

PAZ GARCIA VDA. DE MAPA, SEGUNDO MAPA, PRISCILLA M. MONZON, TERESA MAPA, IGNACIO SALAZAR AND JOSE SALAZAR, PETITIONERS, VS. COURT OF APPEALS, LUIS HIDROSOLLO AND TEODORO HIDROSO...

G.R. No. L-38972. September 28, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals in CA-G. R. No. 40448-R entitled "Paz Garcia Vda. de Mapa, et al. vs. Luis Hidrosollo, et al." reversing the decision of the then Court of First Instance of Manila in Civil Case No. 59566, bearing the same title.

The antecedent facts of the case are as follows:

On January 16, 1965, petitioners Paz Garcia vda. de Mapa, et al. instituted Civil Case No. 59566 before the then Court of First Instance of Manila to recover from the estate of the late Ludovico Hidrosollo, then the subject of Special Proceedings No. 52229 of the same court, the properties left by the late Concepcion Mapa de Hidrosollo. They claimed that the deceased Concepcion Mapa de Hidrosollo, in her last will and testament dated June 2, 1951 and admitted to probate in Special Proceedings No. 46015, instituted Ludovico Hidrosollo as universal heir to the residue of her estate with the obligation as trustee to hold the same in trust for petitioners herein who are nephews and nieces of the deceased Concepcion Mapa de Hidrosollo and for respondents Luis, Teodoro, Victorina, Corazon, Violeta***, Rosario and Magdalena, all surnamed Hidrosollo, who are nephews and nieces of Ludovico Hidrosollo; that Ludovico, however, died without fulfilling the obligation so that the estate of Concepcion formed part of the estate of Ludovico. They prayed in the alternative that judgment be rendered either a) declaring a trust to have been created in their favor and their co-beneficiaries over the residue of the estate of Concepcion Mapa de Hidrosollo and ordering therein defendants Luis and Teodoro Hidrosollo as administrators of the estate of Ludovico Hidrosollo, to deliver to them 6/13 of the said properties; or b) declaring the institution of Ludovico Hidrosollo as universal heir with a provision for fideicommissary substitution in their favor and their co-beneficiaries as null and void, declaring the residue of the estate of Concepcion Mapa de Hidrosollo to have been subject to intestate succession, declaring them to be the sole heirs to said residue and ordering therein defendants Luis and Teodoro Hidrosollo to turn over to them the said properties.

Respondents, in their Answer, denied the existence of a trust and alleged that Ludovico Hidrosollo, being the surviving spouse of the deceased Concepcion Mapa de Hidrosollo became the latter's universal heir when she died without descendants or ascendants; that as such universal heir, Ludovico stepped into the rights, title and claims of the deceased Concepcion Mapa de Hidrosollo, so that the controverted properties became part of his own estate subject of settlement in Special Proceedings No. 52229. They further claimed that Civil Case No. 59566 was barred by the order of the same court sitting as a probate court in Special Proceedings No. 52229 which denied petitioners' motion for intervention, and that petitioners, in having instituted Civil Case No. 59566 had forfeited

any benefits under the will.

In disposing of the case, the lower court ruled that a trust was created over the properties of Concepcion Mapa de Hidrosollo in favor of petitioners and respondents; that in resisting petitioners' claim, however, respondents had forfeited their rights thereto; and that the denial of petitioners' motion to intervene in Special Proceedings No. 52229 did not deprive the petitioners of their right to institute a separate action to recover what pertains to them in their own right. Thus, the lower court ordered respondents Luis and Teodoro Hidrosollo or whoever of the rest of therein defendants had disposition of the properties to reconvey the same in favor of petitioners, to render an accounting of the income of said properties and to deliver to petitioners the net proceeds of such income.

Respondents moved for a reconsideration of the decision, but were denied the relief sought. Their appeal to the Court of Appeals proved fruitful as the appellate court reversed the decision of the lower court and ruled instead that no trust nor fideicommissary substitution was created in Concepcion Mapa de Hidrosollo's Will and that petitioners' claim was barred by a final judgment, i.e., the order denying their motion to intervene in Special Proceedings No. 52229 from which no appeal was taken.

