

**MARISSA BENITEZ-BADUA, PETITIONER, VS. COURT OF APPEALS,
VICTORIA BENITEZ LIRIO AND FEODOR BENITEZ AGUILAR,
RESPONDENTS.**

G.R. No. 105625. January 24, 1994

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review of the Decision of the 12th Division of the Court of Appeals in CA-G.R. No. CV No. 30862 dated May 29, 1992.[1]

The facts show that the spouses Vicente Benitez and Isabel Chipongian owned various properties especially in Laguna. Isabel died on April 25, 1982. Vicente followed her in the grave on November 13, 1989. He died intestate.

The fight for administration of Vicente's estate ensued. On September 24, 1990, private respondents Victoria Benitez-Lirio and Feodor Benitez Aguilar (Vicente's sister and nephew, respectively) instituted Sp. Proc. No. 797 (90) before the RTC of San Pablo City, 4th Judicial Region, Br. 30. They prayed for the issuance of letters of administration of Vicente's estate in favor of private respondent Aguilar. They alleged, inter alia, viz:

x x x

"4. The decedent is survived by no other heirs or relatives be they ascendants or descendants, whether legitimate, illegitimate or legally adopted; despite claims or representation to the contrary, petitioners can well and truly establish, given the change to do so, that said decedent and his spouse Isabel Chipongian who pre-deceased him, and whose estate had earlier been settled extra-judicial, were without issue and/or without descendants whatsoever, and that one Marissa Benitez Badua who was raised and cared for by them since childhood is, in fact, not related to them by blood, nor legally adopted, and is therefore not a legal heir; x x x"

On November 2, 1990, petitioner opposed the petition. She alleged that she is the sole heir of the deceased Vicente Benitez and capable of administering his estate. The parties further exchanged reply and rejoinder to buttress their legal postures.

The trial court then received evidence on the issue of petitioner's heirship to the estate of the deceased. Petitioner tried to prove that she is the only legitimate child of the spouses Vicente Benitez and Isabel Chipongian. She submitted documentary evidence, among others: (1) her Certificate of Live Birth (Exh. 3); (2) Baptismal Certificate (Exh. 4); (3) Income Tax Returns and Information Sheet for Membership with the GSIS of the late Vicente naming her as his daughter (Exhs. 10 to 21); and (4) School Records (Exhs. 5 & 6). She also testified that the said spouses reared and continuously treated her as their legitimate daughter. On the other hand, private respondents tried to prove, mostly thru testimonial evidence, that the said spouses failed to beget a child during their marriage; that the late Isabel, then thirty six (36) years of age, was even referred to Dr. Constantino Manahan, a noted obstetrician-gynecologist, for treatment. Their primary witness, Victoria Benitez-Lirio, elder sister of the late Vicente, then 77 years of age,[2] categorically declared that petitioner was not the biological

child of the said spouses who were unable to physically procreate.

On December 17, 1990, the trial court decided in favor of the petitioner. It dismissed the private respondents petition for letters of administration and declared petitioner as the legitimate daughter and sole heir of the spouses Vicente O. Benitez and Isabel Chipongian. The trial court relied on Articles 166 and 170 of the Family Code.

On appeal, however, the Decision of the trial court was reversed on May 29, 1992 by the 17th Division of the Court of Appeals. The dispositive portion of the Decision of the appellate court states:

"WHEREFORE, the decision appealed from herein is REVERSED and another one entered declaring that appellee Marissa Benitez is not the biological daughter or child by nature of the spouse Vicente O. Benitez and Isabel Chipongian and, therefore, not a legal heir of the deceased Vicente O. Benitez. Her opposition to the petition for the appointment of an administrator of the intestate estate of the deceased Vicente O. Benitez is, consequently, DENIED; said petition and the proceedings already conducted therein reinstated; and the lower court is directed to proceed with the hearing of Special Proceeding No. SP-797 (90) in accordance with law and the Rules.

Costs against appellee.

SO ORDERED."

In juxtaposition, the appellate court held that the trial court erred in applying Articles 166 and 170 of the Family Code.

