

**LUISA Y. ORTEGA, NIEVES Y. ORTEGA, MARIA MARIZAL POLANCOS,
REPRESENTED BY HER FATHER AND NATURAL GUARDIAN
MAMERTO POLANCOS, JOAQUIN ORTEGA, JR., REPRESENTED BY
HIS COUSIN, MARIA...**

G.R. No. L-43155. August 14, 1987

Ponente: PARAS, J.

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PARAS, J.:

THE SOLE ISSUE IN THIS PETITION FOR CERTIORARI IS WHETHER THE RESPONDENT JUDGE NUMERIANO ESTENZO OF THE THEN COURT OF FIRST INSTANCE OF LEYTE, BRANCH V, ACTED IN EXCESS OF JURISDICTION WHEN HE CONVERTED CIVIL CASE NO. 1184-0, AN ACTION FOR QUIETING OF TITLE, DECLARATION OF NULLITY OF SALE, AND ANNULMENT OF TAX DECLARATION OF A PARCEL OF LAND, INTO AN ACTION FOR THE DECLARATION OF WHO IS THE LEGAL WIFE, WHO ARE THE LEGITIMATE CHILDREN, IF ANY, AND WHO ARE THE COMPULSORY HEIRS OF THE DECEASED JOAQUIN ORTEGA. THE COURT OF APPEALS* DISMISSED THE PETITION ASSAILING THE DECISION OF THE TRIAL COURT.

AS FACTUAL BACKGROUND, IT SHOULD BE STATED THAT ON MAY 22, 1948, JOAQUIN ORTEGA DIED INTESTATE, ON JANUARY 3, 1949, EMILIA YBAÑEZ, THE SURVIVING SPOUSE OF JOAQUIN ORTEGA, INITIATED INTESTATE PROCEEDINGS (DOCKETED AS SP. PROC. NO. 441-R) IN THE THEN COURT OF FIRST INSTANCE OF CEBU CITY, BRANCH II, FOR THE SETTLEMENT OF THE ESTATE OF HER DECEASED HUSBAND. IN THAT PROCEEDINGS, EMILIA YBAÑEZ WAS APPOINTED ADMINISTRATRIX OF THE ESTATE, WITH LETTERS OF ADMINISTRATION ISSUED TO HER ON FEBRUARY 22, 1949. JOAQUIN ORTEGA WAS ALSO SURVIVED BY HIS DAUGHTERS BY EMILIA IBAÑEZ, NAMELY, LUISA Y. ORTEGA DE SEVILLA, ELENA Y. ORTEGA, NIEVES Y. ORTEGA, EUFEMIA Y. ORTEGA AND AGUEDA Y. ORTEGA, ALL PETITIONERS IN THIS CASE.

ON MARCH 17, 1949, CALIXTA YAP, WHO CLAIMED TO BE THE COMMON-LAW WIFE OF JOAQUIN ORTEGA, FILED A MOTION FOR RECONSIDERATION OF THE ORDER APPOINTING EMILIA YBAÑEZ AS ADMINISTRATRIX OF JOAQUIN ORTEGA'S ESTATE ON THE GROUND THAT HER OWN ACKNOWLEDGED NATURAL CHILDREN BY JOAQUIN ORTEGA WERE THE ONLY SURVIVING FORCED HEIRS OF THE DECEDENT. SHE ALSO CLAIMED THAT EMILIA YBAÑEZ AND JOAQUIN ORTEGA WERE NEVER MARRIED; HENCE, THEIR CHILDREN (PETITIONERS HEREIN) COULD NOT BE CONSIDERED LEGITIMATE, THE MOTION WAS DENIED.

ON MAY 19, 1949, EMILIA YBAÑEZ PRESENTED A VERIFIED INVENTORY AND APPRAISAL OF THE ESTATE OF THE DECEASED. IT WAS APPROVED BY THE PROBATE COURT. ON JUNE 30, 1954, AGUEDA CONCORDIA Y. ORTEGA, A DAUGHTER OF JOAQUIN ORTEGA, BY THEN THE DULY APPOINTED ADMINISTRATRIX OF THE ESTATE, FILED ANOTHER INVENTORY WHICH THE

COURT ALSO APPROVED.

