

IN RE SUMMARY SETTLEMENT OF THE ESTATE OF MELODIA FERRARIS. FILOMENA ABELLANA DE BACAYO, PETITIONER AND APPELLANT, VS. GAUDENCIA FERRARIS DE BORRAMEO, CATALINA FERRARIS DE VILLE...

G.R. No. L-19382. August 31, 1965

Ponente: REYES, J.B.L., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/cf99661c77fc/>

REYES, J.B.L., J.:

This is a pauper's appeal, directly brought to this Court on points of law, from a resolution, dated September 20, 1961, excluding petitioner-appellant herein, Filomena Abellana de Bacayo, as heir in the summary settlement of the estate of Melodia Ferraris, Special Proceeding No. 2177-R of the Court of First Instance of Cebu, Third Branch, as well as from the order, dated October 16, 1961, denying a motion to reconsider said resolution.

The facts of this case are not disputed by the parties.

Melodia Ferraris was a resident of Cebu City until 1937 when she transferred to Intramuros, Manila. She was known to have resided there continuously until 1944. Thereafter, up to the filing on December 22, 1960 of the petition for the summary settlement of her estate, she has not been heard of and her whereabouts are still unknown. More than ten (10) years having elapsed since the last time she was known to be alive, she was declared presumptively dead for purposes of opening her succession and distributing her estate among her heirs.

Melodia Ferraris left properties in Cebu City, consisting of one third (1/3) share in the estate of her aunt, Rosa Ferraris, valued at P6,000.00, more or less, and which was adjudicated to her in Special Proceeding No. 13-V of the same court.

The deceased Melodia Ferraris left no surviving direct descendant, ascendant, or spouse, but was survived only by collateral relatives, namely, Filomena Abeiana de Bacayo, an aunt, and half-sister of decedent's father, Anacleto Ferraris; and by Gaudencia, Catalina, Conchita, and Juanito, all surnamed Ferraris, her nieces and nephew, who were the children of Melodia's only brother of full blood, Arturo Ferraris, who pre-deceased her (the decedent). These two classes of heirs claim to be the nearest intestate heirs and seek to participate in the estate of said Melodia Ferraris.

The following diagram will help illustrate the degree of relationship of the contending parties to said Melodia Ferraris:

(see Philippine Report Volume 122 page 321)

The sole issue to be resolved in this case is: Who should inherit the intestate estate of a deceased person when he or she is survived only by collateral relatives, to wit: an aunt and the children of a brother who predeceased him or her? Otherwise, will the aunt concur with the children of the decedent's brother in the inheritance or will the former be excluded by the latter?

The trial court ruled that the oppositors-appellees, as children of the only predeceased brother of the decedent, exclude the aunt (petitioner-appellant) of the same decedent, reasoning out that the former are nearer in degree (two degrees) than the latter since nieces and nephew succeed by right of representation, while petitioner-appellant is three degrees distant from the decedent, and that other collateral relatives are excluded by brothers or sisters, or children of brothers or sisters of the decedent in accordance with article 1009 of the New Civil Code.

Against the above ruling, petitioner-appellant contends in the present appeal that she is of the same or equal degree of relationship as the oppositors-appellees, three degrees removed from the decedent; and that under article 975 of the New Civil Code no right or representation could take place when the nieces and nephew of the decedent do not concur with an uncle or aunt, as in the case at bar, but rather the former succeed in their own right.

We agree with appellants that as an aunt of the deceased, she is as far distant as the nephews from the decedent (three degrees) since in the collateral line to which both kinds of relatives belong degrees are counted by first ascending to the common ancestor and then descending to the heir (Civil Code, Art. 966). Appellant is likewise right in her contention that nephews and nieces alone do not inherit by right of representation (i.e., per stirpes) unless concurring with brothers or sisters of the deceased, as provided expressly by Article 975:

"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."

Nevertheless, the trial court was correct when it held that, in case of intestacy, nephews and nieces of the de cujus exclude all other collaterals (aunts and uncles, first cousins, etc.) from the succession. This is readily apparent from articles 1001, 1004, 1005, and 1009 of the Civil Code of the Philippines, that provided as follows:

"ART. 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half."

"ART. 1004. Should the only survivors be, brothers and sisters of the full blood, they shall inherit in equal shares."

"ART. 1005. Should brothers and sisters survive together with nephews and nieces who are the children of the decedent's brothers and sisters of the full blood, the former shall inherit per capita, and the latter per stirpes."

"ART. 1009. Should there be neither brothers nor sisters, nor children of brothers or sisters, the other collateral relatives shall succeed to the estate."

Under the last article (1009), the absence of brothers, Sisters, nephews and nieces of the decedent is a precondition to the other collaterals (uncles, cousins, etc.) being called to the succession. This was also and more clearly the case under the Spanish Civil Code of 1889, that immediately preceded the Civil Code now in force (R. A. 386). Thus, Articles 952 and 954 of the Code of 1889 prescribed as follows:

"ART. 952. In the absence of brothers or sisters and of nephews or nieces, children of the former, whether of the whole blood or not, the surviving spouse, if not separated by a final decree of divorce shall succeed to the entire estate of the deceased,"

"ART. 954. Should there be neither brothers nor sisters, nor children of brothers or sisters, nor a surviving spouse, the other collateral relatives shall succeed to the estate of deceased.

The latter shall succeed without distinction of lines or preference among them by reason of the whole blood."

It will be seen that under the preceding articles, brothers and sisters and nephews and nieces inherited ab intestato ahead of the surviving spouse, while other collaterals succeeded only after the widower or widow. The present Civil Code of the Philippines merely placed the spouse on a par with the nephews and nieces and brothers and sisters of the deceased, but without altering the preferred position of the latter vis a vis the other collaterals.

Appellants quote paragraph 2 of Tolentino's commentaries to Article 1009 of the present Civil Code as declaring that Article 1009 does not establish a rule of preference. Which is true as to "other collaterals", since preference among them is according to their proximity to the decedent, as established by Article 962, paragraph 1.

"ART. 962. In every inheritance, the relative nearest in degree excludes the more distant ones, saving the right of representation when it properly takes place."

But Tolentino does not state that nephews and nieces concur with other collaterals of equal degree. On the contrary, in the first paragraph of his commentaries to Article 1009 (Vol. II, p. 439) (which counsel for appellants had unethically omitted to quote), Tolentino expressly states:

"Other Collaterals.—The last of the relatives of the decedent to succeed in intestate succession are the collaterals other than brothers or sisters or children of brothers or sisters. They are, however, limited to relatives within the fifth degree. Beyond this, we can safely say there is hardly any affection to merit the succession of collaterals. Under the law, therefore, persons beyond the fifth degree are no longer considered as relatives, for successional purposes.

Article 1009 does not state any order of preference. However, this article should be understood in connection with the general rule that the nearest relatives exclude the farther. Collaterals of the same degree inherit in equal parts, there being no right of representation. They succeed without distinction of lines or preference among them on account of the whole blood relationship." (Italics supplied)

We, therefore, hold, and so rule, that under our laws of succession, a decedent's uncles and aunts may not succeed ab intestato so long as nephews and nieces of the decedent survive and are willing and qualified to succeed.

The decision appealed from, in so far as it conforms to this rule, is hereby affirmed. No costs.

Bengzon, C. J., Concepcion, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.