Hence, this present recourse, petitioners maintaining that the Will of Concepcion Mapa de Hidrosollo created a trust in their favor, not a fideicommissary substitution, and that the denial of their motion to intervene in Special Proceedings No. 52229 did not constitute a bar to Civil Case No. 59566.

We find both contentions meritorious.

A careful perusal and scrutiny of the pertinent provisions of Concepcion Mapa de Hidrosollo's Will reveal that she intended to create a trust in favor of both petitioners and private respondents. These provisions read:

"OCTAVA: Del resto de todos mis bienes parafernales y ganaciales, instituyo por mi unico y universal heredero, a mis esposo Ludovico Hidrosollo, a quien, al mismo tiempo, nombro como mi Abacea (sic) testamentario con relvacin (sic) de fianza.

"NOVENA: Encargo a mi esposo que en el caso de que me abreviva (sic), disponga de los bienes que le queden a favor de nuestros sobrinos, todos en partes iguales, a saber:

1. Jose Agustin Mapa 7. Teodoro Hidrosollo
2. Segundo Mapa 8. Victorina Hidrosollo
3. Priscilla Mapa 9. Corazon Hidrosollo
4. Teresa Mapa 10. Luis Hidrosollo
5. Ignacio Salazar 11. Violeta Hidrosollo
6. Jose Salazar 12. Rosario Hidrosollo
13. Magdalena Hidrosollo

"DECIMA: Los beneficiarios nombrados en la clausula que antecede tendran la obligacion de entregar, cada año, a Salvador Genova, mientras esta viva, doce cavanos de palay, con la condicion de que dicho Salvador ayude a Luis Hidrosollo en la recoleccion de cada cosecha. Dichos beneficiarios tendran igualmente la obligacion de permitir al menciado Salvador Genova a tener su casa en nuestro solar en Ilaud, dentro de la poblacion de Dumarao, sin pago alguno.

"UNDECIMA: Encargo igualmente a mi esposo, como heredero universal mio que, si a su muerte, hubiese alguna deuda contraida por el durante su supervivencia sobre mi, dicha deuda sea cargada a la parte que corresponda a sus sobrinos par consagunidad, todos apellidados Hidrosollo, y no debiera en mio alguno,

afectar la participacion de mis sobrinos, cuatro de ellos appellidados Mapa y dos appellidados Salazar.

x x x x x x x x

"DECIMA TERCERA: Es tambien mi voluntad la desque los bienes permanezcan en todo tiempo en comunidad, y que los beneficiarios se abstengan an absoluto de venderos o gravarlos en cualquier forma, en respeto a la memoria de sus tios que solo miran el propio bien de sus dichos sobrinos.

x x x x x x x x

"DECIMA QUINTO: Encargo a mis sobrinos nombrados en ester testamento que la administracion de los bienes de la comunidad sea encomendada a Ignacio Salazar y a Luis Hidrosollo conjuntamente, y en el caso de que ambos o cualquiera de ellos no pudiere, por cualquier motivo, complier con el cometido, que dicha administracion se ponga en manos de los sobrinos, uno del grupo Mapa o Salazar y el otro del grupo Hidrosollo." (pp. 58-59, Rollo).

Thus, under paragraph 8 of the Will, Ludovico Hidrosollo was instituted as sole and universal heir to the rest of the properties not covered by the legacies in the preceding paragraphs. Under paragraph 9, however, said Ludovico Hidrosollo was charged (encargo) with the obligation to deliver the rest of the estate in equal parts to the Mapa, Salazar and Hidrosollo nephews and nieces, who, as beneficiaries, were directed to deliver annually to one Salvador Genova, during his lifetime, 12 cavans of palay on the condition that the latter assist Luis Hidrosollo in each harvest. Said beneficiaries were likewise required to allow said Salvador Genova to maintain his house on a parcel of land situated at Ilaud, Municipality of Dumarao, without payment of any compensation (Par. 10 of the Will).