ON APRIL 17, 1959, THE CHILDREN OF CALIXTA YAP, HEREIN PRIVATE RESPONDENTS, FILED IN THE PROBATE COURT A MOTION FOR INTERVENTION IN THE INTESTATE PROCEEDINGS, ALLEGING THAT THEY WERE THE ACKNOWLEDGED NATURAL CHILD-REN. THEY PRAYED TO BE DECLARED THE HEIRS OF JOAQUIN ORTEGA.

ON JUNE 25, 1959, ANOTHER INVENTORY WAS FILED IN COURT BY EUFEMIA Y. ORTEGA, ANOTHER DAUGHTER OF EMILIA YBAÑEZ BY JOAQUIN ORTEGA, AT THAT TIME THE APPOINTED ADMINISTRATRIX OF THE ESTATE. THE INVENTORY WAS APPROVED BY THE PROBATE COURT.

ON NOVEMBER 14, 1962, THE CHILDREN OF CALIXTA YAP FILED A MOTION FOR THE DISMISSAL OF THEIR MOTION FOR DECLARATION OF HEIRS, WHICH THE COURT GRANTED IN AN ORDER DATED NOVEMBER 16, 1962.

ON NOVEMBER 24, 1962, JUDGE AMADOR E. GOMEZ, COURT OF FIRST INSTANCE (CFI) OF CEBU, BRANCH II, ISSUED AN ORDER IN SP. PROC. NO. 441-R DECLARING EMILIA YBAÑEZ AND HER DAUGHTERS BY JOAQUIN ORTEGA THE LEGAL HEIRS OF THE SAID JOAQUIN ORTEGA, TO WHOM ALL THE ASSETS OF THE ESTATE WERE ADJUDICATED IN UNDIVIDED EQUAL SHARES, AND, THERE HAVING BEEN NO MONEY CLAIMS FILED AGAINST THE ESTATE, THE COURT, IN THE SAME ORDER, DECLARED THE PRO-CEEDINGS CLOSED AND TERMINATED.

ON DECEMBER 6, 1972, CALIXTA YAP AND HER CHILDREN HEREIN PRIVATE RESPONDENTS, FILED AGAINST PETITIONERS A COMPLAINT FOR QUIETING OF TITLE, DECLARATION OF NULLITY OF SALE, ANNULMENT OF TAX DECLARATION, DAMAGES AND OTHER RELIEFS, IN THE CFI OF LEYTE, BRANCH V, PRESIDED OVER BY JUDGE NUMERIANO ESTENZO. THE COMPLAINT, DOCKETED AS CIVIL CASE NO. 1184-0, MADE THE FOLLOWING SUBSTANTIAL ALLEGATIONS: THAT CALIXTA YAP WAS THE ABSOLUTE OWNER OF A PARCEL OF LAND SITUATED IN STA. CRUZ, ISABEL, LEYTE, WITH AN AREA OF 174,496 SQUARE METERS, MORE OR LESS, AND COVERED BY TAX DECLARATION NO. 4251; THAT ON OCTOBER 20, 1927, WHILE CALIXTA YAP WAS LIVING TOGETHER WITH HER COMMON-LAW HUSBAND, JOAQUIN ORTEGA, SHE AND HER GRAND-FATHER, FROILAN MAURILLO, EXECUTED A SIMULATED DEED OF SALE TRANSFERRING AND CONVEYING THE LAND MENTIONED ABOVE TO JOAQUIN ORTEGA; THAT CALIXTA YAP HAD ALWAYS BEEN IN POSSESSION OF SAID LAND UNTIL THE DEATH OF JOAQUIN ORTEGA IN 1948; THAT CALIXTA YAP AND JOAQUIN ORTEGA HAD EIGHT CHILDREN, HER CO-PLAINTIFFS.