In this petition for review, petitioner contends:

"1. The Honorable Court of Appeals committed error of law and misapprehension of facts when it failed to apply the provisions, more particularly, Arts. 164, 166, 170, and 171 of the Family Code in this case and in adopting or upholding private respondent's theory that the instant case does not involve an action to impugn the legitimacy of a child;

"2. Assuming arguendo that private respondents can question or impugn directly or indirectly, the legitimacy of Marissa's birth, still the respondent appellate Court committed grave abuse of discretion when it gave more weight to the testimonial evidence of witnesses of private respondents whose credibility and demeanor have not convinced the trial court of the truth and sincerity thereof, than the documentary and testimonial evidence of the now petitioner Marissa Benitez-Badua;

"3. The Honorable Court of Appeals has decided the case in a way not in accord with law or with applicable decisions of the Supreme Court, more particularly, on prescription or laches."

We find no merit to the petition.

Petitioner's insistence on the applicability of Articles 164, 166, 170 and 171 of the Family Code to the case at bench cannot be sustained. These articles provide:

"Art. 164. Children conceived or born during the marriage of the parents are legitimate.

"Children conceived as a result of artificial insemination of the wife with sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided, that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child.

"Art. 166. Legitimacy of child may be impugned only on the following grounds:

"1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first

120 days of the 300 days which immediately preceded the birth of the child because of:

- a) the physical incapacity of the husband to have sexual intercourse with his wife;
- b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or
- c) serious illness of the husband, which absolutely prevented sexual intercourse.

"2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband except in the instance provided in the second paragraph of Article 164; or

"3) That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence.

"Art. 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

"If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

"Art. 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding Article only in the following case:

- "1) If the husband should die before the expiration of the period fixed for bringing his action;
- "2) If he should die after the filing of the complaint, without having desisted therefrom; or
- "3) If the child was born after the death of the husband."

A careful reading of the above articles will show that they do not contemplate a situation, like in the instant case, where a child is alleged not to be the child of nature or biological child of a certain couple. Rather, these articles govern a situation where a husband (or his heirs) denies as his own a child of his wife. Thus, under Article 166, it is the husband who can impugn the legitimacy of said child by proving: (1) it was physically impossible for him to have sexual intercourse, with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child; (2) that for biological or other scientific reasons, the child could not have been his child; (3) that in case of children conceived through artificial insemination, the written authorization or ratification by either parent was obtained through mistake, fraud, violence, intimidation or undue influence. Articles 170 and 171 reinforce this reading as they speak of the prescriptive period within which the husband or any of his heirs should file the action impugning the legitimacy of said child. Doubtless then, the appellate court did not err when it refused to apply these articles to the case at bench. For the case at bench is not one where the heirs of the late Vicente are contending that petitioner is not his child by Isabel. Rather, their clear submission is that petitioner was not born to Vicente and Isabel. Our ruling in *Cabatbat--Lim vs. Intermediate Appellate Court*, 166 SCRA 451, 457 cited in the impugned decision is apropos, viz:

"Petitioners' recourse to Article 263 of the New Civil Code [now Art. 170 of the Family Code] is not well-taken. This legal provision refers to an action to impugn legitimacy. It is inapplicable to this case because this is not an action to impugn the legitimacy of a child, but an action of the private respondents to claim their inheritance as legal heirs of their childless deceased aunt. They do not claim that petitioner Violeta Cabatbat Lim is an illegitimate child of the deceased, but that she is not the decedent's child at all. Being neither legally

adopted child, nor an acknowledged natural child, nor a child by legal fiction of Esperanza Cabatbat, Violeta is not a legal heir of the deceased."

We now come to the factual finding of the appellate court that petitioner was not the biological child or child of nature of the spouses Vicente Benitez and Isabel Chipongian. The appellate court exhaustively dissected the evidence of the parties as follows:

"x x x And on this issue, we are constrained to say that appellee's evidence is utterly insufficient to establish her biological and blood kinship with the aforesaid spouses, while the evidence on record is strong and convincing that she is not, but that said couple being childless and desirous as they were of having a child, the late Vicente O. Benitez took Marissa from somewhere while still a baby, and without he and his wife's legally adopting her treated, cared for, reared, considered, and loved her as their own true child, giving her the status as not so, such that she herself had believed that she was really their only daughter and entitled to inherit from them as such.

