

**INTESTATE ESTATE OF TEODORA TANGCO DE VALENCIA,
DECEASED. ROSITA MASANGCAY, EVANGELINA MASANGCAY,
FELICIDAD DE LA PEÑA, AND JULIA DE LA PEÑA, PETITIONERS AND
APPELLEES, VS. MARC...***G.R. No. L-9786. August 31, 1960*

Ponente: BARRERA, J.

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On November 3, 1950, petitioners Rosita Masangcay, Evangelina Masangcay, Felicidad de la Peña, and Julia de la Peña, filed with the Court of First Instance of La Union a petition praying that they, as nieces of the deceased Teodora Tangco de Valencia, be declared her heirs, and that her property be summarily distributed among them in accordance with law, the total value of the estate being merely P5,750.00. To this petition, Marcelo Valencia, husband of said deceased, filed an opposition claiming that he is the sole heir of said deceased and, therefore, entitled to her entire estate. Pedro Valencia, brother of Marcelo Valencia, also filed an opposition, claiming that a parcel of land belonging to him was included among the property lifted in the conjugal estate of the spouses Marcelo Valencia and Teodora Tangco. He further asserted that he has a claim of P700.00 on the house built on the lot which is, likewise, listed in the petition as part of said conjugal estate. Marcelo Valencia died on December 23, 1953, while the case was pending trial.[1]

After the issues were joined, the case was heard and, after hearing, the court, on May 27, 1955, rendered a decision which, in part, reads:

* * * * *

"Teodora Tangco, who, died on June 18, 1949 without a will is the wife of Marcelo Valencia. She is the daughter of Aleja Tangco with one Marcelo Barba, who was then married to another woman. Out of this relation between Aleja and Marcelo was also born another daughter, Basilisa. Basilisa and Teodora adopted and carried the family name of their mother, Aleja, because Marcelo Barba was a married man. Aleja had another daughter, Simeona whom she begot with Jacinto Castro, another married man. Simeona also adopted the surname Tangco of her mother because of Jacinto's married status.

"Simeona who later married and is now deceased, has two surviving daughters, namely Felicidad and Julia, both surnamed de la Peña. Basilisa Tangco, who also later married and now deceased, was survived by her children namely Rosita, Evangelina and Ester all surnamed Masangcay.

"It also appears that the spouses Teodora Tangco and Marcelo Valencia have conjugal properties real and personal. * * *.

* * * * *

"There is sufficient evidence to show that Aleja Tangco is the mother of Teodora, Basilisa, and Simeona. These three women had the reputation of being the children of Aleja Tangco. Guillermo Natividad, 100 years

old, testified that Aleja Tangco is the mother of Teodora, Simeona and Basilisa. Maria Tangco, aged 80, testified also that her father is the brother of Aleja Tangco and that Teodora Tangco is her first cousin, being the daughter of said Aleja Tangco. Nieves Valencia, 74 years old, elder sister of Marcelo Valencia, declared that Teodora Tangco, Simeona Tangco, and Basilisa Tangco are sisters, being the daughters of Aleja Tangco. She (Nieves) also said that she is younger than these three sisters. She (Nieves) testified further that these three sisters lived with Aleja Tangco.

"These three sisters are more than 74 years old, because they are older than Nieves Valencia; they must have been born before December 8, 1889 when the Civil Code of Spain took effect in law at the time they were born and acknowledged and was extended to the Philippines. Hence the law at the time they were born and acknowledged as and reputed to be the children of Aleja Tangco is the Law of Toro. Under that law, acknowledgment of a child may be made by tacit recognition (Petrona Capistrano, et al., vs. Estate of Josefa Gabino, 8 Phil., 135). And this is true with the three sisters for they bear and carry the family name of Tangco, which is the surname of Aleja. Not only this, but also because according to Nieves Valencia they (Teodora, Simeona, and Basilisa) lived with Aleja Tangco. Undoubtedly, these circumstances are indicative that Aleja recognized and acknowledged them to be her natural children. At the time of their birth, Aleja appears to be single, without any legal impediment to marry the fathers of Basilisa, Teodora, and Simeona. It was Marcelo Barba and Jacinto Castro who could not marry because they were married men at the time when Aleja had relations with them.

"Under these circumstances, Basilisa, Teodora, and Simeona shall succeed each other pursuant to the rules established for legitimate brothers and sisters (Article 945). The heirs of Basilisa and Simeona necessarily shall inherit the estate of Teodora. Basilisa and Teodora are sisters of full blood as they have one common father, Marcelo Barba. Simeona's father is Jacinto Castro. So that the heirs of Basilisa shall receive a share in the inheritance double that of the heirs of Simeona.

