

## **ZONIA ANA T. SOLANO, PETITIONER, VS. THE COURT OF APPEALS, BIENVENIDO S. GARCIA, AND EMETERIA S. GARCIA, RESPONDENTS.**

*G.R. No. L-41971. November 29, 1983*

Ponente: MELENCIO-HERRERA, J.

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### **MELENCIO-HERRERA, J.:**

A Petition for Review on Certiorari of the Decision of the then Court of Appeals affirming the judgment rendered by the former Court of First Instance of Albay, Branch II, in Civil Case No. 3956, an action for Recognition.

On July 7, 1969, Bienvenido Garcia and Emeteria Garcia (GARCIAS), claiming to be illegitimate children of Dr. Meliton SOLANO, filed an action for recognition against him. In his Answer, SOLANO denied paternity. On February 3, 1970, during the pendency of the suit, SOLANO died. Petitioner ZONIA Ana Solano was ordered substituted for the DECEDENT as the only surviving heir mentioned in his Last Will and Testament probated on March 10, 1969, or prior to his death, in Special Proceedings No. 842 of the same Court. ZONIA entered her formal appearance as a "substitute defendant" on March 4, 1970 claiming additionally that she was the sole heir of her father, SOLANO, and asking that she be allowed to assume her duties as executrix of the probated Will with the least interference from the GARCIAS who were "mere pretenders to be illegitimate children of SOLANO".

On April 6, 1970, the GARCIAS filed their "Reply to ZONIA's Appearance and Supplemental Cause of Action" impugning the recognition of ZONIA as an acknowledged natural child with the prayer that she be declared instead, like them, as an adulterous child of the DECEDENT. ZONIA did not file any responsive pleading and the case proceeded to trial. The GARCIAS further moved for the impleading of the SOLANO estate in addition to ZONIA, which was opposed by the latter, but which the Trial Court granted in its Order dated April 15, 1970.[1]

In the hearing of May 13, 1970, the Trial Court specified the legal issues to be treated in the parties' respective Memoranda as: 1) the question of recognition of the GARCIAS; 2) the correct status of ZONIA, and 3) the hereditary share of each of them in view of the probated Will.[2]

On July 14, 1970, the Trial Court, presided by Judge Ezequiel S. Grageda, rendered judgment the dispositive portion of which decrees:

"WHEREFORE, judgment is hereby rendered declaring the plaintiffs Bienvenido S. Garcia and Emeteria S. Garcia and the defendant Sonia Ana Tuagnon as the illegitimate children of the late Dr. Meliton Solano under the class of ADULTEROUS CHILDREN, with all the rights granted them by law. The institution of Sonia Ana Solano as sole and universal heir of the said deceased in the will is hereby declared null and void and the three (3) children shall share equally the estate or one-third (1/3) each, without prejudice to the legacy given to Trinidad Tuagnon and the tight of any creditors of the estate. No pronouncement as to costs."

Appealed to the Court of Appeals by ZONIA, said Court affirmed the judgment in toto (CA-G.R. No. 49018).

ZONIA seeks a reversal of that affirmance in this petition, which was given due course.

At the outset, we should state that we are bound by the findings of fact of both the Trial Court and the Appellate

Court, particularly, the finding that the GARCIAS and ZONIA are, in fact, illegitimate children of the DECEDENT. The oral testimony and the documentary evidence of record inevitably point to that conclusion, as may be gleaned from the following background facts: SOLANO, a resident of Tabaco, Albay, married Pilar Riosa. The latter died. On a world tour he met a French woman, Lilly Gorand, who became his second wife in 1928. The union was short lived as she left him in 1929. In the early part of 1930, SOLANO started having amorous relations with Juana Garcia, out of which affair was born Bienvenido Garcia on March 24, 1931 (Exhibits "A" & "3"); and on November 3, 1935, Emeteria Garcia was born, (Exhibits "B" & "2"). Their birth certificates and baptismal certificates mention only the mother's name without the father's name. The facts establish, however, that SOLANO during his lifetime recognized the GARCIAS as his children by acts of support and provisions for their education.

In 1935, SOLANO started living with Trinidad Tuagnon. Three children were born out of this relation but only petitioner ZONIA Ana Tuagnon, born on July 26, 1941, is living. In her Birth Certificate, her status was listed as "illegitimate"; her mother as Trinidad Tuagnon; her father as "P.N.C." (Exhibit "V"), or "padre no conocido".