In paragraph 11 of the same Will, the testatrix expressly provided that any obligations which her husband might incur after her death, shall be charged against the share corresponding to the Hidrosollo nephews and nieces and in no case shall the participation of her own nephews and nieces be charged with said obligations. She likewise expressed the wish that all her properties should always remain in co-ownership among her beneficiaries, who should abstain from selling or encumbering the same in any manner whatsoever (par. 13) and that the same be administered jointly by Ignacio Salazar and Luis Hidrosollo, or in case of their inability, by a nephew or niece from each of the two groups (par. 15).

Although the word "trust" itself does not appear in the Will, the testatrix's intent to create one is nonetheless clearly demonstrated by the stipulations in her Will. In designating her husband Ludovico Hidrosollo as universal and sole heir with the obligation to deliver the properties to petitioners and private respondents, she intended that the legal title should vest in him, and in significantly referring to petitioners and private respondents as "beneficiarios", she intended that the beneficial or equitable interest to these properties should repose in them. To our mind, these designations, coupled with the other provisions for co-ownership and joint administration of the properties, as well as the other conditions imposed by the testatrix effectively created a trust in favor of the parties over the properties adverted to in the Will. "No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended." (Art. 1443, Civil Code of the Philippines).

However, we must not lose sight of the fact that as the surviving spouse of the testatrix, Ludovico Hidrosollo was entitled to a legitime of one-half (½) of her hereditary estate. As that portion is reserved by law for the compulsory heirs, no burden, encumbrance, condition or substitution of any kind whatsoever may be imposed upon the legitime by the testator. (Art. 904, second paragraph, Ibid.) The trust created by Concepcion Mapa should therefore be, as it is hereby declared to be effective only on the free portion of her estate, i. e., that portion not covered by Ludovico Hidrosollo's legitime.

Anent the issue of res judicata, We rule that the order denying petitioners' motion for intervention in Special

Proceedings No. 52229 did not constitute an adjudication on the merits and therefore could not operate as a bar to Civil Case No. 59566.

The reason given by the probate court for denying petitioners' motion for intervention is as follows:

"x x x that there is no fideicommissary substitution because the testatrix did not impose upon her spouse the absolute obligation to deliver the property to said petitioners. When the testatrix provided in her will that her husband dispose of in favor of the petitioners his remaining properties it only shows that he was not absolutely obligated to preserve and transmit to the petitioners the properties by him acquired under the will of his deceased wife. If the testatrix intended to entrust the property to her husband with the obligation to preserve and to transmit the remaining properties to the petitioners, she could have said so in an express manner. However, even assuming that Clause 9 could be interpreted to be a fideicommissary substitution, such substitution can not be given effect in the face of an opposition and in view of Art. 863 of the Civil Code of the Philippines, requiring that substitution must not go beyond one degree from the heir originally instituted. It will be noticed that the second heirs instituted are merely 'sobrinos' of the fiduciary or first heir (surviving spouse). Upon these facts, the Court is of the opinion that the movants for intervention do not have a legal interest in the estate under the present administration." (pp. 50-51, Record on Appeal, p. 101, Rollo).

Since the denial order was anchored primarily on the non-existence of, or the ineffectivity of a fideicommissary substitution, and did not resolve the issue of trust alleged by petitioners, said order cannot be considered an adjudication on the merits of petitioners' claim against the estate.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. No. 44448-A is hereby reversed. Private respondents Luis and Teodoro Hidrosollo or their successors as administrators of the estate of Ludovico Hidrosollo are hereby ordered to deliver to petitioners their lawful shares in the trust constituted over the free portion of the estate of Concepcion Mapa. Said Luis and Teodoro Hidrosollo or their successors are further ordered to render an accounting of the income of the properties pertaining to petitioners and to deliver to the latter the net proceeds of such income.

No pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

* Petitioner Paz Garcia vda. de Mapa died during the pendency of the petition, survived by her co-petitioners Segundo Mapa, Priscilla M. Monzon and Teresa Mapa.

** Should be Victorina.

*** Her name does not appear in the title of the petition as one of the respondents, but she is a defendant in the original complaint as well as a defendant-appellee in the appellate court. The omission might have been an oversight.

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