

WENCESLA CACHO, PETITIONER-APPELLEE, VS. JOHN G. UDAN AND RUSTICO G. UDAN, OPPOSITORS-APPELLANTS.*G.R. No. L-19996. April 30, 1965*

Ponente: REYES, J.B.L., J.

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Direct appeal, on questions of law, from an order of the Court of First Instance of Zambales (Hon. Lucas Lacson, presiding), issued on 20 February 1962, in its Special Proceeding No. 2230, wherein the court disallowed the opposition of John G. Udan and Rustico G. Udan to the probate of the alleged will of their sister Silvina Udan.

From the records it can be gleaned that on 13 December 1959 one Silvina G. Udan, single, and a resident of San Marcelino, Zambales, died leaving a purported will naming her son Francisco G. Udan and one Wencesla Cacho, as her sole heirs, share and share alike. Wencesla Cacho filed a petition to probate said Will in the Court of First Instance of Zambales on 14 January 1960 (RA. pp. 1-16). On 15 February 1960 Rustico G. Udan, legitimate brother of the testatrix, filed an opposition to the probate (RA. pp. 16-18). On 16 February 1960, Atty. Guillermo Pablo, Jr., filed his Appearance and Urgent Motion for Postponement for and in behalf of his client Francisco G. Udan, the appointed heir in the Will (RA. pp. 18-22). On 9 June 1960 Francisco G. Udan, through counsel, filed his opposition to the probate of this Will (RA. pp. 33-35). On 15 September 1960 oppositor Rustico G. Udan, through counsel, verbally moved to withdraw his opposition, dated 13 February 1960, due to the appearance of Francisco G. Udan, the named heir in the Will and said opposition was ordered withdrawn (RA. pp. 55-56). After one witness the Notary Public who made and notarized the Will had testified in court, oppositor Francisco G. Udan died on 17 June 1961 in San Marcelino, Zambales, Philippines (RA. pp. 63-66).

After the death of Francisco G. Udan, John G. Udan and Rustico G. Udan, both legitimate brothers of the testatrix Silvina G. Udan, filed their respective oppositions on the ground that the will was not attested and executed as required by law; that testatrix was incapacitated to execute it; and that it was procured by fraud or undue influence (RA. pp. 63-66; 67-71). On 20 January 1962 proponent-appellee, through counsel, filed a Motion to Dismiss Oppositions filed by the Oppositors (RA. pp. 73-80), and on 20 February 1962 the Honorable Court of First Instance of Zambales issued an Order disallowing these two oppositions for lack of interest in the estate and directing the Fiscal to study the advisability of filing escheat proceedings (RA. pp. 97-99). On 26 and 30 March 1962 both oppositors filed their Motions for Reconsideration, through their respective counsels, and these motions were both denied by the lower court on 25 April 1962 (RA. pp. 99-122; 131-132). On 7 May 1962 oppositors filed their joint Notice of Appeal (RA. pp. 132-135).

The first issue tendered by appellants is whether the oppositor brothers, John and Rustico Udan, may claim to be heirs intestate of their legitimate sister, the late Silvina Udan. We find that the court below correctly held that they were not, for at the time of her death Silvina's illegitimate son, Francisco Udan, was her heir intestate, to the exclusion of her brothers. This is clear from Articles 988 and 1003 of the governing Civil Code of the Philippines, in force at the time of the death of the testatrix:

"Art. 988 In the absence of legitimate descendants or ascendants, the illegitimate children shall succeed to the entire estate of the deceased."

"Art. 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles."

These legal provisions decree that collateral relatives of one who died intestate inherit only in the absence of descendants, ascendants, and illegitimate children. Albeit the brothers and sisters can concur with the widow or widower under Article 1101, they do not concur, but are excluded by the surviving children, legitimate or illegitimate (Art. 1003).

That Francisco Udan was the illegitimate son of the late Silvina is not denied by the oppositors; and he is so acknowledged to be in the testament, where said Francisco is termed "son" by the testatrix. As the latter was admittedly single, the son must be necessarily illegitimate (presumptively natural under Article 277).

The trial court, therefore, committed no error in holding that John and Rustico Udan had no standing to oppose the probate of the will. For if the will is ultimately probated John and Rustico are excluded by its terms from participating in the estate; and if probate be denied, both oppositors-appellants will be excluded by the illegitimate son, Francisco Udan, as sole intestate heir, by operation of law.

The death of Francisco two years after his mother's demise does not improve the situation of appellants. The rights acquired by the former are only transmitted by his death to his own heirs at law, not to the appellants, who are legitimate brothers of his mother, for the reason that, as correctly decided by the court below, the legitimate relatives of the mother can not succeed her illegitimate child. This is clear from Article 992 of the Civil Code.

"ART. 992. An illegitimate child has no right to inherit ab intestato from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child."

For the oppositors-appellants it is argued that while Francisco Udan did survive his mother, and acquired the rights to the succession from the moment of her death (Art. 777, Civ. Code), still he did not acquire the inheritance until he accepted it. This argument fails to take into account that the Code presumes acceptance of an inheritance if the latter is not repudiated in due time (Civ. Code, Art. 1057, p. 2), and that repudiation, to be valid must appear in a public or authentic instrument, or petition to the court. There is no document or pleading in the records showing repudiation of the inheritance by Francisco Udan. The latter's own opposition (RA. p. 61) to the probate of the alleged will is perfectly compatible with the intention to exclude the proponent Cacho as testamentary co-heir, and to claim the entire inheritance as heir ab intestato.

Finally, it is urged that no probate is only concerned with the due execution of a testament, any ruling on the successional rights of oppositors-appellants is at present premature. Inquiry into the hereditary rights of the appellants is not premature, if the purpose is to determine whether their opposition should be excluded in order to simplify and accelerate the proceedings. If, as already shown, appellants can not gain any hereditary interest in the estate, whether the will is probated or not, their intervention would merely result in unnecessary complication.

It may not be amiss to note, however, that the hearing on the probate must still proceed to ascertain the rights of the proponent Cacho as testamentary heir.

WHEREFORE, the order under appeal is affirmed, without prejudice to further proceedings in the case, conformably to this opinion. Costs against appellants John G. Udan and Rustico G. Udan.

Bengzon, C.J., Bautista Angelo, Concepcion, Paredes, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar,

JJ.,concur.

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