During the Japanese occupation, SOLANO obtained a divorce from Lilly Gorand on November 29, 1943 (Exhibits "R-1" and "S-1"). On December 22, 1943, SOLANO and Trinidad Tuagnon executed an "Escritura de Reconocimiento de Una Hija Natural" (Exhibit "Q"; "7"), acknowledging Zonia as a "natural child" and giving her the right, to use the name ZONIA Ana Solano y Tuagnon. The document was registered with the Local Civil Registrar on the same date.

On January 18, 1969, SOLANO executed his "Ultima Voluntad y Testamento" (Exhibit "11"), instituting ZONIA as his universal heir to all his personal and real properties in Camalig, Tabaco and Malinao, all in the province of Albay, except for five parcels of land in Bantayan, Tabaco, Albay, which were given to Trinidad Tuagnon in usufruct. Upon SOLANO's petition (Exhibit "10"), the Will was duly probated on March 10, 1969 in Special Proceedings No. 842 of the Court of First Instance of Albay, Branch II, in a Decision also rendered by Judge Ezequiel S. Grageda (Exhibit "12").

As above stated, these facts are not in question.

Petitioner maintains, however, that:

### I.

"The Court of Appeals, as well as the trial Court, acted without jurisdiction or in excess of jurisdiction in declaring substitute defendant Zonia Ana Solano, now petitioner, an illegitimate child of the late Dr. Meliton Solano in an action where private respondents, as plaintiffs in the Court below, sought recognition as natural children of Dr. Meliton Solano.

### II.

"The Court of Appeals, as well as the trial Court, acted without jurisdiction or in excess of jurisdiction in ordering the division of the estate of Dr. Meliton Solano between the petitioner and private respondents, when said estate is under the jurisdiction and control of the probate Court in Special Proceedings No. 842.

### III

"The Court of Appeals, as well as the trial Court, acted without jurisdiction or in excess of jurisdiction in declaring null and void the institution of heir in the last will and testament of Dr. Meliton Solano, which was duly probated in special proceedings No. 842 of the Court of First Instance of Albay, and in concluding that total intestacy resulted therefrom." [3]

Directly challenged is the jurisdiction of the lower Court, in an action for recognition: 1) to declare ZONIA as an illegitimate child of SOLANO; 2) to order the division of the estate in the same action despite the pendency of Special Proceedings No. 842; and 3) to declare null and void the institution of heir in the Last Will and Testament of SOLANO, which was duly probated in the same Special Proceedings No. 842, and concluding that total intestacy resulted.

It is true that the action below was basically one for recognition. However, upon notice of SOLANO's death, the Trial Court ordered his substitution by ZONIA, "the only surviving heir x x x as of now"[4] In her "Appearance of Substitute Defendant Zonia Ana T. Solano x x x Sole and Universal Heir", ZONIA specifically prayed that she be "allowed to assume her duties as executrix and administratrix of the probated will and testament of the late Dr. Meliton Solano, under Special Proceedings No. 842, which is already final and executory, with least interference from the plaintiffs (GARCIAS) who may be classified for the moment as only pretenders to be illegitimate children". In other words, ZONIA did not only rely upon SOLANO's Answer already of record but asserted new rights in her capacity as sole and universal heir, "executrix and administratrix," and challenged the right of the GARCIAS to recognition. Thus, she was not defending the case as a mere representative of the deceased but asserted rights and defenses in her own personal capacity. So it was that the GARCIAS filed a "Reply to Appearance of ZONIA x x x and Supplemental Cause of Action x x x " vigorously denying that ZONIA was SOLANO's sole and universal heir; that ZONIA could not legally be considered as SOLANO's acknowledged natural child because of a legal impediment; that the admission to probate of SOLANO's Will was merely conclusive as to its due execution; that the supposed recognition under a notarial instrument of ZONIA as an acknowledged natural child was fraudulent and a product of misrepresentation; that ZONIA's recognition in the Will as an acknowledged natural child is subject to nullification and that at most ZONIA is, like them, an adulterous child of SOLANO with Trinidad Tuagnon.

During the trial, the GARCIAS presented evidence to prove their allegations not only in their main complaint but also in their "Reply to Appearance and Supplemental Cause of Action". ZONIA presented no objection to the presentation by the GARCIAS of their oral and documentary evidence and even cross-examined their witnesses. ZONIA, for her part, presented her own testimonial and documentary evidence, denied the relationship of the GARCIAS' to SOLANO and presented the notarial recognition in her favor as an acknowledged natural child by SOLANO and Trinidad Tuagnon (exhibit "Q"). Thus, as raised by the parties in their own pleadings and pursuant to their respective evidence during the trial, the litigation was converted into a contest between the GARCIAS and ZONIA precisely as to their correct status as heirs and their respective rights as such. No error was committed by either the Trial Court or the Appellate Court, therefore, in resolving the issue of ZONIA's status.