"The strong and convincing evidence referred to by us are the following:

"First, the evidence is very cogent and clear that Isabel Chipongian never became pregnant and, therefore, never delivered a child. Isabel's own only brother and sibling, Dr. Lino Chipongian, admitted that his sister had already been married for ten years and was already about 36 years old and still she had not begotten or still could not bear a child, so that he even had to refer her to the late Dr. Constantino Manahan, a well-known and eminent obstetrician-gynecologist and the OB of his mother and wife, who treated his sister for a number of years. There is likewise the testimony of the elder sister of the deceased Vicente O. Benitez, Victoria Benitez Lirio, who then, being a teacher, helped him (he being the only boy and the youngest of the children of their widowed mother) through law school, and whom Vicente and his wife highly respected and consulted on family matters, that her brother Vicente and his wife Isabel being childless, they wanted to adopt her youngest daughter and when she refused, they looked for a baby to adopt elsewhere, that Vicente found two baby boys but Isabel wanted a baby girl as she feared a boy might grow up unruly and uncontrollable, and that Vicente finally brought home a baby girl and told his elder sister Victoria that he would register the baby as his and his wife's child. Victoria Benitez Lirio was already 77 years old and too weak to travel and come to court in San Pablo City, so that the taking of her testimony by the presiding judge of the lower court had to be held at her residence in Parañaque, MM. Considering, her advanced age and weak physical condition at the time she testified in this case, Victoria Benitez Lirio's testimony is highly trustworthy and credible, for as one who may be called by her Creator at any time, she would hardly be interested in material things anymore and can be expected not to lie, especially under her oath as a witness. There were also several disinterested neighbors of the couple Vicente O. Benitez and Isabel Chipongian in Nagcarlan, Laguna (Sergio Fule, Cecilia Coronado, and Benjamin C. Asendido) who testified in this case and declared that they used to see Isabel almost everyday especially as she had a drugstore in the ground floor of her house, but that they never saw her to have been pregnant, in 1954 (the year appellee Marissa Benitez was allegedly born, according to her birth certificate Exh. "3") or at any time at all, and that this is also true with the rest of their townmates. Resurreccion A. Tuico, Isabel Chipongian's personal beautician who used to set her hair once a week at her (Isabel's) residence, likewise declared that she did not see Isabel ever become pregnant, that she knows that Isabel never delivered a baby, and that when she saw the baby Marissa in her crib one day when she went to Isabel's house to set the latter's hair, she was surprised and asked the latter where the baby came from, and "she told me that the child was brought by Atty. Benitez and told me not to tell about it (p. 10, tsn Nov. 29, 1990).

The facts of a woman's becoming pregnant and growing big with child, as well as her delivering a baby, are matters that cannot be hidden from the public eye, and so is the fact that a woman never became pregnant and could not have, therefore, delivered a baby at all. Hence, if she is suddenly seen mothering and caring for a baby as if it were her own, especially at the rather late age of 36 (the age of Isabel Chipongian when appellee Marissa Benitez was allegedly born), we can be sure that she is not the true mother of that baby.

Second, appellee's birth certificate Exh. "3" with the late Vicente O. Benitez appearing as the informant, is highly questionable and suspicious. For if Vicente's wife Isabel, who was already 36 years old at the time of the child's supposed birth, was truly the mother of that child, as reported by Vicente in her birth certificate, should the child not have been born in a hospital under the experienced, skillful, and caring hands of Isabel's obstetrician-gynecologist Dr. Constantino Manahan, since delivery of a child at that late age by Isabel would have been difficult and quite risky to her health and even life? How come, then, that as appearing in appellee's birth certificate, Marissa was supposedly born at the Benitez home in Avenida Rizal, Nagcarlan, Laguna, with no physician or even a midwife attending?

At this juncture, it might be meet to mention that it has become a practice in recent times for people who want to avoid the expense and trouble of a judicial adoption to simply register the child as their supposed child in the civil registry. Perhaps Atty. Vicente O. Benitez, though a lawyer himself, thought that he could avoid the trouble if not the expense of adopting the child Marissa through court proceedings by merely putting himself and his wife as the parents of the child in her birth certificate. Or perhaps he had intended to legally adopt the child when she grew a little older but did not come around doing so either because he was too busy or for some other reason. But definitely, the mere registration of a child in his or her birth certificate as the child of the supposed parents is not a valid adoption, does not confer upon the child the status of an adopted child and the legal rights of such child, and even amounts to simulation of the child's birth or falsification of his or her birth certificate, which is a public document.

