

**LEONORA PERIDO, JOINED BY HUSBAND MANUEL PIROTE,
INOCENCIA PERIDO, ALBENIO PERIDO, PAULINO PERIDO, LETIA
PERIDO, JOINED BY HUSBAND BIENVENIDO BALLYAO, LETICIA
PERIDO, JOINED BY H...**

G.R. No. L-28248. March 12, 1975

Ponente: MAKALINTAL, C.J.

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MAKALINTAL, C.J.:

This is an appeal by certiorari from the decision of the Court of Appeals in its CA-G.R. No. 37034-R, affirming the decision of the Court of First Instance of Negros Occidental in Civil Case No. 6529.

Lucio Perido of Himamaylan, Negros Occidental, married twice during his lifetime. His first wife was Benita Talorong, with whom he begot three (3) children: Felix, Ismael, and Margarita. After Benita died Lucio married Marcelina Baliguat, with whom he had five (5) children: Eusebio, Juan, Maria, Sofronia, and Gonzalo. Lucio himself died in 1942, while his second wife died in 1943.

Of the three (3) children belonging to the first marriage only Margarita Perido is still living. Her deceased brother, Felix Perido, is survived by his children Inocencia, Leonora, Albinio, Paulino, Letia, Leticia, and Eufemia, all surnamed Perido. Nicanora Perido, another daughter of Felix, is also deceased, but is survived by two (2) sons, Rolando and Eduardo Salde.

Margarita's other deceased brother, Ismael Perido, is survived by his children, namely: Consolacion, Alfredo, Wilfredo, and Amparo. Susano Perido, another son of Ismael, is dead, but survived by his own son George Perido.

Of Lucio Perido's five (5) children by his second wife, two are already dead, namely: Eusebio and Juan. Eusebio is survived by his children Magdalena Perido, Pacita Perido, Alicia Perido, Josefina Perido, Fe Perido, Teresa Perido, and Luz Perido, while Juan is survived by his only child, Juan A. Perido.

On August 15, 1960 the children and grandchildren of the first and second marriages of Lucio Perido executed a document denominated as "Declaration of Heirship and Extra-Judicial Partition," whereby they partitioned among themselves Lots Nos. 458, 471, 506, 511, 509, 513-B, 807, and 808, all of the Cadastral Survey of Himamaylan, Occidental Negros.

Evidently the children belonging to the first marriage of Lucio Perido had second thoughts about the partition. On March 8, 1962 they filed a complaint in the Court of First Instance of Negros Occidental, which complaint was later amended on February 22, 1963, against the children of the second marriage, praying for the annulment of the so-called "Declaration of Heirship and Extra-Judicial Partition" and for another partition of the lots mentioned therein among the plaintiffs alone. They alleged, among other things, that they had been induced by the defendants to execute the document in question through misrepresentation, false promises and fraudulent means; that the lots which were partitioned in said document belonged to the conjugal partnership of the spouses Lucio Perido and Benita Talorong; and that the five children of Lucio Perido with Marcelina Baliguat were all

illegitimate and therefore had no successional rights to the estate of Lucio Perido, who died in 1942. The defendants denied the foregoing allegations.

After trial the lower court rendered its decision dated July 31, 1965, annulling the "Declaration of Heirship and Extra-Judicial Partition." However, it did not order the partition of the lots involved among the plaintiffs exclusively in view of its findings that the five children of Lucio Perido with his second wife, Marcelina Baliguat, were legitimate; that all the lots, except Lot No. 458, were the exclusive properties of Lucio Perido; and that 11/12 of Lot No. 458 belonged to the conjugal partnership of Lucio Perido and his second wife, Marcelina Baliguat. The dispositive portion of the decision reads as follows:

