

IN THE MATTER OF THE PROBATE OF THE WILL OF THE LATE JUAN RAFOLS WITH APPLICATION FOR LETTERS OF ADMINISTRATION

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before Us is an Appeal[1] from the Order[2] of the Regional Trial Court (RTC), Branch 21, Cebu City dated April 18, 2008 in SP PROC NO. 15517-CEB which dismissed appellant's petition.

The Facts

Adarna S. Rafols (appellant) filed a Petition[3] for the Probate of the Will of the Late Juan Rafols with Application for Letters of Administration, dated April 19, 2007. The late Juan R. Rafols died in Cebu City last April 20, 1999,[4] survived by his wife, the appellant herein, his daughter Gwendolyn Rafols, the heirs of his deceased son Frederick Rafols, and the heirs of his deceased son Anthony Rafols.[5]

Juan Rafols allegedly left real properties covered by Tax Declaration Nos. GRC6-04-023-04969,[6] GRC6-04-023-04968,[7] GR2K-04-023-04346, and GRC6-04-023-04970 and that the estimated value of the said properties is P707,720.00.[8]

According to appellant, it was discovered that during the lifetime and before the death of Juan R. Rafols, he executed a Last Will and Testament on March 27, 1996. In the Last Will and Testament, Atty. Rogelio R. Corro was appointed as executor but the latter died on March 13, 2006.[9] Appellant, therefore, sought appointment as administratrix of the estate of the late Juan R. Rafols, alleging that she is preferred because she is the surviving spouse.

Appellant made the following Prayer[10] in her Petition:

- (a) To approve the Last Will and Testament of Juan Rafols xxx;
- (b) To issue letter of administration in favor of Petitioner and to the administer [sic] the estate and thereafter to distribute the estate in accordance with Last Will and Testament sought for probation.

Appellant filed a Motion to Amend Petition as of Right[11] dated May 9, 2007 alleging that her correct name is Sumatra Adarna Rafols and that the names "Sumatra Adarna Rafols" and "Adarna Sumatra Rafols" refer to one and the same person. The Motion was granted by the RTC in an Order[12] dated May 18, 2007.

An Opposition (To Probate of Will and Administration) with Motion to Exclude Lot No. 867-E and 873-C[13] was filed by the Heirs of Frederick Rafols alleging that while the appellant is claiming to be the wife of Juan Rafols, she is, however, not the mother of the three (3) children of Juan Rafols named Gwendolyn, Frederick and Anthony because Sumatra Adarna Rafols is already the second wife of the late Juan Rafols and, as far as the Oppositors know, their union did not produce any offspring. According to the Opposition, appellant's co-heirs Gwendolyn, Frederick and Anthony Rafols are the children of Juan Rafols with his first wife Elena Lalk Rafols.[14]

Further, the oppositors aver that they do not have any knowledge or information sufficient to form a belief as to the truth or falsity of the claim that appellant is the wife of the late Juan Rafols, as they have been in the United States for the most part and they have no personal knowledge as to whether a marriage had in fact taken place between appellant and Juan Rafols, hence, they maintain that appellant must be made to present proof that she is indeed the legitimate wife of the late Juan Rafols by presenting a marriage certificate between them.[15]

Oppositors contend that the Last Will and Testament of Juan Rafols is void ab initio for having preterited Anthony Rafols and Frederick Rafols;[16] that as can be gleaned from the Petition itself, there are four (4) putative heirs of the late Juan Rafols, namely: Adarna Rafols, Gwendolyn Rafols, Frederick Rafols (deceased) and Anthony Rafols (deceased); that the recitals of the Last Will and Testament show that only Adarna Sumatra Rafols and Gwendolyn Rafols have been instituted as heirs of the testator to whom he has bequeathed the properties in his estate; that Frederick Rafols and Anothony Rafols were never mentioned in the Will sought to be probated; that the omission of Frederick and Anthony Rafols in the testamentary disposition of the Will is fatal to its validity as it constitutes a preterition which invalidates such disposition under Article 854 of the Civil Code.[17]

