothing by the testament; tacitly, they were deprived of their legitime; neither were they expressly disinherited. This is a clear case of preterition. Such preterition in the words of Manresa "anulara siempre la institucion de heredero, dando caracter absoluto a este ordenamiento", referring to the mandate of Article 814, now 854 of the Civil Code.[9] The one-sentence will here institutes petitioner as the sole, universal heir - nothing more. No specific legacies or bequests are therein provided for. It is in this posture that we say that the nullity is complete. Perforce, Rosario Nuguid died intestate. Says Manresa:

"En cuanto a la institucion de heredero, se anula. Lo que se anula deja de existir, en todo o en parte? No se anade limitacion alguna, como en el articulo 851, en el que se expresa que se anulara la institucion de heredero en cuanto perjudique a la legitima del desheredado. Debe, pues, entenderse que la anulacion es completa o total, y que este articulo como especial en el caso que le motiva. rige con preferencia al 817." [10]

The same view is expressed by Sanchez Roman:-

"La consecuencia de la anulacion de la institucion de heredero por pretericion de uno, varios o todos los forzosos en linea recta, es la apertura de la sucesion intestada, total o parcial. SerA total, cuando el testador que comete la pretericion, hubiere dispuesto de todos los bienes por titulo universal de herencia en favor de los herederos institucion, cuya institucion se anula, porque asi lo exige la generalidad del precepto legal del art. 814, al determinar, como efecto de la pretericion, el de que 'anularA la institucion de heredero'.***" [11]

Really, as we analyze the word annul employed in the statute, there is no escaping the conclusion that the universal institution of petitioner to the entire inheritance results in totally abrogating the will. Because, the nullification of such institution of universal heir - without any other testamentary disposition in the will - amounts to a declaration that nothing at all was written. Carefully worded and in clear terms, Article 854 offers no leeway for inferential interpretation. Giving it an expansive meaning will tear up by the roots the fabric of the statute. On this point, Sanchez Roman cites the "Memoria annual del Tribunal Supremo, correspondiente a 1908", which in our opinion expresses the rule of interpretation, viz:

*** El art. 814, que preceptua en tales casos de pretericion la nulidad de la institucion de heredero, no consiente interpretacion alguna favorable a la persona instituida en el sentido antes expuesto, aun cuando parezca, y en algun caso pudiera ser, mas o menos equitativa, porque una nulidad no significa en Derecho sino la suposicion de que el hecho o el acto no se ha realizado, debiendo, por lo tanto, procederse sobre tal base o supuesto, y consiguientemente, en un testamento donde falte la institucion, es obligado llamar a los herederos forzosos en todo caso, como habria que llamar a los de otra clase, cuando el testador no hubiese distribuido todos sus bienes en legados, siendo tanto mas obligada esta consecuencia legal cuanto que, en materia de testamentos, sabido es, segun tiene declarado la jurisprudencia. con repeticion, que no basta que sea conocida la voluntad de quien testa si esta voluntad no aparece en la forma y en las condiciones que la ley ha exigido para que sea valido y eficaz, por lo que constituiria una interpretacion arbitraria, dentro del derecho positivo, reputar como legatario a un heredero cuya institucion fuese anulada con pretexto de que esto se acomodaba mejor a la voluntad del testador, pues aun cuando asi fuese, sera esto razdn para modificar la ley, pero que no autoriza a una interpretacion contraria a sus terminos y a los principios que informan la testamentacion, pues no porque parezca mejor una cosa en el terreno del Derecho constituyente, hay razdn para convertir este juicio en regla de interpretacion, desvirtuando y anulando por este procedimiento lo que el legislador quiere establecer." [12]