"IN VIEW OF ALL THE FOREGOING, the Court renders judgment as follows: declaring the following as the legitimate children and grandchildren and heirs of Lucio Perido and Benita Talorong: Felix Perido, deceased; grandchildren: Inocencia Perido, Leonora Perido, Albinio Perido, Paulino Perido, Letia Perido, Leticia Perido, Eufemia Perido; Nicanora Perido, deceased; great grandchildren: Rolando Salde and Eduardo Salde; Ismael Perido, deceased; grandchildren: Consolacion Perido, Alfredo Perido, Susano Perido, deceased; great grandson: George Perido; Amparo Perido and Wilfredo Perido; and, Margarita Perido; (2) declaring the following as the legitimate children and grandchildren and heirs of Lucio Perido and Marcelina Baliguat: Eusebio Perido, deceased; grandchildren: Pacita Perido, Magdalena Perido, Alicia Perido, Josefina Perido, Fe Perido, Teresa Perido, and Luz Perido; Juan B. Perido, deceased; grandson, Juan A. Perido; Maria Perido; Sofronia Perido; and Gonzalo Perido; (3) declaring all lots (471, 506, 511, 509, 513-part, 807, and 808) except Lot No. 458 as exclusive properties of Lucio Perido so that each of them should be divided into eight (8) equal parts: 1/8 belongs to Felix Perido, but because of his death leaving eight (8) children, the same should be divided and allotted as follows: 1/64 to Inocencia Perido of age, widow; 1/64 to Leonora Perido, of age, married to Manuel Pirote; 1/64 to Albinio Perido, of age, married to Honorata Villasana; 1/64 to Paulino Perido, of age, married to Norma Villalba; 1/64 to Letia Perido, of age, married to Bienvenido Balyac; 1/64 to Leticia Perido, of age, married to Felix Villaruz; 1/64 to Eufemia Perido, of age, single; 1/64 to Nicanora Perido, but because she is now dead the same should be divided and allotted as follows: 1/128 to Rolando Salde, of age, single; and 1/128 to Eduardo Salde, of age, single; 1/8 belongs to Ismael Perido, but because he is already dead leaving five children, the same should be divided and allotted as follows: 1/40 to Consolacion Perido, of age, widow; 1/40 to Alfredo Perido, of age, married to Trinidad Tamargo; 1/40 to Susano Perido, but he is already dead with one son, the same goes to George Perido, of age, single; 1/40 to Wilfredo Perido, of age, single; 1/8 belongs to Margarita Perido, of age, widow; 1/8 belongs to Eusebio Perido, but because he is already dead with seven children, the same should be divided and allotted as follows: 1/56 goes to Pacita Perido, of age, single; 1/56 goes to Magdalena Perido, of age, single; 1/56 goes to Alicia Perido, of age, married to Isaias Ruiz; 1/56 goes to Josefina Perido, of age, married to Leopoldo Doloroso; 1/56 goes to Fe Perido, of age, single; 1/56 goes to Teresa Perido, of age, single; 1/56 goes to Luz Perido, of age, married to Fidel dela Cruz; 1/8 belongs to Juan B. Perido, but because he is already dead with one child, the same 1/8 goes to Juan A. Perido, of age, married to Salud Salgado; 1/8 goes to Maria Perido, of age, married to Julio Pirote; 1/8 goes to Sofronia Perido, of age, widow; and, 1/8 goes to Gonzalo Perido, of age, married to Lacomemoracion Estiller; (4) declaring the 11/12 shares in Lot No. 458 as conjugal partnership property of Lucio Perido and Marcelina Baliguat, which should be divided and allotted as follows: 11/24 goes to Lucio Perido to be divided into eight (8) equal shares and 11/24 goes to Marcelina Baliguat to be divided into five (5) equal shares or 11/120 for each of the children and again to be divided by the children of each child now deceased; (6) declaring Fidel Perido owner of 1/12 share in Lot 458 to be divided among his heirs to be determined accordingly later; and (6) declaring null and void Exhibit "J" of the plaintiffs which is Exhibit "10" for the defendants, without costs and without adjudication with respect to the counterclaim and damages, they being members of the same family, for equity and justice."

The plaintiffs appealed to the Court of Appeals, alleging that the trial court erred: (1) in declaring that Eusebio Perido, Juan Perido, Maria Perido, Sofronia Perido and Gonzalo Perido, were the legitimate children of Lucio

Perido and his second wife, Marcelina Baliguat; (2) in declaring that Lucio Perido was the exclusive owner of Lots Nos. 471, 506, 511, 509, 513-Part, 807, and 808 of Cadastral Survey of Himamaylan, Negros Occidental, and in not declaring that said lots were the conjugal partnership property of Lucio Perido and his first wife, Benita Talorong; and (3) in holding that 11/12 of Lot 458 was the conjugal partnership property of Lucio Perido and Marcelina Baliguat.

Finding no reversible error in the decision of the lower court, the Court of Appeals affirmed it in toto. The appellants moved to reconsider but were turned down. Thereupon they instituted the instant petition for review reiterating in effect the assignments of error and the arguments in the brief they submitted to the appellate court.

The first issue pertains to the legitimacy of the five children of Lucio Perido with Marcelina Baliguat. The petitioners insist that said children were illegitimate on the theory that the first three were born out of wedlock even before the death of Lucio Perido's first wife, while the last two were also born out of wedlock and were not recognized by their parents before or after their marriage. In support of their contention they allege that Benita Talorong died in 1905, after the first three children were born, as testified to by petitioner Margarita Perido and corroborated by petitioner Leonora Perido; that as late as 1923 Lucio Perido was still a widower, as shown on the face of the certificates of title issued to him in said year; and Lucio Perido married his second wife, Marcelina Baliguat, only in 1925, as allegedly established through the testimony of petitioner Leonora Perido.

The petition cannot be sustained. The Court of Appeals found that there was evidence to show that Lucio Perido's first wife, Benita Talorong, died during the Spanish regime. This finding is conclusive upon Us and beyond our power of review. Under the circumstance, Lucio Perido had no legal impediment to marry Marcelina Baliguat before the birth of their first child in 1900.

