

**SALUD DIVINAGRACIA, EMILIA DIVINAGRACIA, DOLORES  
DIVINAGRACIA, ROSARIO DIVINAGRACIA AND JUANITA  
DIVINAGRACIA, PETITIONERS, VS. JUDGE JOSUE N. BELLOSILLO, IN  
HIS CAPACITY AS PRES...**

*G.R. No. L-47407. August 12, 1986*

Ponente: PARAS, J.

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**PARAS, J.:**

This case is a sequel to *Divinagracia vs. Roviro*, L-42615, August 10, 1976, 72 SCRA 307 wherein it was stated:

"Feliciano Divinagracia died in Iloilo City on February 1, 1964. He was survived by his wife, Salud Bretana, and their four (4) daughters, named Emilia, Dolores, Rosario and Juanita. The notice of his death was published in two periodicals and in the Manila Times. Two days after his death, a petition was filed in the Court of First Instance of Iloilo for the settlement of his estate (Special Proceeding No. 1752).

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Judge Castrence C. Veloso in his order of April 17, 1971 approved the final accounting and project of partition and declared the proceeding "closed and terminated, subject to the condition that the heirs shall assume all the outstanding obligations of the estate."

On June 8, 1971 or after the order closing the intestate proceeding had become final, Camilo Divinagracia filed a motion to reopen it and to set aside the order of closure. He alleged that he was an illegitimate child of the decedent that he was born on November 9, 1930 and that he came to know of the intestate proceeding only when he was transferred as a government employee from Masbate to Iloilo a few days before June 8. He prayed for the determination of his share in the decedent's estate.

The administratrix in her opposition to the motion contended that the proceeding could no longer be re-opened; that its expediente had already been archived; that there is no allegation in the motion that Camilo's filiation was acknowledged by the decedents, and that the Juvenile and Domestic Relations Court of Iloilo has exclusive original jurisdiction to entertain Camilo's action for acknowledgement, as held in *Paterno vs. Paterno*, L-23060, June 30, 1967, 20 SCRA 585.

The motion remained unresolved for more than four years. Judge Veloso did not act on it before he retired in the early part of 1975. The case was re-raffled to respondent Judge Valerio V. Roviro who issued the questioned order dated October 18, 1975 re-opening the intestate proceeding.

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Finding the Order of closure already final and, executory, hence, can no longer be disturbed, and that the motion for re-opening involves the determination of Camilo's status as a spurious child of Feliciano Divinagracia, hence within the exclusive original jurisdiction of the Juvenile and Domestic Relations Court of Iloilo, this Court sets aside the said order dated October 18, 1975."

On February 21, 1977, Camilo Divinagracia filed a separate action before the Court of First Instance of Iloilo, docketed as Civil Case No. 10963, against herein petitioners, alleging substantially that he is the acknowledged illegitimate child of Feliciano Divinagracia, who died intestate on February 1, 1964 at Iloilo City; that the said Feliciano Divinagracia left a considerable estate which was administered in Special Proceedings No. 1752 (Intestate Estate of the late Feliciano Divinagracia), Court of First Instance of Iloilo; that in the project of partition in the said estate, he was preterited and the estate was divided among the petitioners, and praying that the said project of partition be annulled and petitioners be ordered to submit a new partition to include private respondent or in the alternative, to deliver to private respondent his share in the said estate, together with the fruits of the same, and to order petitioners to pay said private respondent moral damages, exemplary damages, and attorney's fees.

On March 14, 1977, petitioners filed a motion to dismiss the complaint on the following grounds: (1) that the complaint states no cause of action, because he has not yet proven his status as an heir; (2) that the court has no jurisdiction over the subject matter of the complaint and/or over the nature of the action because the determination of Camilo's status as spurious child falls within the exclusive original jurisdiction of the Juvenile and Domestic Relations Court of Iloilo; and (3) that private respondent's action has prescribed, because it was not brought during the lifetime of Feliciano Divinagracia.

On June 24, 1977, respondent court issued an order denying the motion to dismiss, holding that the "issues raised therein are evidentiary in nature and may only be resolved by the presentation of the parties' evidence" and that whatever defect in the motion for re-opening of Special Proceedings No. 1752 is cured by the allegation in the present complaint that plaintiff is an acknowledged illegitimate child of the late Feliciano Divinagracia which is hypothetically admitted in the motion to dismiss.

The motion for reconsideration having been denied, petitioners returned to this Court on December 3, 1977 on the present petition for certiorari and prohibition with preliminary injunction, alleging that respondent Judge acted without or in excess of jurisdiction or with grave abuse of discretion in denying their motion to dismiss, and praying that a restraining order or a preliminary injunction restraining respondent Judge from further proceeding with Civil Case No. 10963, and after hearing, that judgment be rendered annulling the said order denying the motion to dismiss.

On December 9, 1977, the Court issued a temporary restraining order and required the respondents to comment on the petition.

On July 31, 1978, the Court resolved to consider the comment as an answer and required the parties to file memoranda.

The pivotal issue presented in this case is- whether or not respondent court has jurisdiction over the subject matter of Civil Case No. 10963.

The petitioners contend, that on the authority of "Divinagracia vs. Roviro", the case falls within the jurisdiction of the Juvenile and Domestic Relations Court of Iloilo.

Upon the other hand, respondent maintain that it is within the jurisdiction of respondent court because Civil Case No. 10963 is an action for partition and therefore within the jurisdiction of the Court of First Instance (Sec. 44, Rep. Act 296).

We hold that the Court of First Instance (now Regional Trial Court) has jurisdiction over the case because:

- (1) Camilo claims he is already an acknowledged spurious child (that is already voluntarily acknowledged thru an "authentic writing",<sup>[1]</sup> and not a person seeking compulsory recognition); if this be true he is entitled to

obtain his hereditary share in the estate;

(2) at any rate, there are no more Juvenile and Domestic Relations Courts today under Batas Pambansa Bilang 129. Their functions have been transferred to the Regional Trial Court.

WHEREFORE, the petition is dismissed the temporary restraining order is lifted, and the Regional Trial Court is ordered to proceed with the case, no costs.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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[1] This authentic writing (See Art. 278, Civil Code)reads:

"Iloilo City  
Feb. 20, 1957

Dear Camilo,  
Please meet me in Dainty Restaurant for urgent matter.

Your Father,  
(Signature Illegible)"

Tolentino says that under the Civil Code of 1950, any "authentic writing" is not just a ground for compulsory recognition; it is in itself a voluntary recognition and does not require an action to compel recognition (Tolentino Vol. 1, New Civil Code, 1974 Ed). pp 580 - 584).

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