

TESTATE ESTATE OF THE LATE GREGORIO VENTURA: MARIA VENTURA, EXECUTRIX-APPELLANT, MIGUEL VENTURA AND JUANA CARDOVA, HEIRS, VS. MERCEDES VENTURA, AND HER HUSBAND PEDRO D. CORPUZ,...*G.R. No. L-23875. May 27, 1977*

Ponente: BARREDO, J.

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Appeal from the orders entered by the Court of First Instance of Nueva Ecija (Guimba Branch) in Special Proceedings No. 812, Testate Estate of the Late Gregorio Ventura, on February 26, 1964 and June 11, 1964 granting the motion of appellee Mercedes Ventura to annul the institution of heirs made in the will of the deceased, which was probated during his lifetime, upon the ground that said appellee and her sister Gregoria Ventura who have been found in the decision of another court in a corresponding case, already final, to be legitimate children and compulsory heirs of said deceased, were preterited and deprived of their share in the inheritance. Appellant denies that the decision referred to has already become final and executory.

On December 2, 1952, herein appellee Gregoria Ventura filed an action in the Court of First Instance of Nueva Ecija, Branch I, against the other appellee herein Mercedes Ventura, who later joined cause with Gregoria, and Gregorio Ventura. Gregoria and Mercedes claimed that they are the legitimate children of Gregorio Ventura and his wife Paulina Simpliciano, who died in 1943, and asked that one-half of the properties described in the complaint be declared as the share of their mother in the conjugal partnership, with them as the only forced heirs of their mother Paulina. The case was docketed as Civil Case No. 1064.

Later on, the same properties invoked in the just mentioned case became the subject of another action, Civil Case No. 1476, also of the Court of First Instance of Nueva Ecija, Branch I, filed by Alipio, Eufracia and Juliana, all surnamed Simpliciano, against Gregorio Ventura and the two sisters, Mercedes and Gregoria. They alleged that as the only children of Modesto Simpliciano, sole brother of Paulina, they, instead of Mercedes and Gregoria, whom they claimed are adulterous children of Paulina with another man, Teodoro Ventura, and as such are not entitled to inherit from her under the Old Civil Code, are the ones who should be declared as inheritors of the share of Paulina in the conjugal partnership with Gregorio.

In his answer to the above complaints, Gregorio Ventura took the position that Mercedes and Gregoria are not his children because they were born out of the adulterous relationship between Paulina who had left their conjugal home and Teodoro Ventura with whom she lived for more than ten years.

In Civil Case No. 1064, Gregorio Ventura filed a counterclaim against Mercedes and her husband, Pedro Corpuz, seeking the reconveyance from them of properties covered by Transfer Certificates of Title Nos. T-1102, T-1212, T-1213 and T-1214 of the Office of the Register of Deeds of Nueva Ecija.

Meanwhile, on December 14, 1953, Gregorio Ventura filed a petition for the probate of his will and thus gave rise

to herein subject proceeding, Special Proceedings No. 812. In due course, said will was admitted to probate on January 14, 1954. This admission became final.

Gregorio died on September 26, 1955, and on October 17, 1955, pursuant to his will, Maria Ventura was appointed executrix, in which capacity, she is appellant in this case.

On November 4, 1959, after a joint hearing of Civil Cases Nos. 1064 and 1476, the court rendered its decision, the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered declaring Mercedes Ventura and Gregoria Ventura to be the legitimate daughters of Paulina Simpliciano and Gregorio Ventura; declaring that as such legitimate daughters of Paulina Simpliciano they are entitled to 1/2 of the properties described in par. six of the complaint; x x x . The parties are urged to arrive at an amicable partition of the properties herein adjudicated within twenty days from the receipt of this decision. Upon their failure to do so, the Court shall appoint commissioners to divide the properties in accordance with the terms of this decision. Without pronouncement as to costs". (Page 36, Record on Appeal.)

Upon motion for reconsideration, this decision was amended by reducing the amount of the monetary judgment against Mercedes and her husband to P97,000.