With respect to the civil status of Lucio Perido as stated in the certificates of title issued to him in 1923, the Court of Appeals correctly held that the statement was not conclusive to show that he was not actually married to Marcelina Baliguat. Furthermore, it is weak and insufficient to rebut the presumption that persons living together as husband and wife are married to each other. This presumption, especially where the legitimacy of the issue is involved, as in this case, may be overcome only by cogent proof on the part of those who allege the illegitimacy. In the case of *Adong vs. Cheong Seng Gee*,^[1] this Court explained the rationale behind this presumption, thus: "The basis of human society throughout the civilized world is that of marriage. Marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply interested. Consequently, every intendment of the law leans toward legalizing matrimony. Persons dwelling together in apparent matrimony are presumed, in the absence of any counter-presumption or evidence special to the case, to be in fact married. The reason is that such is the common order of society, and if the parties were not what they thus hold themselves out as being, they would be living in the constant violation of decency and of law. A presumption established by our Code of Civil Procedure is 'that a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage.' (Sec. 334, No. 28) *Semper praesumitur pro matrimonio* — Always presume marriage."

While the alleged marriage ceremony in 1925, if true, might tend to rebut the presumption of marriage arising from previous cohabitation, it is to be noted that both the trial court and the appellate court did not even pass upon the uncorroborated testimony of petitioner Leonora Perido on the matter. The reason is obvious. Said witness, when asked why she knew that Marcelina Baliguat was married to Lucio Perido only in 1925, merely replied that she knew it because "during the celebration of the marriage by the Aglipayan priest (they) got flowers from (their) garden and placed in the altar." Evidently, she was not even an eyewitness to the ceremony.

In view of the foregoing the Court of Appeals did not err in concluding that the five children of Lucio Perido and

Marcelina Baliguat were born during their marriage and, therefore, legitimate.

The second assignment of error refers to the determination of whether or not Lots Nos. 471, 506, 511, 509, 513-Part, 807 and 808 were the exclusive properties of Lucio Perido. In disposing of the contention of the petitioners that said lots belonged to the conjugal partnership of spouses Lucio Perido and Benita Talorong, the Court of Appeals said:

"x x x. We cannot agree again with them on this point. It is to be noted that the lands covered by the certificates of title (Exhs. B to G) were all declared in the name of Lucio Perido. Then there is evidence showing that the lands were inherited by Lucio Perido from his grandmother (t.s.n., p. 21, Feb. 20, 1964). In other words, they were the exclusive properties of the late Lucio Perido which he brought into the first and second marriages. By fiat of law said properties should be divided accordingly among his legal heirs."

The petitioners take exception to the finding of the appellate court that the aforementioned lots were inherited by Lucio Perido from his grandmother and contend that they were able to establish through the testimonies of their witnesses that the spouses Lucio Perido and Benita Talorong acquired them during their lifetime. Again, the petitioners cannot be sustained. The question involves appreciation of the evidence, which is within the domain of the Court of Appeals, the factual findings of which are not reviewable by this Court.

The third assignment of error is with regard to the ruling of the Court of Appeals sustaining the finding of the trial court that 11/12 of Lot 458 was the conjugal partnership property of Lucio Perido and his second wife, Marcelina Baliguat. Said the appellate court:

"With respect to Lot No. 458 which is now covered by Original Certificate of Title No. 21769 issued in 1925 the same should be considered conjugally owned by Lucio Perido and his second wife, Marcelina Baliguat. The finding of the lower court on this point need not be disturbed. It is expressly stated in the certificate of title (Exh. L) that Lucio Perido, the registered owner, was married to Marcelina Baliguat unlike in the previous land titles. If the law presumes a property registered in the name of only one of the spouses to be conjugal (Guinguing vs. Abutin, 48 Phil.144; Flores vs. Flores, 48 Phil. 288, Escutin vs. Escutin, 60 Phil. 922), the presumption becomes stronger when the document recites that the spouse in whose name the land is registered is married to somebody else, like in the case at bar. It appearing that the legal presumption that Lot No. 458 belonged to the conjugal partnership had not been overcome by clear proofs to the contrary, we are constrained to rule, that the same is the conjugal property of the deceased spouses Lucio Perido and Marcelina Baliguat."

In impugning the foregoing ruling, the petitioners maintain that they were able to prove that 6/12 of said Lot 458 was the conjugal property of spouses Lucio Perido and his first wife, Benita Talorong, and that the purchase price of the additional 5/12 of said lot came from the proceeds of sale of a lot allegedly belonging to Lucio Perido and his three children of the first marriage. As in the second assignment of error, the issue raised here also involves appreciation of the evidence and, consequently, the finding of the appellate court on the matter is binding on this Court. Indeed, a review of that finding would require an examination of all the evidence introduced before the trial court, a consideration of the credibility of witnesses and of the circumstances surrounding the case, their relevancy or relation to one another and to the whole, as well as an appraisal of the probabilities of the entire situation. It would thus abolish the distinction between an ordinary appeal on the one hand and review on certiorari on the other, and thus defeat the purpose for which the latter procedure has been established.[2]

WHEREFORE, the decision of the Court of Appeals is hereby affirmed, with costs against the petitioners.

Castro, Teehankee, Makasiar, and Esguerra, JJ., concur.

Muñoz Palma, J., is on leave abroad.

[1] 43 Phil. 43, 56.

[2] Tamayo vs. Callejo, No. L-25563, July 28, 1972, (46 SCRA 27).

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