- We should not be led astray by the statement in Article 854 that, annulment notwithstanding, "the devisees and legacies shall be valid insofar as they are not inofficious". Legacies and devises merit consideration only when they are so expressly given as such in a will. Nothing in Article 854 suggests that the mere institution of a universal heir in a will - void because of preterition - would give the heir so instituted a share in the inheritance. As to him, the will is inexistent. There must be, in addition to such institution, a testamentary disposition granting him bequests or legacies apart and separate from the nullified institution of heir, Sanchez Roman, speaking of the two component parts of Article 814, now 854, states that preterition annuls the institution of the heir "totalmente por la pretericion"; but added (in reference to legacies and bequests), "pero subsistiendo, x x x todas aquellas otras disposiciones que no se refieren a la institucion de heredero ***".[13] As Manreea puts it, annulment throws open to intestate succession the entire inheritance including "la porcion libre (que) no hubiese dispuesto en virtud de legado, mejora o donacion".[14]

As aforesaid, there is no other provision in the will before us except the institution of petitioner as universal heir. That institution, by itself, is null and void. And, intestate succession ensues,

- Petitioner's mainstay is that the present is "a case of ineffective disinheritance rather than one of preterition".[15] From this, petitioner draws the conclusion that Article 854 "does not apply to the case at bar". This argument fails to appreciate the distinction between preterition and disinheritance.

Preterition "consists in the omission in the testator's will of the forced heirs or anyone of them, either because they are not mentioned therein, or, though mentioned, they are neither instituted as heirs nor are expressly disinherited." [16] Disinheritance, in turn, "is a testamentary disposition depriving any compulsory heir of his share in the legitime for a cause authorized by law."[17] In Manresa's own words: "La privacion expresa de la legitima constituye la desheredacion. La privacion tacita de la misma se denomina pretericion." [18] Sanchez Roman emphasizes the distinction by stating that disinheritance "es siempre Voluntaria": preterition, upon the other hand, is presumed to be "involuntaria".[19] Express as disinheritance should be, the same must be supported by a legal cause specified in the will itself.[20]

The will here does not explicitly disinherit the testatrix's parents, the forced heirs. It simply omits their names altogether. Said will rather than be labeled ineffective disinheritance is clearly one in which the said forced heirs suffer from preterition.

On top of this is the fact that the effects flowing from preterition are totally different from those of disinheritance. Preterition under Article 854 of the Civil Code, we repeat, "shall annul the institution of heir". This annulment is in toto, unless in the will there are, in addition, testamentary dispositions in the form of devises or legacies. In ineffective disinheritance under Article 918 of the same Code, such disinheritance shall also "annul the institution of heirs," but only "insofar as it may prejudice the person disinherited", which last phrase was omitted in the case of preterition.[21] Better stated yet, in disinheritance the nullity is limited to that portion of the estate of which the disinherited heirs have been illegally deprived. Manresa's expressive language, in commenting on the rights of the preterited heirs in the case of preterition on the one hand and legal disinheritance on the other, runs thus: "Preteridos, adquieren el derecho a todo; deshereda dos, solo les corresponde un tercio o dos tercios,[22] segun el caso." [23]

- Petitioner insists that the compulsory heirs ineffectively disinherited are entitled to receive their legitimes, but that the institution of heir "is not invalidated," although the inheritance of the heir so instituted is reduced to the extent of said legitimes.[24]

This is best answered by a reference to the opinion of Mr. Chief Justice Koran in the Nerl case heretofore cited, viz:

"But the theory is advanced that the bequest made by universal title in favor of the children by the second marriage should be treated as legado and mejora and, accordingly, it must not be entirely annulled but merely reduced. This theory, if adopted, will result in a complete abrogation of articles 814 and 851 of the Civil Code. If every case of institution of heirs may be made to fall into the concept of legacies and betterments reducing the bequest accordingly, then the provisions of articles 814 and 851 regarding total or partial nullity of the institution, would be absolutely meaningless and will never have any application at all. And the remaining provisions contained in said article concerning the reduction of inofficious legacies or betterments would be a surplusage because they would be absorbed by article 817. Thus, instead of construing, we would be destroying integral provisions of the Civil Code.