Third, if appellee Marissa Benitez is truly the real, biological daughter of the late Vicente O. Benitez and his wife Isabel Chipongian, why did he and Isabel's only brother and sibling Dr. Nilo Chipongian, after Isabel's death on April 25, 1982, state in the extrajudicial settlement Exh. "E" that they executed of her estate, "that we are the sole heirs of the deceased ISABEL CHIPONGIAN because she died without descendants or ascendants"? Dr. Chipongian, placed on the witness stand by appellants, testified that it was his brother-in-law Atty. Vicente O. Benitez who prepared said document and that he signed the same only because the latter told him to do so (p. 24, tsn Nov. 22, 1990). But why would Atty. Benitez make such statement in said document, unless appellee Marissa Benitez is really not his and his wife's daughter and descendant and, therefore, not his deceased's wife legal heir? As for Dr. Chipongian, he lamely explained that he signed said document without understanding completely the meaning of the words "descendant and ascendant" (p. 21, tsn Nov. 22, 1990). This we cannot believe, Dr. Chipongian being a practicing pediatrician who has even gone to the United States (p. 52, tsn Dec. 13, 1990). Obviously, Dr. Chipongian was just trying to protect the interests of appellee, the foster-daughter of his deceased sister and brother-in-law, as against those of the latter's collateral blood relatives.

Fourth, it is likewise odd and strange, if appellee Marissa Benitez is really the daughter and only legal heir of the spouses Vicente O. Benitez and Isabel Chipongian, that the latter, before her death, would write a note to her husband and Marissa stating that:

"even without any legal papers, I wish that my husband and my child or only daughter will inherit what is legally my own property, in case I die without a will,"

and in the same handwritten note, she even implored her husband --

"that any inheritance due him from my property - when he die - to make our own daughter his sole heir. This do [sic] not mean what he legally owns or his inherited property. I leave him to decide for himself regarding those."

(Exhs. "F-1", "F-1-A" and "F-1-B")

We say odd and strange, for if Marissa Benitez is really the daughter of the spouses Vicente O. Benitez and Isabel Chipongian, it would not have been necessary for Isabel to write and plead for the foregoing requests to her husband, since Marissa would be their legal heir by operation of law. Obviously, Isabel Chipongian had to

implore and supplicate her husband to give appellee although without any legal papers her properties when she dies, and likewise for her husband to give Marissa the properties that he would inherit from her (Isabel), since she well knew that Marissa is not truly their daughter and could not be their legal heir unless her (Isabel's) husband makes her so.

Finally, the deceased Vicente O. Benitez' elder sister Victoria Benitez Lirio even testified that her brother Vicente gave the date December 8 as Marissa's birthday in her birth certificate because that date is the birthday of their (Victoria and Vicente's) mother. It is indeed too much of a coincidence for the child Marissa and the mother of Vicente and Victoria to have the same birthday unless it is true, as Victoria testified, that Marissa was only registered by Vicente as his and his wife's child and that they gave her the birth date of Vicente's mother."

We sustain these findings as they are not unsupported by the evidence on record. The weight of these findings was not negated by the documentary evidence presented by the petitioner, the most notable of which is her Certificate of Live Birth (Exh. "3") purportedly showing that her parents were the late Vicente Benitez and Isabel Chipongian. This Certificate registered on December 28, 1954 appears to have been signed by the deceased Vicente Benitez. Under Article 410 of the New Civil Code, however, "the books making up the Civil Registry and all documents relating thereto shall be considered public documents and shall be prima facie evidence of the facts therein stated." As related above, the totality of contrary evidence, presented by the private respondents sufficiently rebutted the truth of the content of petitioner's Certificate of Live Birth. Of said rebutting evidence, the most telling was the Deed of Extra-Judicial Settlement of the Estate of the Deceased Isabel Chipongian (Exh. "E") executed on July 20, 1982 by Vicente Benitez, and Dr. Nilo Chipongian, a brother of Isabel. In this notarized document, they stated that "(they) are the sole heirs of the deceased Isabel Chipongian because she died without descendants or ascendants". In executing this Deed, Vicente Benitez effectively repudiated the Certificate of Live Birth of petitioner where it appeared that he was petitioner's father. The repudiation was made twenty eight years after he signed petitioner's Certificate of Live Birth.

IN VIEW WHEREOF, the petition for review is dismissed for lack of merit. Costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

Nocon, J., on leave.

[1] Composed of Associate Justice Pedro Ramirez (Chairman); Associate Justice Alicia Sempio-Diy (Ponente) and Associate Justice Ricardo Galvez.

[2] She died during the pendency of the present action, and was substituted by her daughters, Mayra B. Lirio and Nieva L. Isla and son, Jose B. Lirio, Jr.

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