

INTESTATE ESTATE OF PABLO C. LUCE. PIO PORTEA, PETITIONER AND APPELLANT, VS. JACINTO PABELLON ET AL., OPPOSITORS AND APPELLEES.

G.R. No. L-1367. August 16, 1949

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from a judgment of the Court of First Instance of Quezon holding that, upon the death of Pablo Luce, "all his properties were inherited by his legitimate daughter Cristeta Luce who survived him for at least half an hour, she having died about half an hour after" the death of her father.

In the notice filed by the petitioner, it was announced that the appeal was taken from said judgment to the Supreme Court, on the ground that the question involved is one of law; and in the record on appeal filed by him and approved by the trial court, it was prayed that the case be certified and elevated to the Supreme Court, as only a question of law is involved.

Following the decision in *Millar vs. Nadres*, 1 Off. Gaz., 975, cited in *Moran's Comments on the Rules of Court*, 2d ed., Vol. I, p. 753, the appellant cannot now raise any question of fact. Even so, the writer of this opinion expresses his adherence to his dissent from the majority decision in the case cited, he being of the conviction that, although the appellant announces his intention to raise merely questions of law and appeal directly to the Supreme Court, this Court is bound to certify the case to the Court of Appeals, where said appellant actually raises questions of fact in his brief. However, in view of the stand of the majority, the author of this opinion has undertaken to examine the factual contention of the appellant, in relation to the evidence on record, with the result that he has come to the conclusion that the appealed judgment is supported by the proof.

The appellant insists that, since there is no proof as to the definite time of the death of Pablo Luce and his daughter Cristeta Luce, the law applicable is section 69, sub-section ii (5), of Rule 123 of the Rules of Court, under which it is presumed that, in the absence of any showing as to which of two persons (who have perished in the same calamity) died first, the person between the ages of 15 and 60 is presumed to have survived the person under 15 or over 60. In this connection, it is alleged that Pablo Luce was 45 years old, whereas Cristeta Luce was only 13 years of age. In the face of the factual conclusion of the trial court that Pablo Luce died half an hour before Cristeta Luce died, which finding the appellant is now estopped to controvert and which (in the opinion of the writer hereof) is furthermore supported by the evidence, the rule cited by the appellant regarding the disputable presumption of survivorship cannot apply.

The appellant also contends that, even assuming that Cristeta Luce survived her father Pablo Luce, her estate should still be adjudicated to the appellant who is the nephew of Pablo Luce. Reliance is placed on article 925 of the Civil Code providing that the right of representation shall always take place in the direct descending line but never in the ascending, and that in the collateral line it shall take place only in favor of the children of brothers and sisters, whether they may be of the whole or half blood. It is intimated that because the oppositors-appellees

are not in the direct descending line, but are only maternal grandparents of Cristeta Luce, they cannot inherit by representation. Aside from the fact that the trial court correctly withheld any adjudication as to the estate of Cristeta Luce, because it is not included in the intestate proceedings instituted by the petitioner-appellant, said oppositors-appellees are claiming Inheritance from their grandchild Cristeta Luce in their own right as ascendants, and not merely by right of representation, it appearing that the said Cristeta Luce did not leave any legitimate children or descendants. (Arts. 1935 and 937, Civil Code.)

Wherefore, the appealed judgment is affirmed with costs against the appellant. So ordered.

Moran, C.J., Ozaeta, Feria, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

PADILLA, J.:

I concur in the result.

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