

**GAUDENCIO BICOMONG, ET AL., PLAINTIFFS-APPELLEES, VS.
GERONIMO ALMANZA, ET AL., DEFENDANTS, FLORENTINO
CARTENA, DEFENDANT-APPELLANT.**

G.R. No. L-37365. November 29, 1977

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an appeal certified to this Court by the Court of Appeals[1] in accordance with the provisions of Sec. 17, paragraph (4) of the Judiciary Act of 1948, as amended, since the only issue raised is the correct application of the law and jurisprudence on the matter which is purely a legal question.

The following findings of fact by the Court of First Instance of Laguna and San Pablo City in Civil Case No. SP-265, and adopted by the Court of Appeals, show that:

"Simeon Bagsic was married to Sise-nanda Barcenas on June 8, 1859 (Exh. "D"). Of this marriage there were born three children namely: Perpetua Bagsic (Exhibit G), Igmedia Bagsic (Exhibit F), and Ignacio Bagsic (Exhibit H). Sisenanda Barcenas died ahead of her husband Simeon Bagsic.

On June 3, 1885 Simeon Bagsic re-married Silvestra Glorioso (Exhibit "E"). Of this second marriage were born two children, Felipa Bagsic (Exhibit J) and Maura Bagsic (Exhibit I). Simeon Bagsic died sometime in 1901. Silvestra Glo-rioso also died.

Ignacio Bagsic died on April 18, 1939 (Exhibit C) leaving the plaintiff Francisca Bagsic as his only heir. Igmedia Bagsic also died on August 19, 1944 (Exhibit B) survived by the plaintiffs Dionisio Tolentino, Maria Tolentino and Petra Tolentino.

Perpetua Bagsic died on July 7, 1945 (Exhibit A). Surviving her are her heirs, the plaintiffs Gaudencio Bicomong, Felicidad Bicomong, Salome Bicomong, and Gervacio Bicomong.

Of the children of the second marriage, Maura Bagsic died also on April 14, 1952 leaving no heir as her husband died ahead of her. Felipa Bagsic, the other daughter of the second marriage, died also leaving her husband Geronimo Almanza and her daughter Cristeta Almanza. But five (5) months before the present suit was filed or on July 23, 1959, Cristeta Almanza died leaving behind her husband, the defendant herein Engracio Manese (Exhibit 1-Manese) and her father Geronimo Almanza."

(Rollo, pp. 2-3)

The subject matter of the complaint in Civil Case No. SP-265 concerns the one-half undivided share of Maura Bagsic in the following described five (5) parcels of land which she inherited from her deceased mother, Silvestra Glorioso, to wit:

"A. A parcel of land in Bo. San Ignacio, City of San Pablo, planted with 38 fruit bearing coconut trees, with an area of 1,071 sq. m. Bounded on the N. by German Gariñgan; on the E. by Juan Aliagas; on the S. by Bernardino Alina; and on the W. by Feliciano Glorioso. Covered by Tax No. 12713 for the year 1948 in the

name of Silvestra Glorioso, now Tax No. 31232, assessed at P170.00 in the name of defendant Geronimo Almanza;

B. A parcel of land, also situated in Bo. San Ignacio, City of San Pablo, planted with fruit bearing coconut trees, with an area of 9,455 sq. m. Bounded on the N. by Paulino Gajuco; on the E. by Felisa Gaviño and German Gariñan; on the S. by Esteban Calayag; and on the W. by Laureano Ambion. Covered by Tax No. 12714 for the year 1948 in the name of defendant Geronimo Almanza;

C. A parcel of land situated in same Bo. San Ignacio, City of San Pablo, planted with 376 fruit bearing coconut trees and having an area of 11,739 sq. m. Bounded on the N. by Jacinto Alvero, Anacleto Glorioso and Bernardino Alina; on the E. by Bernardino Alina; on the S. by Rosendo Banaad, Jacinto Alvero and Casayan River; and on the W. by Anacleto Glorioso. Covered by Tax No. 12715 for the year 1948 in the name of Silvestra Glorioso, now Tax No. 31234, assessed at P2,720.00 in the name of defendant Geronimo Almanza;