Maria Ventura, who, as executrix of the estate of Gregorio, was substituted for him, tried on December 8, 1959 (also on December 24, 1959) to appeal from the above decision to this Court (G.R. No. L-18283) but said appeal was dismissed for late payment of the docketing fees and the estimated cost of printing the record on appeal. Subsequently, or, on October 8, 1962 and October 31, 1962, Executrix Maria filed motions for the execution, alleging that "said decision, as amended, had long been final and executory."

Earlier, or, on July 14, 1962, Mercedes filed, thru counsel, Atty. Arturo M. Tolentino, the "Motion to Annul Provisions of Will" that spawned the present controversy. The motion reads as follows:

"MOTION TO ANNUL PROVISIONS OF WILL

"COMES now the undersigned counsel, for MERCEDES VENTURA and to this Honorable Court respectfully states:

"1. That on November 4, 1959, in Civil Cases Nos. 1064 and 1476, entitled 'Gregoria Ventura and Exequiel Victorio, plaintiffs, versus Gregorio Ventura, Mercedes Ventura and Pedro Corpuz, as husband of Mercedes Ventura', the Honorable Court of First Instance of Nueva Ecija, through the Honorable Judge Jose N. Leuterio, rendered a decision the dispositive portion of which was originally as follows:

"WHEREFORE, judgment is hereby rendered declaring Mercedes Ventura and Gregoria Ventura to be the legitimate daughters of Paulina Simpliciano and Gregorio Ventura; declaring that as such legitimate daughters of Paulina Simpliciano they are entitled to 1/2 of the properties described in paragraph 6 of the complaint; ordering the defendant Maria Ventura, as administratrix of the estate of Gregorio Ventura to pay to Mercedes and Gregoria Ventura the amount of P19,074.09 which shall be divided equally between Mercedes and Gregoria Ventura; declaring that Emiliano Ventura is not the son of Paulina Simpliciano and therefore, not entitled to share in the estate of Paulina Simpliciano; declaring that Mercedes Ventura and Pedro D. Corpuz are the exclusive owners of the properties described in the certificates of Title Nos. T-1102, T-1212, T-1213, T-1214, Exhibits 32, 33, 34 and 35, respectively; ordering the said Mercedes Ventura and Pedro D. Corpuz to pay to the conjugal partnership of Gregorio Ventura and Paulina Simpliciano the sum of P100,000.00 one-half of which shall pertain to the estate of Gregorio Ventura and the other half to the estate of Paulina Simpliciano to whom Mercedes and Gregoria have succeeded, to be divided between Mercedes and Gregoria Ventura in equal parts; and dismissing Civil Case 1476. The parties are urged to arrive at an amicable partition of the

properties herein adjudicated within twenty days from the receipt of this decision. Upon their failure to do so, the Court shall appoint commissioners to divide the properties in accordance with the terms of this decision. Without pronouncement as to costs.'

"2. Subsequently, a Motion to amend the above dispositive portion with respect to the sum of P100,000.00, which Mercedes Ventura and Pedro D. Corpuz are required to pay to the conjugal partnership of Gregorio Ventura and Paulina Simpliciano, was filed, and the Honorable Court amended its decision reducing the said amount to P97,000.00, under an Order, dated December 21, 1959.

"3. The foregoing decision of the Honorable Court of First Instance of Nueva Ecija has long become final.

"4. That in the Will probated by this Honorable Court in the above-entitled case, Mercedes Ventura and Gregoria Ventura, legitimate children of the deceased Gregorio Ventura with Paulina Simpliciano, have been omitted or preterited.

"5. That under Article 854 of the Civil Code, '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; but the devises and legacies shall be valid insofar as they are not inofficious'.

"6. That pursuant to the above-quoted provisions of Article 854 of the Civil Code, all of the provisions of the probated will designating heirs are null and void, as a result intestacy follows, unless there are devisees and legacies which are not inofficious which would stand to such extent that they are not inofficious.

"IN VIEW OF THE FOREGOING, it is respectfully prayed that this Honorable Court declares null and void all the provisions of the Will probated in the above-entitled case designating heirs to any portion of the estate of the deceased Gregorio Ventura, and to declare MERCEDES VENTURA and GREGORIA VENTURA as the sole legitimate children of the deceased Gregorio Ventura entitled to his estate by the rules of intestacy, without prejudice to the rights of any other compulsory heir who may be entitled to any portion of the estate.