ON FEBRUARY 12, 1973, THE COMPLAINT IN CIVIL CASE NO. 1184-0 WAS AMENDED, SHOWING THESE CHANGES: THAT CALIXTA YAP WAS MARRIED TO JOAQUIN ORTEGA IN 1927 BEFORE JUSTICE OF THE PEACE SILVERIO ZAMORA OF MERIDA, LEYTE, WHICH MARRIAGE WAS KEPT A SECRET TO AVOID A MISUNDERSTANDING WITH THE FAMILY OF EMILIA YBAÑEZ; THAT CALIXTA YAP'S CHILDREN BY JOAQUIN ORTEGA WERE LEGITIMATE OR WERE LEGITIMATED; THAT EMILIA YBAÑEZ'S CHILDREN BY JOAQUIN ORTEGA WERE ILLEGITIMATE; THAT THE APPROVAL BY THE PROBATE COURT OF THE INVENTORIES SUBMITTED IN THE INTESTATE PRO-CEEDINGS HAD NO BASIS IN LAW AND IN FACT; AND THAT THE DECLARATION BY THE PROBATE COURT IN SP. PROC. NO. 441-R OF EMILIA YBAÑEZ AND HER CHILDREN AS HEIRS OF JOAQUIN ORTEGA WAS AN ERROR.

ON FEBRUARY 19, 1973, THE COMPLAINT IN CIVIL CASE NO. 1184-0 WAS AMENDED A SECOND TIME, WITH THE FOLLOWING ADDITIONS TO THE SUBJECT MATTER OF THE ACTION: A) THE FOUR OTHER LOTS ADJACENT TO THE ONE COVERED BY TAX DECLARATION NO. 4251; AND B) THE SIX OTHER LOTS IN CANGAG, ISABEL, LEYTE. THE ORIGINAL SUBJECT MATTER OF THE COM-PLAINT (THE 174,496 SQUARE METERS OF LAND IN STA. CRUZ, ISABEL, LEYTE) PLUS THE AFOREMENTIONED ADDITIONS COMPRISE THE ENTIRE ESTATE OF JOAQUIN ORTEGA, WHICH WERE ALREADY ADJUDICATED IN SP, PROC. NO. 441-R TO EMILIA YBAÑEZ AND HER CHILDREN ON NOVEMBER 24, 1962.

DESPITE THE VEHEMENT OBJECTIONS OF THE PETITIONERS (THEN THE DEFENDANTS BELOW) THAT THE AMENDMENT HAD ALTERED THE NATURE OF THE CASE, RESPONDENT JUDGE NUMERIANO ESTENZO NEVERTHELESS ALLOWED THE AMENDMENTS.

THE AMENDED COMPLAINT IN ESSENCE PRAYED ?

- 1) THAT CALIXTA YAP BE DECLARED THE ABSOLUTE OWNER OF THE PARCEL OF LAND AT BO. STA. CRUZ, ISABEL, LEYTE IN HER OWN RIGHT;
- 2) THAT HER CHILDREN BY JOAQUIN ORTEGA BE DECLARED THE ONLY LEGITIMATE CHILDREN, OR IN THE ALTERNATIVE, THE ACKNOWLEDGED NATURAL CHILDREN OF THE DECEASED JOAQUIN ORTEGA, AND, AS HEIRS, ENTITLED TO THE RESIDUARY ESTATE OF THE DECEDENT;
- 3) THAT THE DEED OF SALE EARLIER EXECUTED BY HER IN FAVOR OF JOAQUIN ORTEGA BE DECLARED INEXISTENT AND VOID.