Moreover, the oppositors claim that the signature of Juan Rafols on the Will appears to be not genuine; that it appears to be markedly different from the one that he is customarily using; that they reserve the right to adduce evidence to substantiate such fact; that the timing of the production and probate of the will is highly suspicious because Juan Rafols died as early as 1999 or about eight (8) years before the filing of the petition; that since the death of Juan Rafols up to the filing of the petition, no effort whatsoever was made by the appellant, or anyone else having custody of the alleged Will, to have the same probated in court; that on April 2, 2007, the oppositors sent a demand letter to the appellant dated March 27, 2007 demanding her to cease and desist from misrepresenting herself to be the owner of some of the properties mentioned in the Will but all of a sudden, the Will appeared out of the blue and appellant hastily filed the instant petition alleging that the Will was just “lately” discovered by her.[18]

Oppositors argue that the Last Will and Testament contains disposition of properties which the testator does not own; that Lot Nos. 867-E and 873-C covered by Tax Declaration No. GRC6-04-023-04968 and the buildings constructed thereon were already owned by Frederick Rafols, Anthony Rafols, and Gwendolyn Rafols long before the execution of the supposed Last Will and Testament of Juan Rafols which they acquired as far back as April 20, 1978 by virtue of an Extrajudicial Declaration of Heirs and Partition of Property of same date executed between them and their father Juan Rafols in their capacity as the sole heirs of the late Elena Lalk Rafols, who died on March 21, 1978.[19]

Finally, oppositors object to the appointment of appellant Sumatra Adarna as administratrix to the estate of Juan Rafols for having shown to be unfit to administer the estate, as in fact she has already usurped ownership of Lot Nos. 867-E and 873-C which do not belong to her and has misappropriated the monies that she collected as rentals thereon.[20]

In an Ex Parte Manifestation[21] dated November 9, 2007, Lyntoni R. Alburo, Ace D. Rafols, Moonyeen G. Rafols, and Dexter D. Rafols allege that they are acknowledged illegitimate children of the late Frederick Rafols and late Anthony Rafols whose names are omitted in the Original/Amended Petition as heirs of Frederick Rafols and Anthony Rafols; that they are not opposing the probate of the Will; and that they have no objection that the estate be administered by the appellant.

Subsequently, the oppositors filed a Motion to Dismiss[22] dated November 27, 2007, reiterating that the omission of Frederick and Anthony Rafols in the testamentary disposition of the Will constitutes a case of

preterition which invalidates the institution of heirs; that the preterition of an heir is a ground for the dismissal of a petition for probate of a Will as it would be useless to pass upon the extrinsic validity of a Will that is intrinsically void;[23] and that the testamentary dispositions contained in the Will is also void ab initio for the reason that the properties which were disposed of by Juan Rafols in the Will are no longer his properties at the time of the execution of the Will.[24]

Appellant filed an Opposition to Motion to Dismiss[25] dated December 17, 2007, arguing that the probate of the Will is a mandatory proceeding and that the probate is proper among compulsory heirs entitled to receive the “free portion” of the estate of Juan Rafols.[26] Further, appellant contends that if the probate of the Will is denied, the case should not be dismissed because the case may proceed no longer as an estate but an intestate proceeding, relying on the provision in Rule 76, Section 2 of the Rules of Court, to wit: “...But no defect in the petition shall render void the allowance of the will, or the issuance of letters testamentary or of administration with the will annexed.”

In a Manifestation and Endorsement[27] dated November 9, 2007, Gwendolyn Rafols Gutierrez made a manifestation that she is one of the heirs of the late Juan Rafols mentioned in the Original/Amended Petition; that she is not opposing the probate of the Will; and that she is endorsing appellant to administer the estate if the latter is qualified to act as such.

Appellant filed a Reply to Petitioner's Opposition[28] dated January 21, 2008, praying that the Opposition to Motion to Dismiss be expunged or stricken off from the records for having been filed out of time and for failure to comply with Section 11, Rule 13 of the Rules of Court and for utter lack of merit; and that the Oppositor's Motion to Dismiss be granted.