"Manila, for Cabanatuan City, July 14, 1962." (Pp. 10-14, Record on Appeal.)

This motion was opposed first, by Miguel Ventura and Juana Cardona, who were given shares in the will of Gregorio, and later by appellant Maria. The main ground of this latter opposition was that the decision in Civil Cases Nos. 1064 and 1476 was not yet final, notwithstanding the dismissal of her appeal. She contended that since the action filed by Mercedes and Gregoria was for partition, the decision of the court of November 4, 1959, which merely "urged" the parties "to arrive at an amicable settlement of the properties herein adjudicated within twenty days from receipt of this decision," and "upon their failure to do so, the Court shall appoint commissioners to divide the properties in accordance with the terms of this decision" left something else to be done and was, therefore, interlocutory and not final, citing 1 Moran, Rules of Court, 1950 ed. 810 and the cases therein cited.

On February 26, 1964, the trial court issued the first assailed order thus:

"ORDER

"This refers to the 'Motion to Annul Provisions of Will' filed by Mercedes Ventura thru counsel, Atty. Arturo M. Tolentino, dated July 14, 1962.

"After a careful perusal of said motion, conjointly with the supporting memorandum therefor filed by Gregoria Ventura dated November 4, 1963; the opposition thereto filed by Miguel Ventura and Juana Cardona, dated July 26, 1962, as well as the opposition filed by executrix Maria Ventura, dated October 30, 1963, and the rejoinder thereto of the spouses Gregoria Ventura and Exequiel Victorio, dated November 29, 1963 all filed thru their respective counsel, the Court finds said motion meritorious and hereby grants the same, it appearing

that the compulsory heirs Mercedes Ventura and Gregoria Ventura, legitimate children of the deceased Gregorio Ventura and Paulina Simpliciano, are indeed preterited.

"WHEREFORE, the institution of heirs in the will, Exhibit D-1, is hereby annulled. However, the devises given in favor of Clarita Ventura and Trinidad Ventura, as set out in paragraph 6 of the will, and in favor of Agapito, Alipio, Juliana and Eufracia, all surnamed Simpliciano, as set forth in par. 7 thereof, shall remain valid insofar as they are not inofficious.

"SO ORDERED." (Pp. 30-31, Rec. on Appeal.)

Maria moved for reconsideration, insisting on her theory of non-finality of the decision and adding as authority in support of her pose the ruling in *Fuentebella vs. Carrascoso*, G.R. No. 48102, May 27, 1942, which reversed the doctrines laid down in *Africa vs. Africa*, 42 Phil. 934 and *Villanueva vs. Capistrano*, 49 Phil. 460, relied upon by appellees.

On June 11, 1964, the other impugned order was entered as follows:

"O R D E R

"To the order of this Court dated February 26, 1964 in which the institution of heirs in the will, Exhibit D-1 was annulled upon motion of Gregoria Ventura and Mercedes Ventura who appear to have prevailed by this Court's judgment in Civil Cases Nos. 1064 and 1476 in which, among other things, the said Mercedes and Gregoria Ventura were declared as legitimate daughters of Paulina Simpliciano and Gregorio Ventura and entitled to one-half of the properties of the said spouses, a motion for reconsideration was filed by the executrix on the ground that the same is premature.

"Although the properties subject matter of Civil Cases Nos. 1064 and 1476 have not been actually partitioned in accordance with the said decision, but such partition did not, and could not, delay the finality of the judgment in such cases, considering that the partition is purely mechanical and all that the parties need do was to convoke the board of commissioners and to undertake the actual partition. The main cause of action, vis., the declaration of legitimacy of Mercedes and Gregoria Ventura, did not in any way depend on such partition, hence, after the lapse of the reglementary period within which to appeal the case, the finding of this Court respecting such legitimacy has now become final.

"UPON THE FOREGOING CONSIDERATIONS, this Court denied the motion for reconsideration filed by the executrix Maria Ventura on March 9, 1964.

"SO ORDERED." (Pp. 64-66, Rec. on Appeal.)

