

GERTRUDES L. DEL ROSARIO, PETITIONER, VS. DOROTEA O. CONANAN AND MARILOU DEL ROSARIO, RESPONDENTS.

G.R. No. L-37903. March 30, 1977

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Review of the order of the Court of First Instance of Rizal dated June 21, 1973, dismissing petitioner's petition for settlement and partition of estate.

On November 13, 1972, petitioner filed with the court below the above-said petition, subject of which is the estate left by her late son, Felix L. del Rosario, who died in a plane crash on September 12, 1969 at Antipolo, Rizal (Partial Joint Stipulation of Facts, p. 2, petition, p. 6, rec.).

On March 17, 1973, respondents filed their opposition.

On April 26, 1973, the court a quo, pursuant to a verbal agreement forged between the parties, issued an order requiring them to come up with a joint stipulation of facts (p. 9, rec.).

On May 19, 1973, the parties submitted the following stipulation of facts:

"OPPOSITOR admits that petitioner is the legitimate mother of the late FELIX L. DEL ROSARIO.

"PETITIONER admits that oppositor DOROTEA OTERA DEL ROSARIO is the legitimate surviving wife of the deceased FELIX L. DEL ROSARIO.

"PETITIONER admits that MARILOU DEL ROSARIO, is the legally adopted child of the late FELIX L. DEL ROSARIO and DOROTEA DEL ROSARIO CONANAN.

"THAT THE PARTIES admit that the late FELIX L. DEL ROSARIO died last September 12, 1969 at Antipolo, Rizal in a plane crash and within the jurisdiction of the Honorable Court.

"That the only surviving nearest relatives of deceased FELIX L. DEL ROSARIO are the petitioner and oppositors DOROTEA O. CONANAN and MARILOU DEL ROSARIO.

"Parties admit to pay their respective counsel in the amount to be determined by the court.

"WHEREFORE, it is respectfully prayed of this Honorable Court that on the basis of the facts stipulated, the Court declare the heirs of the deceased" (pp. 9-10, rec.).

On June 21, 1973, the lower court issued the challenged order, pertinent portions of which read:

"A perusal of the petition shows that the instant case was filed under the provisions of Section 2, Rule 74 of the Revised Rules of Court, which reads as follows:

"Whenever the gross value of the estate of a deceased person, whether he died testate or intestate, does not exceed ten thousand pesos, and that fact is made to appear to the Court of First Instance having jurisdiction of the estate

by the petition of an interested person and upon hearing, which shall be held not less than one (1) month nor more than three (3) months from the date of the last publication of a notice which shall be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province, and after such other notice to interested persons as the court may direct, the court may proceed summarily, without the appointment of an executor or administrator, and without delay, to grant, if proper, allowance of the will, if any there is, to determine who are the persons legally entitled to participate in the estate, and to apportion and divide it among them after the payment of such debts of the estate as the court shall then find to be due; and such persons, in their own right, if they are of lawful age and legal capacity, or by their guardians or trustees legally appointed and qualified, if otherwise, shall thereupon be entitled to receive and enter into the possession of the portions of the estate so awarded to them respectively. The court shall make such order as may be just respecting the costs of the proceedings, and all orders and judgment made or rendered in the course thereof shall be recorded in the office of the clerk, and the order of partition or award, if it involves real estate, shall be recorded in the proper registrar's office.

"While it may be true that a petition for summary settlement is allowed under the aforementioned provision of the rules, the same rule specifically limits the action to estates the gross value of which does not exceed P10,000.00. The instant petition, however, clearly alleges that the value of the real properties alone left by the deceased Felix del Rosario amounts to P33,000.00 which is obviously over and above the value of the estate allowed under the rules. The action taken by the petitioner (cannot be) construed as one filed under an intestate proceeding as the requirements provided by law for the same has not been complied with. Based on the foregoing observation alone, the petition must perforce be dismissed.

"But granting arguendo that this Court may consider the petition as an exercise (of) the powers of a probate Court in determining and declaring the heirs of the deceased as prayed for in the aforementioned partial joint stipulation of facts, the law on intestate succession is clear that an adopted child concurring with the surviving spouse of the adopter excludes the legitimate ascendants from succession. x x x x x.