ZONIA additionally assails the jurisdiction of the Trial Court in declaring null and void the institution of heir in SOLANO's will; in concluding that total intestacy resulted therefrom; and distributing the shares of the parties in SOLANO's estate when said estate was under the jurisdiction and control of the Probate Court in Special Proceedings No. 842.

Normally, this would be the general rule. However, a peculiar situation is thrust upon us here. It should be recalled that SOLANO himself instituted the petition for probate of the Will during his lifetime. That proceeding was not one to settle the estate of a deceased person that would be deemed terminated only upon the final distribution of the residue of the hereditary estate. With the Will allowed to probate, the case would have terminated except that it appears that the parties, after SOLANO's death, continued to file pleadings therein. Secondly, upon motion of the GARCIAS, and over the objection of ZONIA, the Trial Court ordered the impleading of the estate of SOLANO and proceeded on that basis. In effect, therefore, the two cases were consolidated. The records further disclose that the action for recognition (Civil Case No. 3956) and Spec. Procs.

No. 842 were pending before the same Branch of the Court and before the same Presiding Judge. Thirdly, it is settled that the allowance of a Will is conclusive only as to its due execution.[5] A probate decree is not concerned with the intrinsic validity or legality of the provisions of the Will.[6]

Thus, the Trial Court and the Appellate Court had jurisdiction to conclude that, upon the facts, the GARCIAS and ZONIA were in the same category as illegitimate children; that ZONIA's acknowledgment as a "natural child" in a notarial document executed by SOLANO and Trinidad Tuagnon on December 22, 1943 was erroneous because at the time of her birth in 1941, SOLANO was still married to Lilly Gorand, his divorce having been obtained only in 1943, and, therefore, did not have the legal capacity to contract marriage at the time of ZONIA's conception[7], that being compulsory heirs, the GARCIAS were, in fact, preterited from SOLANO's Last Will and Testament; and that as a result of said preterition, the institution of ZONIA as sole heir by SOLANO is null and void pursuant to Article 854 of the Civil Code.

"The preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious.

x x x "[8]

As provided in the foregoing provision, the disposition in the Will giving the usufruct in favor of Trinidad Tuagnon over the five parcels of land in Bantayan, Tabaco, Albay, is a legacy, recognized in Article 563 of the Civil Code[9], and should be respected in so far as it is not inofficious.[10]

So also did the Trial Court have jurisdiction in resolving the issue of the hereditary shares of the GARCIAS and ZONIA. However, contrary to the conclusions of the Courts below, holding that the entire Will is void and intestacy ensues, the preterition of the GARCIAS should annul the institution of ZONIA as heir only insofar as the legitime of the omitted heirs is impaired. The Will, therefore, is valid subject to that limitation.[11] It is plain that the intention of the testator was to favor ZONIA with certain portions of his property, which, under the law, he had a right to dispose of by Will, so that the disposition in her favor should be upheld as to the one-half ( $\frac{1}{2}$ ) portion of the property that the testator could freely dispose of.[12] Since the legitime of illegitimate children consists of one-half ( $\frac{1}{2}$ ) of the hereditary estate[13], the GARCIAS and ZONIA each have a right to participation therein in the proportion of one-third ( $\frac{1}{3}$ ) each. ZONIA's hereditary share will, therefore, be  $\frac{1}{2} + (\frac{1}{3} \text{ of } \frac{1}{2})$  or  $\frac{4}{6}$  of the estate, while the GARCIAS will respectively be entitled to  $\frac{1}{3}$  of  $\frac{1}{2}$  or  $\frac{1}{6}$  of the value of the estate.

As heretofore stated, the usufruct in favor of Trinidad Tuagnon over the properties indicated in the Will is valid and should be respected.

