

TESTATE ESTATE OF JOSE EUGENIO RAMIREZ, MARIA LUISA PALACIOS, ADMINISTRATRIX, PETITIONER-APPELLEE, VS. MARCELLE D. VDA. DE RAMIREZ, ET AL., OPPOSITORS, JORGE AND ROBERTO RAMIREZ...

G.R. No. L-27952. February 15, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

The main issue in this appeal is the manner of partitioning the testate estate of Jose Eugenio Ramirez among the principal beneficiaries, namely: his widow Marcelle Demoron de Ramirez; his two grandnephews Roberto and Jorge Ramirez; and his companion Wanda de Wroblewski.

The task is not trouble-free because the widow Marcelle is a French who lives in Paris, while the companion Wanda is an Austrian who lives in Spain. Moreover, the testator provided for substitutions.

Jose Eugenio Ramirez, a Filipino national, died in Spain on December 11, 1964, with only his widow as compulsory heir. His will was admitted to probate by the Court of First Instance of Manila, Branch X, on July 27, 1965. Maria Luisa Palacios was appointed administratrix of the estate. In due time she sub-mitted an inventory of the estate as follows:

"INVENTARIO

Una sexta parte (1/6) pro-indivisa de un terreno, con sus mejoras y edificaciones, situado en la Escolta, Manila
..... P 500,000.00

Una sexta parte (1/6) pro-indivisa de dos parcelas de terreno situadas en Antipolo, Rizal
..... 658.34

Cuatrocientos noventa y un (491) acciones de la 'Central Azucarera de la Carlota' a P17.00 por accion
..... 8,347.00

Diez mil ochocientos seis (10,806) acciones de la 'Central Luzon Milling Co.', disuelta y en liquidacion, a P0.15 por accion 1,620.90

Cuenta de Ahorros en el Philippine Trust Co. 2,350.73

TOTAL..... P 512,976.97

MENOS:

Deuda al Banco de las Islas Filipinas, garantizada con prenda de las acciones de La Carlota P
5,000.00

VALOR LIQUIDO P507,976.97"

The testamentary dispositions are as follows:

"A. - En nuda propiedad, a D. Roberto y D. Jorge Ramirez, ambos menores de edad, residentes en Manila, I. F., calle Wright, No. 1818, Malate, hijos de su sobrino D. Jose Ma. Ramirez, con sustitucion vulgar a favor de sus respectivos descendientes, y, en su defecto, con sustitucion vulgar reciproca entre ambos.

"El precedente legado en nuda propiedad de la participacion indivisa de la finca Santa-Cruz Building, lo ordena el testador a favor de los legatarios nombrados, en atencion a que dicha propiedad fue creacion del querido padre del otorgante y por ser aque-llos continuadores del apellido Ramirez.

"B.- Y en usufructo a saber: -

a. - En cuanto a una tercera parte, a favor de la esposa del testador, Da. Marcelle Ramirez, domiciliada en IE PECO, calle del General Gallieni, No. 33, Seine, Francia, con sustitucion vulgar u fideicomisaria a favor de Da. Wanda de Wroblewski, de Palma de Mallorca, Son Rapiña, Avenida de los Reyes 13,

b. - Y en cuanto a las dos terceras partes restantes, a favor de la nombrada Da. Wanda de Wroblewski, con sustitucion vulgar y fideicomisaria, a saber: -

"En cuanto a la mitad de dichas dos terceras partes, a favor de D. Juan Pablo Jankowski, de Son Rapiña, Palma de Mallorca; y en cuanto a la mitad restante, a favor de su sobrino, D. Horace V. Ramirez, San Luis Building, Florida St. Ermita, Manila, I.F.

"A pesar de las sustituciones fideicomisarias precedentemente ordinadas, las usufructuarias nombradas conjuntamente con los nudo propietarios, podran en cualquier momento vender a tercero los bienes objeto delegado, sin intervencion alguna de los titulares fideicomisarios."