D. A residential lot, situated at P. Alcantara Street, Int., City of San Pablo, with an area of 153 sq. m. Bounded on the N. by heirs of Pedro Calampiano; on the E. by Petronilo Cartago; on the S. by Ignacio Yerro; and on the W. by Melecio Cabrera. Covered by Tax No. 17653 for the year 1948 in the name of Silvestra Glorioso, now Tax No. 21452, assessed at P610.00 in the name of Cristeta Almanza; and

E. A parcel of coconut land, situated at Bo. Buenavista, Candelaria, Quezon, planted with 300 coconut trees fruit bearing. Area - 24,990 sq. m. Bounded on the N. (Ilaya) by heirs of Pedro de Gala; on the E. by Julian Garcia; on the S. (Ibaba) by Julian Garcia; and on the W. by Taguan River. Covered by Tax No. 21452, assessed at P910.00."

(Record on Appeal, pp. 4-6)

Three sets of plaintiffs filed the complaint on December 1, 1959, namely: (a) the Bicomongs, children of Perpetua Bagsic; (b) the Tolentinos, children of Igmedia Bagsic; and (c) Francisca Bagsic, daughter of Ignacio Bagsic, in the Court of First Instance of Laguna and San Pablo City against the defendants Geronimo Almanza and Engracio Manese for the recovery of their lawful shares in the properties left by Maura Bagsic.

After the death of Maura Bagsic, the above-described properties passed on to Cristeta Almanza who took charge of the administration of the same. There-upon, the plaintiffs approached her and requested for the partition of their aunt's properties. However, they were prevailed upon by Cristeta Almanza not to divide the properties yet as the expenses for the last illness and burial of Maura Bagsic had not yet been paid. Having agreed to defer the partition of the same, the plaintiffs brought out the subject again sometime in 1959 only. This time Cristeta Almanza acceded to the request as the debts, accordingly, had already been paid. Unfortunately, she died without the division of the properties having been effected, thereby leaving the possession and administration of the same to the defendants.

After trial, the court rendered judgment, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs who are hereby declared to be entitled to ten twenty-fourth (10/24) share on the five parcels of land in dispute. The defendant Engracio Manese and the heirs of the deceased Geronimo Almanza, who are represented in the instant case by the administrator Florentino Cartena, are hereby required to pay the plaintiffs from July 23, 1959 the sum of P625.00 per annum until the ten-twenty fourth (10/24) share on the five parcels of land are delivered to the plaintiffs, with legal interest from the time this decision shall have become final.

With costs against the defendants.

SO ORDERED.

City of San Pablo, September 21, 1962.

(SGD) JOSE G. BAUTISTA

Judge"

Record on Appeal, p. 47

From the aforesaid decision of the trial court, Florentino Cartena, the substitute defendant for Geronimo Almanza, appealed to the Court of Appeals. The other defendant, Engracio Manese, did not appeal and execution was issued with respect to the parcels of land in his possession, that is, those described under Letters D and E in the complaint. Hence, the subject matter of the case on appeal was limited to the one-half undivided portion of only three of the five parcels of land described under letters A, B and C in the complaint which defendant Cartena admitted to be only in his possession.[2]

On appeal, defendant-appellant Cartena contends that the provisions of Arts. 995, 1006 and 1008 of the New Civil Code, applied by the trial court in allowing plaintiffs-appellees to succeed to the properties left by Maura Bagsic were not the applicable provisions. He asserts that in the course of the trial of the case in the lower court, plaintiffs requested defendants to admit that Felipa Bagsic, the sole sister of full blood of Maura Bagsic, died on May 9, 1955. Since Maura Bagsic died on April 14, 1952, Felipa succeeded to Maura's estate. In support thereof, he cites Art. 1004 of the New Civil Code which provides that "should the only survivors be brothers and sisters of the full blood, they shall inherit in equal shares," and he concludes with the rule that the relatives nearest in degree excludes the more distant ones. (Art. 962, New Civil Code)