On April 18, 2008, the Regional Trial Court (RTC), Branch 21, Cebu City issued an Order,[29] the dispositive portion of which states

In the light of the foregoing, on the ground that the Last Will and Testament of Juan Rafols which sought to be probated is intrinsically null and void, this Court hereby DISMISSES herein petition.

SO ORDERED.

The RTC held that two (2) of testator's compulsory heirs who are in the direct line, have been preterited, thus making the Will intrinsically void.[30]

Appellant filed a Motion for Reconsideration[31] (of the Order dated April 18, 2008) but it was denied by the RTC in an Order[32] dated June 26, 2008.

Hence, the present appeal with the following Assignment of Errors:[33]

THAT THE DENIAL ORDER OF THE PROBATE OF WILL IS NOT SUPPORTED BY EVIDENCE AND LAW;

THE TRIAL COURT HAS [MISAPPRECIATED] THE EVIDENCE AND LAW. THEREFORE THE DISMISSAL ORDER BE SET ASIDE AND THE PROBATE OF THE WILL BE ADEQUATELY [GRANTED].

Appellant argues that there is necessity that the appeal be given due course for the Will to be probated in order not to defeat the wishes of the testator; that the preterition could not be a ground to disallow the probate of the Will because the preterition is correctible by two procedures after the probate of the Will, namely the declaration of heirs and the project of partition; and that even if the Will is not probated, the probate proceeding Will continue as an intestate proceeding without the necessity of filing another case to avoid multiplicity of suits.[34]

Appellant contends that the probate of the Will is mandatory under the Rules of Court as gleaned by the facts that any infirmity of the filed Petition for Probate cannot be a ground for dismissal; that if the Will is probated, the ground for preterition can be rectified under the subsequent proceeding of declaration of heirs and submission of project of partition where the respective legitimes are rectified or added or reduced under the rule that those who received less will receive more, those who received more will have a reduced share to comply with the legitimate requirement of all the heirs entitled to inherit.[35]

Finally, appellant argues that the non-probate of the Will would defeat the wishes of the testator who wants to give his surviving spouse the free portion of the excess of the mandatory legitime.

The Court's Ruling.

The appeal is partly meritorious.

Appellant contends that the probate of a Will is a mandatory proceeding. However, the statement, without qualification, is incorrect. The New Civil Code provides:

Art. 838. No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court. (Emphasis supplied)

On the other hand, the Rules of Court provides:

Rule 75, Section 1. Allowance necessary. Conclusive as to execution. - No will shall pass either real or personal estate unless it is proved and allowed in the proper court. Subject to the right of appeal, such allowance of the will shall be conclusive as to its due execution. (Emphasis supplied)

A Last Will and Testament must be probated before any distribution of real or personal property, disposed therein, may be made. "Without having been probated, the said last will and testament could not be the source of any right." [36] To that extent, the probate of the will is mandatory. As held in the case of *Heirs of Lasam v. Umengan*: [37]

Dr. Tolentino, an eminent authority on civil law, also explained that "[b]efore any will can have force or validity it must be probated. To probate a will means to prove before some officer or tribunal, vested by law with authority for that purpose, that the instrument offered to be proved is the last will and testament of the deceased person whose testamentary act it is alleged to be, and that it has been executed, attested and published as required by law, and that the testator was of sound and disposing mind. It is a proceeding to establish the validity of the will. Moreover, the presentation of the will for probate is mandatory and is a matter of public policy. (Emphasis supplied)

Further, appellant contends that the probate of the will is mandatory under the Rules of Court as gleaned by the facts that any infirmity of the filed Petition for Probate cannot be a ground for dismissal. This interpretation is erroneous. The appellant relies on the following provision:

But no defect in the petition shall render void the allowance of the will, or the issuance of letters testamentary or of administration with the will annexed.

However, upon examination of the same provision in the Rules of Court, it is embodied in a Section enumerating the contents of the petition for the probate of the will, to wit:

Rule 76

Allowance or Disallowance of Will

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Sec. 2. Contents of petition. - A petition for the allowance of a will must show, so far as known to the

petitioner:

- (a) The jurisdictional facts;
- (b) The names, ages, and residences of the heirs, legatees, and devisees of the testator or decedent;
- (c) The probable value and character of the property of the estate;
- (d) The name of the person for whom letters are prayed;
- (e) If the will has not been delivered to the court, the name of the person having custody of it.