On June 23, 1966, the administratrix submitted a project of partition as follows: the property of the deceased is to be divided into two parts. One part shall go to the widow "en pleno dominio" in satisfaction of her legitime; the other part or "free portion" shall go to Jorge and Roberto Ramirez "en nuda propiedad." Furthermore, one third (1/3) of the free portion is charged with the widow's usufruct and the remaining two-third (2/3) with a usufruct in favor of Wanda.

Jorge and Roberto opposed the project of partition on the grounds: (a) that the provisions for vulgar substitution in favor of Wanda de Wroblewski with respect to the widow's usufruct and in favor of Juan Pablo Jankowski and Horacio V. Ramirez, with respect to Wanda's usufruct are invalid because the first heirs (Marcelle and Wanda) survived the testator; (b) that the provisions for fideicommissary substitutions are also invalid because the first heirs are not related to the second heirs or substitutes within the first degree, as provided in Article 863 of the Civil Code; (c) that the grant of a usufruct over real property in the Philippines in favor of Wanda Wroblewski, who is an alien, violates Section 5, Article XIII of the Philippine Constitution; and that (d) the proposed partition of the testator's interest in the Santa Cruz (Escolta) Building between the widow Marcelle, and the appellants, violates the testator's express will to give this pro-erty to them. Nonetheless, the lower court approved the pro-ject of partition in its order dated May 3, 1967. It is this order which Jorge and Roberto have appealed to this Court.

1. The widow's legitime.

The appellant's do not question the legality of giving Marcelle one-half of the estate in full ownership. They admit that the testator's dispositions impaired his widow's legitime. Indeed, under Art. 900 of the Civil Code "If the only survivor is the widow or widower, she or he shall be entitled to one-half of the hereditary estate." And since Marcelle alone survived the deceased, she is entitled to one-half of his estate over which he could impose no burden, encumbrance, condition or substitution of any kind whatsoever. (Art. 904, par. 2, Civil Code.)

It is the one-third usufruct over the free portion which the appellants question and justifiably so. It appears that the court a quo approved the usufruct in favor of Marcelle because the testament provides for a usufruct in her favor of one-third of the estate. The court a quo erred for Marcelle who is entitled to one-half of the estate "en pleno dominio" as her legitime and which is more than what she is given under the will is not entitled to have any additional share in the estate. To give Marcelle more than her legitime will run counter to the testator's intention for as stated above his dispositions even impaired her legitime and tended to favor Wanda.

2. The substitutions.

It may be useful to recall that "Substitution is the appointment of another heir so that he may enter into the inheritance in default of the heir originally instituted." (Art. 857, Civil Code.) And that there are several kinds of substitutions, namely: simple or common, brief or compendious, reciprocal, and fideicommissary. Art. 858, Civil Code.) According to Tolentino, "Although the Code enumerates four classes, there are really only two principal classes of substitutions: the simple and the fideicommissary. The others are merely variations of these two." (III Civil Code, p. 185 [1973].)

The simple or vulgar is that provided in Art. 859 of the Civil Code which reads:

"ART. 859. The testator may designate one or more persons to substitute the heir or heirs instituted in case such heir or heirs should die before him, or should not wish, or should be incapacitated to accept the inheritance.

"A simple substitution, without a statement of the cases to which it refers, shall comprise the three mentioned in the preceding paragraph, unless the testator has otherwise provided."

The fideicommissary substitution is described in the Civil Code as follows:

"ART. 863. A fideicommissary substitution by virtue of which the fiduciary or first heir instituted is entrusted with the obligation to preserve and to transmit to a second heir the whole or part of inheritance, shall be valid and shall take effect, provided such substitution does not go beyond one degree from the heir originally instituted, and provided further that the fiduciary or first heir and the second heir are living at time of the death of the testator."

It will be noted that the testator provided for a vulgar substitution in respect of the legacies of Roberto and Jorge Ramirez, the appellants, thus: "con sustitucion vulgar a favor de sus respectivos descendientes, y, en su defecto, con substitution vulgar reciproca entre ambos." The appellants do not question the legality of the substitution so provided.