In her brief, appellant assigns the following four errors allegedly committed by the probate court:

"ASSIGNMENT OF ERRORS

I

"THE LOWER COURT ERRED IN NOT DECLARING THAT THE DECISION IN CIVIL CASES NOS. 1064 and 1476 ORDERING THE PARTITION OF THE PROPERTIES DESCRIBED IN THE COMPLAINT IS NOT AS YET FINAL AND EXECUTORY, THERE BEING SOMETHING MORE TO BE DONE IN THE TRIAL COURT FOR THE COMPLETE DISPOSITION OF THE CASES, AND, THEREFORE, IT IS PREMATURE TO ANNUL THE INSTITUTION OF HEIRS IN THE WILL OF GREGORIO VENTURA, EXHIBIT D-1.

II

"THE LOWER COURT ERRED IN ANNULING THE INSTITUTION OF HEIRS IN THE WILL OF GREGORIO VENTURA, EXHIBIT D-1.

III

"THE LOWER COURT ERRED IN DECLARING THAT 'ALTHOUGH THE PROPERTIES SUBJECT MATTER OF CIVIL CASES NOS. 1064 AND 1476 HAVE NOT BEEN ACTUALLY PARTITIONED IN ACCORDANCE WITH THE DECISION, BUT SUCH PARTITION DID NOT, AND COULD NOT, DELAY IN THE FINALITY OF THE JUDGMENT IN SUCH CASES, CONSIDERING THAT THE PARTITION IS PURELY MECHANICAL AND ALL THAT THE PARTIES NEED DO WAS TO CONVOKE THE BOARD OF COMMISSIONERS AND TO UNDERTAKE THE ACTUAL PARTITION.'

IV

"THE LOWER COURT ERRED IN HOLDING THAT THE DECLARATION OF LEGITIMACY OF MERCEDES AND GREGORIA VENTURA, IN CIVIL CASES NOS. 1064 AND 1476, DID NOT IN ANY WAY DEPEND ON SUCH PARTITION, HENCE, AFTER THE LAPSE OF THE REGLEMENTARY PERIOD WITHIN WHICH TO APPEAL THE CASE, THE FINDINGS OF THE COURT RESPECTING SUCH LEGITIMACY BECAME FINAL." (Pp. 1-3, Brief for Executrix-Appellant.)

Principal additional authority relied upon by appellant in maintaining that the decision in question has not yet become final is *Zaldariaga vs. Enriquez, et al.*, 1 SCRA 1188.

As may be noted, the issues discussed by the parties in their respective briefs could require a renewed deliberation on the variance in opinions among the members of the Court which culminated in the majority ruling in *Miranda vs. Court of Appeals, et al.*, 71 SCRA 295. It appears, however, that an important development in the instant case should make it unnecessary for Us to reexamine in this case said majority ruling.

On February 12, 1975, a motion to dismiss the present appeal on the ground that it has become moot and academic, was filed by Atty. Tolentino, as counsel for appellees Mercedes Ventura and Pedro Corpuz. The motion states that:

"2. That on October 10, 1968, the Commissioners appointed by the lower court to partition the properties subject-matter of Civil Cases Nos. 1064 and 1476 submitted their Amended Commissioners' Report for the partition of the conjugal estate of the late spouses, Gregorio Ventura and Paulina Simpliciano, and the partition of the estate of the late Paulina Simpliciano between Gregoria Ventura and Mercedes Ventura.

"3. The Commissioners, for the information of the Court, were: Emmanuel Mariano, husband of and representing the executrix-appellant, Maria Ventura; Daniel Victorio, son of and representing Gregoria Ventura; and Pedro D. Corpuz, husband of and representing Mercedes Ventura.

"4. That on October 22, 1968, the Court before whom Civil Cases Nos. 1064 and 1476 were pending, issued an Order reading as follows:

'Finding the Commissioners' Report, dated October 10, 1968, duly signed by the three Commissioners in accordance with law and not against public policy and morals, the same is hereby approved. Let the said Commissioners' Report be the laws between the parties with respect to the partition sought for the parties are hereby enjoined to abide by all the terms and stipulations stated and provided in said Report.

'These cases are hereby declared closed and terminated without any pronouncement as to costs.

'SO ORDERED.'

"5. That no appeal was made from said order, which is now final and executory." (Pp. 2-3, Motion in record.)