But no defect in the petition shall render void the allowance of the will, or the issuance of letters testamentary or of administration with the will annexed. (Emphasis supplied)

The import of the provision signifies that any defect in the petition is not a ground to nullify the will which has been allowed. What is referred to as not affecting the allowance of the will is the “defect in the petition” and not the “defect in the will.” Appellant’s contention would render the proceeding of the probate of the will futile since even if the will is defective, it may still be allowed. Such is an erroneous interpretation.

Now, to the important question whether or not the lower court was correct in dismissing the petition for probate on the ground that the Last Will and Testament of Juan Rafols is intrinsically null and void, We do not agree.

The general rule is that in probate proceedings, the court’s area of inquiry is limited to an examination and resolution of the extrinsic validity of the Will.[38] Under the Civil Code, due execution includes a determination of whether the testator was of sound and disposing mind at the time of its execution, that he had freely executed the will and was not acting under duress, fraud, menace or undue influence and that the will is genuine and not a forgery, that he was of the proper testamentary age and that he is a person not expressly prohibited by law from making a will.[39]

The intrinsic validity is not considered since the consideration thereof usually comes only after the will has been proved and allowed.[40] It has been held, however, that:

There are, however, notable circumstances wherein the intrinsic validity was first determined as when the defect of the will is apparent on its face and the probate of the will may become a useless ceremony if it is intrinsically invalid. The intrinsic validity of a will may be passed upon because “practical considerations” demanded it as when there is preterition of heirs or the testamentary provisions are doubtful legality. Where the parties agree that the intrinsic validity be first determined, the probate court may also do so. Parenthetically, the rule on probate is not inflexible and absolute. Under exceptional circumstances, the probate court is not powerless to do what the situation constrains it to do and pass upon certain provisions of the will.[41]

In the present case, the general rule applies. That is, the court erred in ruling upon the intrinsic validity of the Will. Under Article 854 of the New Civil Code:

Art. 854. 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.

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The preterition or omission of one, some, or all of the compulsory heirs in the direct line annuls the institution of heir. However, devises and legacies shall be valid insofar as they are not inofficious. What is peculiar in the present case is that the Last Will and Testament of Juan Rafols only provides for devises of real properties, to wit:

II – I give and bequeath to the persons named hereinbelow the following property, to wit:

A - TO MY WIFE ADARNA SUMATRA RAFOLS:

1. All my undivided one-half (½) share and interest over our conjugal property consisting of a 3-Door Apartment, together with the lot whereon the same is constructed, which was constructed and occupied in the year 1988, covered by Tax Declaration No. GR-04-023-04538 in the name of Juan Rafols, assessed at P178,040.00, having a floor area of: S1-165 and S2-165;

2. All my undivided one-half (½) share and interest over our conjugal property consisting of a residential house (One Unit Duplex) together with the lot whereon the same is constructed, which was constructed and occupied sometime in 1995. This is not yet covered by tax declaration.

All the above-described property are situated at Don Ramon Aboitiz St., Cebu City.

B – TO MY DAUGHTER GWENDOLYN RAFOLS:

- The whole of that residential house together with the lot whereon the same is located, having a floor area of 198 square meters (FCG), declared for taxation purposes in the name of Frederick Rafols, occupied in 1965, under Tax Declaration No. GR-04-023-03143 and assessed at P40,330.00 in the year 1989; and

- The whole of that residential house, together with the lot whereon the same is located, containing an area of 132 square meters (1st Floor), occupied in 1970, and declared for taxation purposes in the name of Frederick Rafols under Tax Dec. No. GR-04-023-03145 and assessed at P31,370.00 in the year 1989.