The destructive effect of the theory thus advanced is due mainly to a failure to distinguish institution of heirs from legacies and betterments, and a general from a special provision. With reference to article 814, which is the only provision material to the disposition of this case, it must be observed that the institution of heirs is therein dealt with as a thing separate and distinct from legacies or betterment. And they are separate and distinct not only because they are distinctly and separately treated in said article but because they are in themselves different. Institution of heirs is a bequest by universal title of property that is undetermined. legacy refers to specific property bequeathed by a particular or special title. *** But again an institution of heirs cannot be taken as a legacy,"[25]

The disputed order, we observe, declares the will in question "a complete nullity". Article 854 of the Civil Code in turn merely nullifies "the institution of heir." Considering, however, that the will before us solely provides for the institution of petitioner as universal heir, and nothing more, the result is the same. The entire will is null.

Upon the view we take of this case, the order of November 8, 1963 under review is hereby affirmed. No costs allowed.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

[1] Castañeda vs. Alemany, 3 Phil. 426, 428; Pimentel vs. Palanca, etc., et al., 5 Phil. 436, 440-441; Limjuco vs. Ganara, 11 Phil. 393, 394-395; Montañano vs. Suesa, 14 Phil. 676, 679; Riera vs. Palmaroli, et al., 40 Phil. 105, 116; In re Estate of Johnson, 39 Phil. 156, 174; Palacios vs. Palacios, 58 Off. Gaz., No. 2, 220, 221; Teotico vs. del Val, etc., 1-18753, March 26, 1965.

[2] Section 13, Rule 76 of the Rules of Court.

[3] Section 2, Rule 1, Rules of Court. Case, et al., vs Jugo, et al., 77 Phil. 517, 522.

[4] Betterments are eliminated in the present Civil Code. II Padilla, Civil Code Annotated, p. 1077.

[5] VI Manresa, Comentarios al Co'digo Civil Espafiol, 7th Edition, (1951) p. 424.

[6] Words & Phrases, Vol. 3A, Permanent Ed., p. 3.

[7] Id., p. 4.

[8] Black's Law Dictionary, 4th ed., p. 117.

[9] Manresa, id., p. 426.

[10] Manresa, id., pp. 43

- [11] VI Sanchez Roman, *Estudios de Derecho Civil*, 2nd Edition, Volume 2, p. 1140.
- [12] VI Sanchez Roman, *id.*, p. 1138. This is also cited in the Neri case, 74 Phil. pp. 192-193. Justice J.B.L. Reyes and Judge R.C. Puno, in their work entitled "An Outline of Philippine Civil Law", 1956 ed., Vol. III, p. 8, citing *Herreros vs. Gil*, L-3362, March 1, 1951, likewise opined that "the right to make a will is statutory, not a natural right, and must be subordinate to law and public policy."
- [13] Sanchez Roman, *id.*, p. 1141.
- [14] Manresa, *id.*, p. 434,
- [15] Petitioner's brief, p. 15.
- [16] Neri, et al., vs. Akutin, et al., *supra*. 72 Phil., at p. 325.
- [17] Justice J.B.L. Reyes and Judge R.C. Puno, *id.*, p. 106.
- [18] Kanresa, *id.*, p. 424. Justice Reyes and Judge Puno, *ibid.*, 107, speaking of the requisites of a valid disinheritance, confirm: the theory that disinheritance "must be express (not implied) (Art. 918); otherwise there is preterition".
- [19] Sanchez Roman, *id.*, p. 1131.
- [20] Arts. 915, 916, "Civil Code; II Padilla, *Civil Code Annotated*, pp. 750-752.
- [21] III Tolentino, *Civil Code of the Philippines*, 1961 Edition, p. 172.
- [22] Now, one-half, Articles 888 and 889, *Civil Code*.
- [23] Manresa, *id.*, p. 430.
- [24] Petitioners brief, p. 13.
- [25] Neri, et al., vs. Akutin, et al., 74 Phil. pp. 191-192. Articles. 817 and 851, *Civil Code of Spain of 1889*, referred to in the opinion above, are now arts. 907 and 918 of the present *Civil Code*.

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