On March 6, 1975, appellant Maria Ventura, thru new counsel, Atty. Inocencio B. Garampil, filed an opposition contending that "there is no basis in alleging that the appeal (in this case) has become moot and academic" just because the partition in Civil Cases Nos. 1064 and 1476 has already been done with approval of the court which has not been appealed. But We find this posture of appellant inconsistent with the position taken by her in the court below in her motion for reconsideration of the order of February 26, 1964, where she stated:

"Is the decision of the Court in Civil Cases Nos. 1064 and 1476 dated November 4, 1959, as amended, the dispositive portion of which is quoted above, already final and executory?

"If it is already final and executory then the findings of the Court 'declaring Mercedes Ventura and Gregoria Ventura to be the legitimate daughters of Paulina Simpliciano and Gregorio Ventura' is already an established fact, and, therefore, Mercedes and Gregoria may properly ask for the annulment of the institution of heirs in the will, Exh. D-1, and this Court would be correct in annulling the institution of heirs in the will Exh. D-1 for 'the compulsory heirs Mercedes Ventura and Gregoria Ventura, legitimate children of the deceased Gregorio Ventura and Paulina Simpliciano, are indeed preterited' (order under reconsideration).

"On the other hand, if said decision of November 4, 1959 is not yet final and executory, or if it is merely interlocutory, because there is something more to be done for the complete disposition of the case, that is, the making of the partition by the duly appointed three (3) commissioners, and the action of the court upon such report, and that the order or judgment of the court approving such report is the final order or judgment, it follows that the findings of the court 'declaring Mercedes Ventura and Gregoria Ventura to be the legitimate daughters of Paulina Simpliciano and Gregorio Ventura', is interlocutory and not final. The executrix shall appeal said decision of November 4, 1959 in due time.

"If said decision of November 4, 1959 is not as yet final, it is, therefore, premature for this Court to order the annulment of the institution of heirs in the will Exh. D-1, on the ground that said Mercedes and Gregoria were preterited. If when we shall appeal said decision of November 4, 1959 and surely we shall appeal and that if the higher court shall find Mercedes and Gregoria to be the adulterous children of Paulina Simpliciano and her paramour Teodoro Ventura, as contended by Gregorio Ventura, then Mercedes and Gregoria are foreigners to Gregorio Ventura, they are not his daughters, and consequently they could not be said to be 'preterited' in Gregorio Ventura's will, Exh. D-1, and clearly the order of this Court dated February 26, 1964, is manifestly premature. Let us wait for the finality of the decision of November 4, 1959 entered in Cases Nos. 1064 and 1476." (Pp. 38-40, Rec. on Appeal.)

And so, acting on appellees' motion to dismiss appeal, it is Our considered opinion that the decision in Civil Cases Nos. 1064 and 1476 declaring that appellees Mercedes and Gregoria Ventura are the legitimate children of the deceased Gregorio Ventura and his wife, Paulina Simpliciano, and as such are entitled to the annulment of the institution of heirs made in the probated will of said deceased became final and executory upon the finality of the order approving the partition directed in the decision in question. We need not indulge in any discussion as to whether or not, as of the time the orders here in question were issued by the trial court said decision had the nature of an interlocutory order only. To be sure, in the case of *Miranda*, aforementioned, the opinion of the majority of the Court may well be invoked against appellant's pose. In any event, even if the Court were minded to modify again *Miranda* and go back to *Fuentebella* and *Zaldariaga*, - and it is not, as of now - there can be no question that the approval by the trial court in Civil Cases Nos. 1064 and 1476 of the partition report of the commissioners appointed for the purpose, one of whom, Emmanuel Mariano, is the husband of appellant, put a definite end to those cases, leaving nothing else to be done in the trial court. That order of approval is an appealable one, and inasmuch as no appeal has been taken from the same, it is beyond dispute that the decision in controversy has

already become final and executory in all respects. Hence, the case at bar has become moot and academic.

IN VIEW OF ALL THE FOREGOING, the appeal of Executrix-Appellant Maria Ventura in this case is hereby dismissed. No costs in this instance.

Fernando, (Chairman), Antonio, Aquino, and Martin, JJ., concur.

Concepcion, Jr., J., no part.

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