From the dispositions in the Last Will and Testament under consideration, it may be argued that the institution of heir is annulled because there is preterition since Juan Rafols' other children and/or grandchildren, as alleged in the Petition for Probate, were not mentioned in the Will. However, upon re-examination of Article 854 on preterition, what is annulled is the “institution of heir” and not devises and legacies. Therefore, there must be a need to distinguish between an “institution of heir” on the one hand and “devise” and “legacy” on the other. As clearly explained in the case of *Nuguid v. Nuguid*:^[42]

The statute we are called upon to apply in Article 854 of the Civil Code which, in part, provides:

ART. 854. 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. ... Except for inconsequential variation in terms, the foregoing is a reproduction of Article 814 of the Civil Code of Spain of 1889, which is similarly herein copied, thus —

Art. 814. The preterition of one or all of the forced 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 void the institution of heir; but the legacies and betterments shall be valid, in so far as they are not inofficious. ...

A comprehensive understanding of the term preterition employed in the law becomes a necessity. xxx

It may now appear trite but [sic] nonetheless helpful in giving us a clear perspective of the problem before us, to have on hand a clear-cut definition of the word annul:

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ANNUL. To reduce to nothing; annihilate; obliterate; to make void or of no effect; to nullify; to abolish; to do away with. (Citation omitted)

And now, back to the facts and the law. The deceased Rosario Nuguid left no descendants, legitimate or illegitimate. But she left forced heirs in the direct ascending line her parents, now oppositors Felix Nuguid and Paz Salonga Nuguid. And, the will completely omits both of them: They thus received nothing by the testament; tacitly, they were deprived of their legitime; neither were they expressly disinherited. This is a clear case of preterition. Such preterition in the words of Manresa "anulara siempre la institucion de heredero, dando

caracter absoluto a este ordenamiento referring to the mandate of Article 814, now 854 of the Civil Code. The one-sentence will here institutes petitioner as the sole, universal heir — nothing more. No specific legacies or bequests are therein provided for. It is in this posture that we say that the nullity is complete. Perforce, Rosario Nuguid died intestate. xxx

Really, as we analyze the word annul employed in the statute, there is no escaping the conclusion that the universal institution of petitioner to the entire inheritance results in totally abrogating the will. Because, the nullification of such institution of universal heir — without any other testamentary disposition in the will — amounts to a declaration that nothing at all was written. Carefully worded and in clear terms, Article 854 offers no leeway for inferential interpretation. Giving it an expansive meaning will tear up by the roots the fabric of the statute. xxx

We should not be led astray by the statement in Article 854 that, annulment notwithstanding, “the devises and legacies shall be valid insofar as they are not inofficious.” Legacies and devises merit consideration only when they are so expressly given as such in a will. Nothing in Article 854 suggests that the mere institution of a universal heir in a will — void because of preterition — would give the heir so instituted a share in the inheritance. As to him, the will is inexistent. There must be, in addition to such institution, a testamentary disposition granting him bequests or legacies apart and separate from the nullified institution of heir. Sanchez Roman, speaking of the two component parts of Article 814, now 854, states that preterition annuls the institution of the heir “totalmente por la pretericion;” but added (in reference to legacies and bequests) “pero subsistiendo ... todas aquellas otras disposiciones que no se refieren a la institucion de heredero ... As Manresa puts it, annulment throws open to intestate succession the entire inheritance including “la porcion libre (que) no hubiese dispuesto en virtud de legado, mejora o donacion.

As aforesaid, there is no other provision in the will before us except the institution of petitioner as universal heir. That institution, by itself, is null and void. And, intestate succession ensues.

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The destructive effect of the theory thus advanced is due mainly to a failure to distinguish institution of heirs from legacies and betterments, and a general from a special provision. With reference to article 814, which is the only provision material to the disposition of this case, it must be observed that the institution of heirs is therein dealt with as a thing separate and distinct from legacies or betterments. And they are separate and distinct not only because they are distinctly and separately treated in said article but because they are in themselves different. Institution of heirs is a bequest by universal title of property that is undetermined. Legacy refers to specific property bequeathed by a particular or special title. ... But again an institution of heirs cannot be taken as a legacy. (Emphasis supplied)

Enlightened by the above ruling, what is annulled by preterition is the institution of heir by universal title of property that is undetermined. To illustrate, the Will in the case of Nuguid is hereby reproduced:

Nov. 17, 1951

I, ROSARIO NUGUID, being of sound and disposing mind and memory, having amassed a certain amount of property, do hereby give, devise, and bequeath all of the property which I may have when I die to my beloved sister Remedios Nuguid, age 34, residing with me at 38-B Iriga, Q.C. In witness whereof, I have signed my name this seventh day of November, nineteen hundred and fifty-one.

