

BRENDA J. DEBUQUE, ESTRELLA L. JAVELONA, ROSENDO L. JAVELONA JR., ARTURO L. JAVELONA, YSMAEL L. JAVELONA, VIVIAN L. JAVELONA, ROBERTO L. JAVELONA AND EDUARDO L. JAVELONA, PETITI...

G.R. No. L-30634. August 27, 1980

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petition for certiorari to review the order dated February 15, 1969 of the Court of First Instance of Negros Occidental, Branch I of Silay City, distributing the balance of the intestate estate of the late Rosendo Javelona Sr. in Special Proceeding No. 270 (6688) entitled "Intestate Estate of the late Rosendo Javelona Sr., Rosendo Javelona Jr., Administrator," which awarded the amount of P12,081.51 to petitioners and P42,587.88 to private respondents.

The following facts are not disputed:

Rosendo Javelona Sr. died intestate on June 22, 1962 in Silay City (p. 2, Petitioners' Brief found on p. 185, rec.). The deceased left two sets of heirs, i.e., the first set consisting of his widow Estrella Libo-on Javelona and their seven (7) legitimate children, and the second set consisting of his nine (9) illegitimate children. They are the petitioners and private respondents herein, respectively.

At the time of the institution of these intestate proceedings before the Court of First Instance of Negros Occidental, Brenda Javelona, the youngest legitimate child was still a minor (p. 6, CFI rec.), and was placed under the guardianship of her mother, Estrella Libo-on Javelona. On the other hand, only the eldest, Renato Javelona, was of age among the illegitimate children (p. 47, CFI rec.) so that the minors were likewise placed under the guardianship of, first their mother, Serena Libo-on (p. 62, CFI rec.), then of Renato Javelona upon the death of their mother (p. 101, CFI rec.), and later of Eulalia Libo-on (p. 311, CFI rec.).

The estate was first administered by Arturo Javelona a legitimate son who was appointed Special Administrator on July 5, 1962 (p. 9, CFI rec.). He was replaced by his elder brother, Rosendo Javelona Jr., who was appointed Judicial Administrator on December 13, 1962 (p. 48, CFI rec.).

On July 15, 1964, the parties, to avoid a protracted and expensive court litigation, entered into an Amicable Settlement-Compromise Agreement whereby they agreed that the first set of heirs will receive 71.62% of the decedent's net estate which shall be equally divided among them, while the second set of heirs will receive 28.38% of the net estate, likewise to be equally divided among them (pp. 192-194, CFI rec.). This was in accordance with the Amended Project of Partition drawn by the Judicial Administrator and the second set of heirs (pp. 183-190, rec.), and approved by respondent Judge on July 20, 1964 (p. 195, CFI rec.).

Since the bulk of the estate consisted in decedent's 1/3 share in Hacienda Banilad, which he owned in common with his two brothers under the partnership "Javelona Brothers" (pp. 3 & 108, CFI rec.), the judicial administrator

was authorized to participate in its partition and subsequent sale (p. 97, CFI rec.). Other properties of the estate were sold and converted to cash, and the heirs were allowed withdrawals by way of advances chargeable against their shares. As of July, 1967, the withdrawals by the first set totalled P527,601.32; while the withdrawals by the second set amounted to P180,768.35, per Consolidated Reports of the Administrators for the period from September 2, 1962 to July, 1967 (p. 1124, CFI rec.), which were approved by the Court on December 15, 1967 (p. 994, CFI rec.).

On January 9, 1968, the Court made an order of disposition (pp. 1039-1049, CFI rec.) which was later modified per Amended Decision dated September 4, 1968 [pp. 1129-1132, CFI rec.]. These two orders, which had both become final, were later clarified in the challenged order of February 15, 1969 (pp. 1190-1192, CFI rec.), which also ordered the distribution of the residuary estate consisting of P54,669.39 deposited in the Philippine Commercial and Industrial Bank in Bacolod City, as follows:

To the first set and the widow-

P12,081.51

To the second set - - - - -

42,587.88

P54,669.39

This order of February 15, 1969 is now the subject of this appeal by certiorari. It was filed by Brenda Javelona Debuque, the youngest legitimate heir who had already been emancipated by her marriage to lawyer Jorge Debuque (p. 448, CFI rec.) and later by becoming of age. The said heir, who had acquired most of the interests of the other legitimate heirs (pp. 1227 & 1281, CFI rec.), first filed a motion for reconsideration [pp. 1204, CFI rec.] on March 11, 1969 or thirteen (13) days from receipt by her on February 26, 1969 [p. 1240, CFI rec.] of the assailed order, praying that the Court reconsider its order so that the remaining balance of P54,669.39 belonging to the estate be proportionately divided between the first set and the second set of heirs according to their respective balances, which were alleged to be: (a) P49,140.52 or P39,106.66 for the first set, depending on whether or not some P10,030.86 or P17,033.26 excess withdrawals by the widow were to be included in the aggregate amount already received by the legitimate heirs; and (b) P42,587.98 for the second set, which is admitted by both parties. The movant alleges that because the total of the above balance exceeds the remaining cash deposit of the estate, payment to the two sets of heirs should be proportionately reduced.