PETITIONERS FILED THEIR ANSWER TO THE AMENDED COM-PLAINT, RAISING THE FOLLOWING ALLEGATIONS: THAT JOAQUIN ORTEGA, THEN JUSTICE OF THE PEACE OF HILONGOS, LEYTE, WAS LEGALLY MARRIED TO EMILIA YBAÑEZ; THAT THEIR CHILD-REN AND HEIRS ARE LUISA ELENA ORTEGA, EUFEMIA ORTEGA, NIEVES ORTEGA, AGUEDA ORTEGA, AND MARIA ELENA ORTEGA; THAT, ON THE OTHER HAND, CALIXTA YAP WAS ONLY A CONCUBINE OF JOAQUIN ORTEGA, AND THAT HER CHILDREN WERE SPURIOUS CHILDREN, BEGOTTEN DURING THE EXISTENCE OF THE MARRIAGE OF EMILIA YBAÑEZ AND JOAQUIN ORTEGA; THAT SINCE 1927, JOAQUIN ORTEGA AND EMILIA YBAÑEZ, THEIR CHILDREN AND GRANDCHILREN, HAVE BEEN CONTINUOUSLY, OPENLY, PEACEFULLY AND ADVERSELY IN POSSESSION AND OCCUPATION OF THE LAND IN LITIGATION, AND THAT PLAINTIFFS' CAUSE OF ACTION, IF ANY, HAD ALREADY PRESCRIBED; THAT THE ESTATE OF JOAQUIN ORTEGA (A PART OF WHICH IS IN LITIGATION) WAS THE SUBJECT OF THE INTESTATE PROCEEDINGS IN SP. PROC. NO. 441-R IN THE CFI OF CEBU, AND THAT IN SAID PROCEEDINGS, THE PLAINTIFFS WERE NOT AMONG THOSE DECLARED THE HEIRS OF JOAQUIN ORTEGA.

ON FEBRUARY 24, 1975, RESPONDENT JUDGE NUMERIANO ESTENZO RENDERED A DECISION WHICH READS IN PART-

"THIS IS A CASE OF FIRST IMPRESSION WHERE THE ISSUE TO BE RESOLVED BY THIS COURT HAS BEEN TO DETERMINE WHO IS THE LEGITIMATE WIFE OF THE DECEASED JOAQUIN ORTEGA, AS BET-WEEN PLAINTIFF CALIXTA YAP ORTEGA WHO CLAIMS SHE WAS MARRIED TO JOAQUIN ORTEGA ON MAY 2, 1927 BEFORE THE JUSTICE OF THE PEACE SILVERIO ZAMORA OF MERIDA, LEYTE, ON ONE HAND, AND EMILIA YBAÑEZ OR EMILIA ABUNDO, MOTHER OF THE ALTERNATIVE DEFENDANTS WHO CLAIM THEIR AFORESAID MOTHER

MARRIED JOAQUIN ORTEGA SOMETIME IN MAY 1915, WHICH MARRIAGE CLAIMS HAVE NO ENTRIES IN THE RESPECTIVE LOCAL CIVIL REGISTRAR CONSIDERING THE LOSS OF THE RECORDS, AS WELL AS THE CORRESPONDING MARRIAGE CONTRACTS DUE TO THE LAST WAR.

XXX XXX XXX

XXX XXX XXX

"WHEREFORE, DECISION IS HEREBY RENDERED IN FAVOR OF THE PLAINTIFFS AND AGAINST THE ALTERNATIVE DEFENDANTS, DECLARING CALIXTA YAP ORTEGA AS THE SURVIVING SPOUSE OF JOAQUIN ORTEGA, AND ISABEL, LEYTE AS DESCRIBED IN THE DEED OF SALE IN FAVOR OF JOAQUIN ORTEGA DATED OCTOBER 21, 1927, WITH RIGHT TO THE 1/2 SHARE OF ALL OTHER PARCELS OF LAND WHICH ARE FOUND BY THIS COURT AS ABOVE INDICATED TO BE THE CONJUGAL PARTNERSHIP PROPERTIES OF CALIXTA YAP AND JOAQUIN ORTEGA, HEREBY ADJUDICATING THE OTHER HALF TO ALL OTHER PLAINTIFFS IN EQUAL PROPORTION.