(Sgd.) Illegible

T/ ROSARIO NUGUID

In the Nuguid case, the Supreme Court ruled that since the Will solely provides for the institution of the petitioner therein as a universal heir, and nothing more, the result is that the Will becomes a “complete nullity.”

In the present case, there is actually no institution of Juan Rafols' heir, whether by universal title or to an aliquot undetermined portion of his estate. The provisions only dispose of devises to his wife and daughter. The next question now is whether or not the Will is valid even if there is no institution of heir. The answer is in the affirmative. Article 841 of the New Civil Code provides: “[a] will shall be valid even though it should not contain an institution of an heir, or such institution should not comprise the entire estate, and even though the person so instituted should not accept the inheritance or should be incapacitated to succeed. In such cases the testamentary dispositions made in accordance with law shall be complied with and the remainder of the estate shall pass to the legal heirs.”

“Devises and legacies shall be valid insofar as they are not inofficious.” The determination of whether or not the devises or legacies are inofficious is already a matter concerning the intrinsic validity of the Will, and as already discussed, it cannot be done until the extrinsic validity of the Will is already passed upon.

In view of the foregoing, We deem it no longer necessary to discuss the other issues raised by the appellant.

WHEREFORE, the instant appeal is GRANTED. The Orders of the Regional Trial Court, Branch 21, Cebu City in SP. PROC. NO. 15517-CEB dated April 18, 2008 and June 26, 2008, respectively, are SET ASIDE. The lower court is directed to conduct further proceedings in the Petition for Probate of the Will of the late Juan Rafols with Application for Letters of Administration.

SO ORDERED.

Ingles, G.T., Chairperson., and Lagura-Lap, M.B., JJ., concur.

[1] Rule 44, The 1997 Rules of Civil Procedure

[2] Rollo, pp. 14-16.

[3] Main Record, pp. 2-6.

[4] Id. at p. 7.

[5] Id. at pp. 3-4.

[6] Id. at p. 9.

[7] Id. at p. 11.

[8] Id. at p. 4.

[9] Id. at p. 4.

[10] Id. at p. 5.

[11] Id. at p. 20.

[12] Id. at p. 41.

[13] Id. at p. 50.

[14] Id. at pp. 50-51.

[15] Id. at p. 51.

[16] Id. at p. 51.

- [17] Id. at p. 52.
- [18] Id. at pp. 53-
- [19] Id. at pp. 54-55.
- [20] Id. at pp. 57-58.
- [21] Id. at pp. 81-82.
- [22] Id. at pp. 83-90.
- [23] Id. at pp. 83-84.
- [24] Id. at p. 86.
- [25] Id. at pp. 97-100.
- [26] Id. at p. 97.
- [27] Id. at pp. 101-102.
- [28] Id. at pp. 103-109.
- [29] Id. at pp. 110-112.
- [30] Id. at p. 111.
- [31] Id. at pp. 116-120.
- [32] Id. at p. 125.
- [33] Rollo, p. 42.
- [34] Id. at p. 42.
- [35] Id. at p. 43.
- [36] Heirs of Lasam v. Umengan, G.R. No. 168156, December 6, 2006.
- [37] G.R. No. 168156, December 6, 2006.
- [38] Nepomuceno v. Court of Appeals, G.R. No. L-62952, October 9, 1985.
- [39] Dorotheo v. Court of Appeals, G.R. No. 108581, December 8, 1999.
- [40] Reyes v. Court of Appeals, G.R. No. 124099, October 30, 1997.
- [41] Reyes v. Court of Appeals, G.R. No. 124099, October 30, 1997.
- [42] G.R. No. L-23445, June 23, 1966.

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