The said motion likewise:

1) questions the inclusion of the excess withdrawals of the widow [P17,033.26 or even only P10,030.86] to the over-all total withdrawals of the first set; and

2) asks, as a corollary motion, for the deduction from the corresponding shares of the members of the first set the amounts they owe movant Brenda and for delivery of the same to the latter, together with her share in the residuary estate.

The said motion was denied per order of respondent Judge dated March 31, 1969 (pp. 1226-1228, CFI rec.), received by movant Brenda through counsel on April 14, 1969 [pp. 1228 & 1242, CFI rec.].

On April 25, 1969 or eleven (11) days from receipt of such order of denial, Brenda filed a second and last motion for reconsideration [pp. 1247-1251, CFI rec.], thus using up a total of twenty-four days of her period to appeal.

Her second motion for reconsideration was denied "for the reasons already given in the order of March 31, 1969" (please see par. 4, p. 24, rec.). This clearly shows that the second motion was pro forma, since the grounds alleged were already available at the time of the filing of the first motion (*Vaswani vs. Tarachand Bros.*, 110 Phil. 527). Hence, it did not interrupt her period to appeal, so that this petition should have been filed on or before May 2, 1969 (May 1st being a legal holiday).

Even granting that the second motion were not pro forma and should therefore suspend the running of her period to appeal, her receipt of the second order of denial on June 13, 1969 (p. 3, rec.) left her only six [6] days from said date within which to perfect her appeal. Such being the case, this petition, which was filed on June 25, 1969 or twelve (12) days thereafter, is obviously out of time.

But even on the merits, this petition ought not to prosper.

The petitioners are the members of the first set, Brenda having included all her legitimate co-heirs as co-petitioners in view of her acquisition of most of their interests. They have raised as the only issue in this petition the alleged grossly disproportionate and unfair distribution by respondent Judge to the co-heirs consisting of petitioners on the one hand and respondents on the other, of the decedent's residuary estate amounting to P54,669.39, in contravention of the expressed provisions of the Civil Code. The bone of their contention is that the respondent Judge failed to apply Articles 1085, 485, 1093, 1095 1104 and 1019 of the Civil Code in ordering the distribution of the residuary estate.

On the other hand, private respondents do not dispute the theory of proportionate distribution as enjoined by the above-mentioned articles. They contend, however, that the respondent Judge correctly found the respondents entitled to their full share of P42,587.98, but the petitioners' share of P12,081.51 is actually more than what they are entitled to, after they received and enjoyed to the exclusion of the private respondents the following amounts due to the estate of the deceased:

P 4,823.23 --

due from the Special Administrator, Arturo L. Javelona (member of the first set), whose remaining share was acquired by petitioner Brenda Debuque [p. 16, rec.];

P 6,304.31 --

share from the Hacienda Anangui, representing 1/2 of the profits realized from the sale of the 1/3 interest held by the deceased in the said hacienda, which he owned in common with his two brothers. The same was sold by the first set of heirs without the proceeds having been reported as income of the estate. The court, after hearing, found this to be conjugal property.

P23,532.85 --

widow's share of the conjugal debt amounting to P47,065.71 which was fully paid by the estate.

P34,660.49 --

T O T A L

In other words, while petitioners insist that the computation of their 71.62% share in the estate should be based on P794,216.99 -- the total value of the net estate, private respondents contend that it should be based only on P759,556.50 because the difference of P34,660.49 should be excluded in determining the proportionate share of the petitioners; otherwise, they will participate twice in the above-mentioned amount.

The trial court has apparently excluded the said amount of P34,660.49 based on the reasons above-stated.

Since the petitioners have elected to elevate their case to Us thru the remedy of appeal by certiorari, they are bound by the factual findings of the trial court. "A direct appeal from the CFI binds appellant to the findings of the trial court. Because he is deemed to have accepted the facts as found by the lower court. He may raise only questions of law" (Lanzar vs. Guerrero Sr., 29 SCRA 107; Abuyo vs. de Suazo, 18 SCRA 600).