On the other hand, plaintiffs-appellees claim that the date of death of Felipa Bagsic was not raised as an issue in the trial court. It was even the subject of stipulation of the parties as clearly shown in the transcript of the stenographic notes that Felipa Bagsic died on May 9, 1945.[3]

The Court of Appeals ruled that the facts of the case have been duly established in the trial court and that the only issue left for determination is a purely legal question involving the correct application of the law and jurisprudence on the matter, hence the appellate court certified this case to Us.

We hold that the provisions of Art. 975, 1006 and 1008 of the New Civil Code are applicable to the admitted facts of the case at bar. These Articles provide:

"Art. 975. When children of one or more brothers or sisters of the deceased survive, they shall inherit from the latter by representation, if they survive with their uncles or aunts. But if they alone survive, they shall inherit in equal portions."

"Art. 1006. Should brothers and sisters of the full blood survive together with brothers and sisters of the half blood, the former shall be entitled to a share double that of the latter."

"Art. 1008. Children of brothers and sisters of the half blood shall succeed per capita or per stripes, in accordance with the rules laid down for brothers and sisters of the full blood."

In the absence of descendants, ascendants, illegitimate children, or a surviving spouse, Article 1003 of the New Civil Code provides that collateral relatives shall succeed to the entire estate of the deceased. It appearing that Maura Bagsic died intestate without an issue, and her husband and all her ascendants had died ahead of her, she is succeeded by the surviving collateral relatives, namely the daughter of her sister of full blood and the ten (10) children of her brother and two (2) sisters of half blood, in accordance with the provision of Art. 975 of the New Civil Code.

By virtue of said provision, the aforementioned nephews and nieces are entitled to inherit in their own right. In

Abellana-Bacayo vs. Ferraris-Borromeo, L-19382, August 31, 1965, 14 SCRA 986, this Court held that "nephews and nieces alone do not inherit by right of representation (that is per stirpes) unless concurring with brothers or sisters of the deceased."

Under the same provision, Art. 975, which makes no qualification as to whether the nephews or nieces are on the maternal or paternal line and without preference as to whether their relationship to the deceased is by whole or half blood, the sole niece of whole blood of the deceased does not exclude the ten nephews and nieces of half blood. The only difference in their right of succession is provided in Art. 1008, N.C.C., in relation to Article 1006 of the New Civil Code (supra), which provisions, in effect, entitle the sole niece of full blood to a share double that of the nephews and nieces of half blood. Such distinction between whole and half blood relationships with the deceased has been recognized in *Dionisia Padura, et al. vs. Melania Baldovino, et al.*, No. L-11960, December 27, 1958, 104 Phil. 1065 (unreported) and in *Alviar vs. Alviar*, No. L-22402, June 30, 1969, 28 SCRA 610.

The contention of the appellant that Maura Bagsic should be succeeded by Felipa Bagsic, her sister of full blood, to the exclusion of the nephews and nieces of half blood citing Art. 1004, N.C.C., is unmeritorious and erroneous for it is based on an erroneous factual assumption, that is, that Felipa Bagsic died in 1955, which as indicated here before, is not true as she died on May 9, 1945, thus she predeceased her sister Maura Bagsic.

We find the judgment of the trial court to be in consonance with law and jurisprudence.

ACCORDINGLY, the judgment of the trial court is hereby affirmed.

No costs.

Teehankee, (Chairman), Makasiar, Muñoz Palma, Martin, and Fernandez, JJ., concur.

[1] Second Division, Concepcion, Jr., J., ponente, and Reyes, A., Fernandez, R., JJ. concurring.

[2] Brief for the Appellees, p. 16.

[3] Brief for the Appellees, pp. 8-9.

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