"The contention of the petitioner that Article 343 is applicable in the instant case finds no basis for the said article is applicable in cases where there are no other concurring intestate heirs of the adopted child. x x x x x.

"Based on the foregoing, therefore, the petitioner not being included as intestate heir of the deceased cannot be considered as a co-owner of or have any right over the properties sought to be partitioned and under the provisions of Section 1, Rule 69 in relation to Section 2, Rule 3 of the Revised Rules of Court, such action must be commenced or instituted by the party in interest.

"WHEREFORE, in view of the foregoing findings, the Court hereby DISMISSES the petition without pronouncement as to costs" (pp. 10-12, rec.).

On July 10, 1973, petitioner filed a notice of appeal, record on appeal and appeal bond (see respondents' comments, p. 18, rec.).

I

WE rule that on purely jurisdictional consideration, the instant petition should be dismissed.

Indeed, in a litany of precedents dating as far back as the 1938 case of *Utulo vs. Pasiono Vda. de Garcia* (66 Phil. 302) and reaffirmed in *Asuncion and Castro vs. De la Cruz* (No. L-7855, November 23, 1955, 97 Phil. 910) and *Gutierrez vs. Cruz* (G.R. No. L-21027, July 20, 1968, 24 SCRA 69), WE uniformly held that for the court to acquire jurisdiction in a petition for summary settlement of estate under the rules, the requirement that the amount of the estate involved should not exceed P10,000.00 (P6,000.00 under the old rules) is jurisdictional.

In the instant case, both parties jointly affirmed that the value of the realty left by the deceased Felix del Rosario is in the aggregate amount of P33,000.00 which, as the court a quo correctly found, is obviously "over and above the value allowed under the rules."

II

However, by virtue of the transcendental implications of the holding of the court a quo, in the sense that once wholly sustained, said holding would preclude petitioner from re-filing the proper action - a consequence which, on the grounds of equity and fair play, WE cannot allow to befall on petitioner - WE deem it essential, for the guidance of the parties, especially herein petitioner, to point out the demerits of the appealed verdict.

A couple of important issues are posed for our consideration, to wit:

1. Which of the following articles of the New Civil Code will apply, Article 343 on the one hand, or Articles 341, 978 and 979 on the other; and
2. Whether the material data rule enunciated by Rule 41, Section 6 of the New Rules of Court should be followed, *ex cathedra*, in the present case.

A

The lower court found the following provisions of the New Civil Code germane to the instant case:

"Art. 341. The adoption shall:

"(1) Give to the adopted person the same rights and duties as if he were a legitimate child of the adopter;

"(2) Dissolve the authority vested in the parents by nature;

"(3) Make the adopted person a legal heir of the adopter;

"(4) Entitle the adopted person to use the adopter's surname."

"Art. 978. Succession pertains, in the first place, to the descending direct line."

"Art. 979. Legitimate children and their descendants succeed the parents and other ascendants, without distinction as to sex or age, and even if they should come from different marriages."

WE opine that the governing provision is the hereinafter quoted Article 343 of the New Civil Code, in relation to Articles 893 and 1000 of said law, which directs that:

"Art. 343. If the adopter is survived by legitimate parents or ascendants and by an adopted person, the latter shall not have more successional rights than an acknowledged natural child."

Article 343 of the New Civil Code is qualification to Article 341 which gives an adopted child the same rights and duties as though he were a legitimate child. The reason for this is that:

"(I)t is unjust to exclude the adopter's parents from the inheritance in favor of an adopted person" (Report of the Code Commissioner, p. 92).

It is most unfair to accord more successional rights to the adopted, who is only related artificially by fiction of law to the deceased, than those who are naturally related to him by blood in the direct ascending line.

The applicability of Article 343 does not exclude the surviving parent of the deceased adopter, not only because a contrary view would defeat the intent of the framers of the law, but also because in intestate succession, where

legitimate parents or ascendants concur with the surviving spouse of the deceased, the latter does not necessarily exclude the former from the inheritance. This is affirmed by Article 893 of the New Civil Code which states:

"If the testator leaves no legitimate descendants, but leaves legitimate ascendants, the surviving spouse shall have a right to one-fourth (only) of the hereditary estate.