Moreover, in appeals by certiorari, only errors or questions of law may be raised (Sec. 2, Rule 45, Rules of Court; Sec. 17, RA 296, as amended by RA 5440).

It appears, however, that the controversy lies not in the application or interpretation of the legal provisions invoked by the petitioners, but on how much the two sets of heirs are entitled to.

A perusal of petitioners' brief (p. 185, rec.) indicates the following assignment of errors:

"I. The trial court erred in ordering the delivery of P42,587.88 to the respondents in full payment of the balance due them and only the sum of P12,081.51 to the petitioners in partial payment of the balance due them (P39,109.66) knowing that the assets left of the estate was only P54,669.39 and therefore insufficient to satisfy fully both claims;

"II. The trial court erred in ignoring the request of petitioners for proportional distribution of the available P54,669.39 whereby petitioners requested for the delivery to them of the sum of P26,170.38 and to the respondents the sum of P28,499.01."

Because these relate to a factual determination of the value of the net estate as well as the remaining shares of the parties therein, which factual determination is dependent on the exclusion of P34,660.49 as above explained, they are deemed waived in this direct appeal to the Supreme Court.

At any rate, We are satisfied that the lower court did not err in finding that "the shares of the heirs in the deposit in the Philippine Commercial and Industrial Bank are as follows:

"To the First Set and the Widow -

Twelve thousand eighty-one pesos

and fifty-one centavos -

(P12,081.51)

"To the Second Set -

Forty-two thousand five hundred

eighty-seven pesos and

eighty-eight centavos - --

(P42,587.88)

P54,669.39"

This case has been litigated between two sets of heirs who are by law supposed to be co-owners of the estate until its partition, pursuant to Articles 1078 and 484 of the New Civil Code. When the parties entered into an amicable settlement--compromise agreement, they made the agreement as between the two sets, namely, the legitimate children and the widow as first party (herein petitioners) and the illegitimate children as party of the second part (herein private respondents) [pp. 72-73, rec.]. The parties then agreed to divide the estate between the two contending sets in the ratio of 71.62% to 28.38% and the respective sets to divide their shares equally among themselves.

Corollarily, upon approval and finality of said agreement, the two sets will again become co-owners of their respective shares as among themselves. Thus, the legitimate heirs will be co-owners in equal shares of the 71.66% portion of the estate, while the illegitimate heirs will be co-owners of their 28.38% portion until partition. Meanwhile, they are governed by the pertinent laws on co-ownership and succession.

When the trial court issued the assailed order of February 15, 1969, the amounts of P4,823.33 -- which is due from petitioner Arturo L. Javelona as Special Administrator; P6,304.31 -- corresponding to the 1/2 share of the deceased in the profit of P12,604.31 resulting from the sale of his 1/3 interest in Hacienda Anangui; and P23,332.85 -- the widow's share in the conjugal debt of P47,065.71 which was fully paid by the estate, were all determined to be due from members of the first set.

As pointed out above, the Special Administrator -- petitioner Arturo, the second eldest legitimate heir -- and the widow belong to the first set. The proceeds of the sale of Hacienda Anangui were admittedly received by the legitimate heirs [please see Deed of Absolute Sale, pp., 67-68, rec.; par. (b) of Petitioners' Reply and Opposition to Motion to Dismiss, p. 102, rec.]. Thus, the members of the first set are solidarily liable for the estate's losses due to the amounts they have taken and have not restored to the estate, pursuant to Article 927 of the New Civil Code, which is quoted hereunder:

"Art. 927. If two or more heirs take possession of the estate, they shall be solidarily liable for the loss or destruction of a thing devised or bequeathed, even though only one of them should have been negligent."

This solidary liability should be understood to cover not only negligence (culpa) but also fraud (dolo) and delay (mora) [Padilla's Civil Code annotated (1973), Vol. III, p. 396].

Although the Code Commission says that this Article is for the protection of devisees and legatees, it may be applied in relation to Article 1087, which provides as follows:

"Art. 1087. In the partition the co-heirs shall reimburse one another for the income and fruits which each one of them may have received from any property of the estate, for any useful and necessary expenses made upon such property, and for any damage thereto through malice or neglect."

Certainly, the 1/2 share in the P12,604.31 profit realized from the sale of the decedent's 1/3 interest in Hacienda Anangui represents income of the estate.

WHEREFORE, THE PETITION IS HEREBY DENIED, WITH COSTS AGAINST THE PETITIONERS.

Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee, J., concurs in the result.

Fernandez, J., on leave.

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