"ALTERNATIVE DEFENDANTS ARE ORDERED TO PAY JOINTLY AND SEVERALLY TO THE PLAINTIFFS THE SUM AT THE RATE OF P2,400.00 A YEAR FROM 1949 UNTIL APRIL 7, 1973, PLUS ANOTHER AMOUNT OF P10,000.00 FOR AND AS LITIGATION EXPENSES, PLUS ANOTHER SUM OF P10,000.00 FOR AND AS ATTORNEY'S FEES, PLUS P10,000.00 FOR AND AS MORAL DAMAGES ALL OF WHICH AMOUNTS SHALL BEAR LEGAL RATE OF INTEREST, FROM THE FILING OF THIS CASE UNTIL PAID, WITH NO COSTS AGAINST THE SAID ALTERNATIVE DEFENDANTS.

"LET A COPY OF THIS DECISION BE FURNISHED THE COURT OF FIRST INSTANCE OF CEBU, BRANCH II IN CONNECTION WITH SP. PROC. NO. 441-R ENTITLED ESTATE OF JOAQUIN ORTEGA FOR ITS READY REFERENCE.

"THE DEFENDANT ADMINISTRATOR JESUS LAURENTE OF THE ESTATE OF JOAQUIN ORTEGA IS ORDERED TO DELIVER THE LAND AS ABOVE INDICATED TO THE PLAINTIFFS, UPON TERMINATION OF THE AFORESAID SPECIAL PROCEEDINGS NOW PENDING IN BRANCH II OF THE COURT OF FIRST INSTANCE OF CEBU AFTER THE SUBMISSION AND APPROVAL OF THE PROJECT OF PARTITION AND THE PAYMENT OF THE ESTATE AND INHERITANCE TAXES." (PP. 182-183, ROLLO)

ON AUGUST 11, 1975, AFTER SEVERAL MOTIONS FOR EXE-CUTION OF JUDGMENT HAD BEEN FILED BY THE PRIVATE RESPONDENTS, PETITIONERS FILED THEIR PETITION FOR CERTIORARI IN THE COURT OF APPEALS, DOCKETED AS CA-G.R. NO. SP-04494-R, ASSAILING THE PROCEEDINGS AND THE JUDGMENT IN CIVIL CASE NO. 1184-0 ON THE GROUND THAT RESPONDENT JUDGE ESTENZO CONVERTED PRIVATE RESPONDENTS' ACTION FOR QUIETING OF TITLE, DECLARATION OF NULLITY OF SALE, AND ANNULMENT OF TAX DECLARATION OF A PARCEL OF LAND INTO AN ACTION FOR DECLARATION OF THE LEGAL WIFE, LEGITIMATE CHILDREN, AND LEGAL HEIRS OF THE DECEASED JOAQUIN ORTEGA. IT IS LIKEWISE THE CONTENTION OF PETITIONERS THAT THE ASSAILED DECISION NULLIFIED, MODIFIED, AND REVOKED THE ORDER OF THE COURT OF FIRST INSTANCE OF CEBU, BRANCH II, DATED NOVEMBER 24, 1962, IN SP. PROC. NO. 441-R, WHICH DECLARED EMILIA YBAÑEZ AND HER CHILDREN BY JOAQUIN ORTEGA THE HEIRS OF THE SAID JOAQUIN ORTEGA.

IN A DECISION PROMULGATED ON FEBRUARY 14, 1976, THE COURT OF APPEALS DISMISSED THE PETITION. HENCE, THIS PRESENT RECOURSE.

THE DECLARATION OF HEIRS MADE BY JUDGE ESTENZO IS VOID, SAID MATTER HAVING BEEN ALREADY RESOLVED WITH FINALITY BY THE PROBATE COURT, WHOSE ORDER OF NOVEMBER 24, 1962 HAS NOT BEEN APPEALED AND IS THEREFORE FINAL INsofar AS SAID DECLARATION IS CONCERNED. BUT OF COURSE THE OWNERSHIP OF THE DISPUTED PARCEL CANNOT BE SAID TO BE RES JUDICATA, FOR A PROBATE COURT HAS NO RIGHT TO DETERMINE WITH FINALITY THE OWNERSHIP THEREOF.