"This fourth shall be taken from the free portion."

Article 343 does not require that the concurring heirs should be the adopted child and the legitimate parents or ascendants only. The language of the law is clear, and a contrary view cannot be presumed.

It is, thus, OUR view that Article 343 should be made to apply, consonant with the cardinal rule in statutory construction that all the provisions of the New Civil Code must be reconciled and given effect.

Under Article 343, an adopted child surviving with legitimate parents of the deceased adopter, has the same successional rights as an acknowledged natural child, which is comprehended in the term "illegitimate children". Consequently, the respective shares of the surviving spouse, ascendant and adopted child should be determined by Article 1000 of the New Civil Code, which reads:

"Art. 1000. If legitimate ascendants, the surviving spouse and illegitimate children are left, the ascendants shall be entitled to one-half of the inheritance, and the other half shall be divided between the surviving spouse and the illegitimate children so that such widow or widower shall have one-fourth of the estate, the illegitimate children the other fourth."

B

Anent the other issue, respondents, in their comment of June 29, 1973, emphasize that the petitioner's record on appeal violates the material data rule in that

"It does not state when the notice of appeal and appeal bond were filed with the lower court in disregard of the requirement of Section 6, Rule 41 of the Rules of Court that the record on appeal must contain such data as will show that the appeal was perfected on time."

Recent jurisprudence has construed liberally the material data rule, whenever circumstances and substantial justice warrant.

The cases of *Berkenkotter vs. Court of Appeals*, No. L-36629, September 28, 1973 (53 SCRA 228) and *Villanueva vs. Court of Appeals* (No. L-29719, November 28, 1975, 68 SCRA 216, 220) are particularly in point.

In *Villanueva*, WE held:

"The deviation from the rigid rule adopted in the case of *Government of the Philippines vs. Antonio, et al.*, G.R. No. L-23736, October 19, 1965, is due to our realization that after all what is of vital importance in the requirement of Section 6, Rule 41 of the Rules of Court is that the Record on Appeal shall show that the appeal was really perfected within the reglementary period. If it could be ascertained from the record of the case that the appeal was perfected within the reglementary period, although such fact did not evidently appear on the face of the record on appeal, the defect or deficiency is not fatal.

"If the appellate court is con-vinced that the appeal was perfected on time, it should not throw out but assume jurisdiction over it. After all, that procedural requirement is only intended to enable the appellate court to determine if the appeal is still within its jurisdiction and nothing more" (*Villanueva vs. Court of Appeals*, 68 SCRA 220, underscoring supplied).

From the docket and process slip of this case, it is shown that the date of notice of the Court of First Instance

decision is July 3, 1973 and that the expiry date to file petition for certiorari with the Supreme Court is December 14, 1973. Petitioner filed her notice of appeal, appeal bond and record on appeal on July 10, 1973 - or still very much within the reglementary period to perfect an appeal. And although this is not mentioned in the record on appeal, it is, nevertheless, a fact of record, the veracity of which this COURT does not doubt.

Perforce, there being substantial compliance with the requirement of the Rules of Court, WE resolve this issue in favor of petitioner.

The liberal interpretation of the material data rule aimed at serving the ends of substantial justice has found amplification in the recent cases of Pimentel, et al. vs. Court of Appeals, et al., L-39423 and L-39684, June 27, 1975, 64 SCRA 475; Republic of the Philippines vs. Court of Appeals, Tomas Carag, et al., L-40495, October 21, 1975, 67 SCRA 322, 328-332; and Manuel R. Luna vs. Court of Appeals, Capati, et al., L-37123, October 30, 1975, 67 SCRA 503, 506.

WHEREFORE, THE INSTANT PETITION IS HEREBY DIS-MISSED, WITHOUT PREJUDICE TO PETITIONER'S FILING THE APPROPRIATE ACTION IN A COMPETENT COURT. NO COSTS.

SO ORDERED.

Teehankee, (Chairman), Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

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