"Felicidad de la Peña and Julia de la Peña, children of Simeona, shall receive half of what Rosita Masangcay, Evangelina Masangcay, Ester Masangcay shall receive (Article 949, Civil Code). Hence, Rosita, Evangelina and Ester are entitled to 1/3 or each of them to 1/9 of the conjugal estate; while Felicidad de la Peña and Julia de la Peña are entitled to 1/6 or each of them to 1/12 of the conjugal estate.

"In view of the foregoing, the Court hereby declares Rosita Masangcay, Evangelina Masangcay, Ester Masangcay, Julia de la Peña and Felicidad de la Peña heirs of Teodora Tangco and therefore entitled to 1/2 of the conjugal estate of Teodora Tangco and Marcelo Valencia, in the proportion as follows:

1. Rosita Masangcay —1/9 undivided share of the conjugal estate.
2. Evangelina Masangcay —1/9 undivided share of the conjugal estate.
3. Ester Masangcay —1/9 undivided share of the conjugal estate.
4. Julia de la Peña —1/12 undivided share of the conjugal estate.
5. Felicidad de la Peña —1/12 undivided share of the conjugal estate.

"To the heirs of Marcelo Valencia, pertains ½ undivided share of the conjugal estate.

"The administrator is hereby ordered to submit a project of partition for approval of this Court.

"Without pronouncement as to costs.

"It is so ordered."

The oppositors filed a motion for reconsideration of said decision on June 27, 1955, which was duly opposed by petitioners on July 9, 1955. Said motion was denied by court on July 29, 1955, Hence, this appeal.

This case was directly appealed to us by oppositors-appellants, for the reason that they are raising only questions of law. Petitioners-appellees, on the other hand, while naturally supporting the decision in their favor, nevertheless raise questions of fact in their brief, particularly disputing the finding of the lower court that Marcelo Barba and Jacinto Castro, at the time of the conception and birth of Teodora and Basilisa Tangco and Simeona Tangco respectively, were married to other women and were, therefore, incapacitated to marry appellees' mother Aleja Tangco. This question of fact, that is, whether Barba and Castro were married at the time of the conception and birth of their respective children with Aleja Tangco, is decisive in this case. If they were, then Teodora, Basilisa, and Simeona (the last two being the mothers of appellees) are illegitimate children of Aleja Tangco. On the other hand, if Barba and Castro were not married men, then Teodora, Basilisa, and Simeona are natural children of Aleja Tangco.[2] Upon the determination of this factual status of Barba and Castro depends the successional rights of appellees as against appellant widower of Teodora Tangco and his successors-in-interest.

The question presently to be determined is whether this appeal is to be decided by this Court, confining the issues between the parties only to the questions of law raised by oppositors-appellants, or whether to consider the issue as extending to the questions of fact raised by petitioners-appellees, in which case, the appeal should be referred to the Court of Appeals for decision.

In the case of *Justo, et al., vs. Hernando, et al.*, (89 Phil., 268) wherein this Court was confronted with the same question, we held and ordered that the appeal be decided by the Court of Appeals, reasoning thus:

"One view of the case is that inasmuch as the appellee has not appealed from the decision to raise questions of fact, neither did he object to the appeal being taken directly to the Supreme Court where only questions of law, are considered, he has waived his right in this regard. The other view which we favor as more practical and more in accord with justice and equity, is that an appellee who obtains a favorable judgment is not called upon to appeal and attack a decision that favors him; neither is he in a position to decide which Court he wants the appeal of the appellant to go to,—to the Court of Appeals or to the Supreme Court, until he (appellee) has read the brief of said appellant and apprised himself of the issues raised, the arguments adduced, and the chances of having the decision appealed from, reversed or modified on those issues and arguments alone. And if an appellee were to play safe in every case and insist that every appeal taken by an appellant on purely questions of law, be taken to the Court of Appeals, where the appellee could, if necessary later raise questions of fact, in order to sustain the judgment, that would imply undue delay, and also much work on the part of the stenographers in transcribing their notes, especially if the oral evidence is voluminous, only to discard and disregard all that evidence and work, should the appellee after reading the brief for appellant decide not to raise questions of fact, thereby resulting in the appeal being certified by the Court of Appeals to the Supreme Court." (Italics supplied.)

For all the foregoing, and because the present appeal involves questions both of law and fact, and the property involved is worth only P5,750.00, the case is hereby remanded to the Court of Appeals for consideration and decision, pursuant to Section 17, subparagraph (5) of paragraph three, Judiciary Act of 1948, as amended by Republic Act No. 2613. So ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Gutierrez David, JJ., concur.

[1] In view of his death, he was substituted by his heirs Nieves, Pedro, and Socorro Valencia, by order of the trial court on July 29, 1955.

[2] *Mijares vs. Nery*, 3 Phil., 195.

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