CIVIL CASE NO. 1184-0 WAS INSTITUTED FOR THE PUR-POSE OF HAVING CALIXTA YAP DECLARED OWNER OF A PARCEL OF LAND IN BARRIO STA. CRUZ, ISABEL, LEYTE, ASSERTING HER TITLE AS AGAINST THE DECEDENT JOAQUIN ORTEGA HIM-SELF. THE SUBJECT MATTER BEING BEYOND THE JURISDICTION OF THE COURT OF FIRST INSTANCE OF CEBU, SITTING AS A PROBATE COURT, IT WAS PROPER THAT THE ISSUE OF OWNERSHIP OF A SPECIFIC PROPERTY WAS RAISED IN A SEPARATE ORDINARY ACTION.

THIS COURT HAS RULED:

"IT IS WELL-SETTLED THAT A PROBATE COURT OR ONE IN CHARGE OF PROCEEDINGS WHETHER TESTATE OR INTESTATE CANNOT ADJUDICATE OR DETERMINE TITLE TO PROPERTIES CLAIMED TO BE A PART OF THE ESTATE AND WHICH ARE EQUALLY CLAIMED TO BELONG TO OUTSIDE PARTIES. ALL THAT THE SAID COURT COULD DO AS REGARDS SAID PROPERTIES IS TO DETERMINE WHETHER THEY SHOULD OR SHOULD NOT BE INCLUDED IN THE INVENTORY OR LIST OF PROPERTIES TO BE ADMINISTERED BY THE ADMINISTRATOR. IF THERE IS NO DISPUTE, WELL AND GOOD, BUT IF THERE IS, THEN THE PARTIES, THE ADMINISTRATOR, AND THE OPPOSING PARTIES HAVE TO RESORT TO AN ORDINARY ACTION FOR A FINAL DETERMINATION OF THE CONFLICTING CLAIMS OF TITLE BECAUSE THE PROBATE COURT CANNOT DO SO." (MALLARI VS. MALLARI, 92 PHIL. 694; BAQUIAL VS. AMIHAN, 92 PHIL. 501; VDA. DE RODRIGUEZ VS. COURT OF APPEALS, 91 SCRA 540)

THUS, IT IS FITTING AND PROPER THAT THE ISSUE OF OWNERSHIP OF THE PARCEL OF LAND BE RESOLVED IN THE ALREADY INSTITUTED CIVIL CASE NO. 1184-0, IN THE THEN COURT OF FIRST INSTANCE OF LEYTE, BRANCH V.

THIS IS AS FAR AS WE CAN GO FOR NOW, THE ISSUE OF OWNERSHIP CANNOT BE DETERMINED BY US WITH FINALITY, THE RESOLUTION OF THE ISSUE IS BETTER LEFT TO THE TRIAL COURT WHERE CIVIL CASE No. 1184-0 IS NOW INSTITUTED. THE RESOLUTION OF THIS ISSUE WILL NEED A FULL-DRESS HEARING WHERE THE PARTIES WILL EXCHANGE VARIOUS PLEADINGS BETWEEN THEMSELVES. THIS COURT NOT BEING A TRIER OF FACTS, IT IS CLEAR THAT WE CANNOT ORDER AN UNQUALIFIED AND FINAL EXCLUSION OR NON-EXCLUSION OF THE PROPERTY INVOLVED FROM THE ESTATE OF JOAQUIN ORTEGA.

WHEREFORE, THE PETITION FOR CERTIORARI IS GRANTED. THIS CASE IS REMANDED TO THE TRIAL COURT FOR A FULL HEARING ONLY ON THE QUESTION OF OWNERSHIP OF THE 174,496 SQUARE METERS OF LAND IN STA. CRUZ, LEYTE AS COVERED BY THE ORIGINAL COMPLAINT.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

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