The appellants question the "sustitucion vulgar y fideicomisaria a favor de Da. Wanda de Wroblewski" in connection with the one-third usufruct over the estate given to the widow Marcelle. However, this question has become moot because as we have ruled above, the widow is not entitled to any usufruct.

The appellants also question the "sustitucion vulgar y fideicomisaria" in connection with Wanda's usufruct over two-thirds of the estate in favor of Juan Pablo Jankowski and Horace V. Ramirez.

They allege that the substitution in its vulgar aspect is void because Wanda survived the testator or stated differently because she did not predecease the testator. But dying before the testator is not the only case for vulgar substitution for it also includes refusal or incapacity to accept the inheritance as provided in Art. 859 of the Civil Code, *supra*. Hence, the vulgar substitution is valid.

As regards the substitution in its fideicommissary aspect, the appellants are correct in their claim that it is void for the following reasons:

(a) The substitutes (Juan Pablo Jankowski and Horace V. Ramirez) are not related to Wanda, the heir originally instituted. Art. 863 of the Civil Code validates a fideicommissary substitution "provided such substitution does not go beyond one degree from the heir originally instituted."

What is meant by "one degree" from the first heir is explained by Tolentino as follows:

"Scaevola, Maura, and Traviesas construe 'degree' as designation, substitution, or trans-mission. The Supreme Court of Spain has decidedly adopted this construction. From this point of view, there can be only one transmission or substitution, and the substitute need not be related to the first heir. Manresa, Morell, and Sanchez Roman, however, construe the word 'degree' as generation, and the present Code has obviously followed this interpretation, by providing that the substitution shall not go beyond one degree 'from the heir originally instituted.' The Code thus clearly indicates that the second heir must be related to and be one generation from the first heir.

"From this, it follows that the fideicommissary can only be either a child or a parent of the first heir. These are the only relatives who are one generation or degree from the fiduciary." (Op. cit., pp. 193-194.)

(b) There is no absolute duty imposed on Wanda to transmit the usufruct to the substitutes as required by Arts. 865 and 867 of the Civil Code. In fact, the appellee admits "that the testator contradicts the establishment of a fideicommissary substitution when he permits the properties subject of the usufruct to be sold upon mutual agreement of the usufructuaries and the naked owners." (Brief, p. 26.)

3. The usufruct of Wanda.

The appellants claim that the usufruct over real properties of the estate in favor of Wanda is void because it violates the constitutional prohibition against the acquisition of lands by aliens.

The 1935 Constitution which is controlling provides as follows:

"SEC. 5. Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines." (Art. XIII.)

The court a quo upheld the validity of the usufruct given to Wanda on the ground that the Constitution covers not only succession by operation of law but also testamentary succession. We are of the opinion that the Constitutional provision which enables aliens to acquire private lands does not extend to testamentary succession for otherwise the prohibition will be for naught and meaningless. Any alien would be able to circumvent the prohibition by paying money to a Philippine landowner in exchange for a devise of a piece of land.

This opinion notwithstanding, We uphold the usufruct in favor of Wanda because a usufruct, albeit a real right, does not vest title to the land in the usufructuary and it is the vesting of title to land in favor of aliens which is proscribed by the Constitution.

IN VIEW OF THE FOREGOING, the estate of Jose Eugenio Ramirez is hereby ordered distributed as follows:

One-half (1/2) thereof to his widow as her legitime;

One-half (1/2) thereof which is the free portion to Roberto and Jorge Ramirez in naked ownership and the usufruct to Wanda de Wroblewski with a simple substitution in favor of Juan Pablo Jankowski and Horace V. Ramirez.

The distribution herein ordered supersedes that of the court a quo. No special pronouncement as to costs.

SO ORDERED.

Barredo (Chairman), Concepcion, Jr., De Castro, Ericta, and Escolin, JJ., concur.

Aquino, J., no part.

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