The case of Nuguid vs. Nuguid, et al.,[14] reiterating the ruling in Neri, et al. vs. Akutin, et al.,[15] which held that where the institution of a universal heir is null and void due to preterition, the Will is a complete nullity and intestate succession ensues, is not applicable herein because in the Nuguid case, only a one-sentence Will was involved with no other provision except the institution of the sole and universal heir; there was no specification of individual property; there were no specific legacies or bequests. It was upon that factual setting that this Court declared:

"The disputed order, we observe, declares the will in question a complete nullity. Article 854 of the Civil Code in turn merely nullifies 'the institution of heir'. Considering, however, that the will before us solely provides for the institution of petitioner as universal heir, and nothing more, the result is the same. The entire will is null."  
(at p. 459)

In contrast, in the case at bar, there is a specific bequest or legacy so that Article 854 of the Civil Code, supra,

applies merely annulling the "institution of heir".

Lastly, it should be pointed out that the jurisdiction of the Trial Court and the Appellate Court was never questioned before either Court. ZONIA herself had gone, without objection, to trial on the issues raised and as defined by the Trial Court. Neither had ZONIA assigned lack of jurisdiction of the Trial Court as an error before the Appellate Court. She should now be held estopped to repudiate that jurisdiction to which she had voluntarily submitted, after she had received an unfavorable judgment. The leading case of *Tijam vs. Sibonghanoy*[16], on this point, declared:

"A party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and after failing to obtain such relief, repudiate or question the same jurisdiction. The question whether the court has jurisdiction either of the subject matter of the action or of the parties is not because the judgment or order of the court is valid and conclusive as an adjudication but for the reason that such practice cannot be tolerated obviously for reasons of public policy. After voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court."

WHEREFORE, the judgment under review is hereby modified in that the hereditary share in the estate of the decedent of petitioner Zonia Ana T. Solano is hereby declared to be  $(1/2 + (1/3 \text{ of } 1/2))$  or  $4/6$  of said estate, while that of private respondents, Bienvenido S. Garcia and Emeteria S. Garcia, shall each be  $(1/3 \text{ of } 1/2)$  or  $(1/6)$  of the estate. The usufruct in favor of Trinidad Tuagnon shall be respected. The judgment is affirmed in all other respects.

No costs.

**SO ORDERED.**

Plana, Relova, and Gutierrez, Jr., JJ., concur.

Teehankee, J., (Chairman) files a brief concurrence.

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[1] Annex "H", Petition, p. 64, Rollo.

[2] T.s.n., May 13, 1970, pp. 27-29, Decision, p. 18.

[3] pp. A-C, Petitioner's Brief.

[4] Annex "D", Petition, p. 55, Rollo.

[5] Article 838, Civil Code; Rule 75, Sec. 1, Rules of Court.

[6] *Teotico vs. Del Val*, 13 SCRA 406 (1965); *Fernandez vs. Dimagiba*, 21 SCRA 428 (1967).

[7] Article 277, Civil Code.

[8] Article 854, *ibid.*

[9] "Art. 563. Usufruct is constituted by law, by the will of private persons expressed in acts inter vivos or in a last will and testament, and by prescription."

[10] *Neri vs. Akutin*, 74 Phil. 185, (1943).

[11] *Escuin vs. Escuin*, 11 Phil. 332 (1908); *Eleazar vs. Eleazar*, 67 Phil. 497 (1939).

[12] *ibid.*

[13] Art. 895, Civil Code.

**[14] 17 SCRA 449 (1966).**

[15] 74 Phil. 185 (1943).

**[16] 23 SCRA 29 (1968).**

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### **CONCURRING OPINION**

#### **TEEHANKEE, J.:**

The record shows that the probate proceeding (Sp. Proc. No. 842) was not one for settlement of estate of a deceased but one instituted by the testator himself, Dr. Meliton Solano, for the allowance of the will during his lifetime under Article 838 of the Civil Code. Such allowance was granted and this terminated the proceeding, although as noted in the Court's opinion, the parties continued to file some pleadings therein after Dr. Solano's death. But the issues between the parties as to their status and hereditary shares in view of the probated will naming petitioner as sole heir were expressly delineated, tried and determined in the action for re-cognition (Civil Case No. 3956) filed by respondents Garcias against their father Dr. Solano who was substituted by petitioner as defendant (and sole heir of the estate under the probated will) after his death. In effect, there-fore, the two cases (assuming that the probate proceeding could be deemed as having continued notwithstanding its termination with the allowance in vitam of Dr. Solano's will) which were pending before the same judge and the same branch of the trial court could be correctly said to have been consolidated. Finally, petitioner is now estopped, after getting an adverse verdict, from repudiating belatedly the jurisdiction of the trial and appellate courts to which she had submitted without question her cause.

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