

HEIRS OF PASCASIO URIARTE, NAMELY, ROSELYN URIARTE, MADRILYN AND LOURDES URIARTE, AND FELOMINA BUNIEL URIARTE, AND HEIRS OF PRIMITIVA ARNALDO AND HEIRS OF GREGORIO ARNALDO, REPR...*G.R. No. 116775. January 22, 1998*

Ponente: MENDOZA, J.

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This is a petition for review on certiorari of the decision[1] of the Court of Appeals, reversing the decision of the Regional Trial Court, Branch 27, of Tandag, Surigao del Sur, as well as the appellate court's resolution denying petitioners' motion for reconsideration. At issue is the right of the parties to a 2.7 hectare piece of land in Sungkit, Madrid, Surigao del Sur, which Justa Arnaldo-Sering left upon her death on March 31, 1989.

The parties and their relationship to Justa Arnaldo-Sering are as follows:

Private respondent Benedicto Estrada is the son of Agatonica Arreza, whose parents were Pedro Arreza and Ursula Tubil. Upon the death of Pedro Arreza, Ursula married Juan Arnaldo by whom she had another daughter, the decedent Justa.[2] Private respondent Benedicto Estrada is thus the nephew of Justa by her half sister Agatonica.

Petitioners, referred to in this case as the heirs of Pascasio Uriarte, are the widow and daughters of Pascasio Uriarte. Pascasio was one of the sons of Primitiva Arnaldo and Conrado Uriarte. His mother, Primitiva Uriarte, was the daughter of Domingo Arnaldo and Catalina Azarcon. Domingo Arnaldo and Justa's father, Juan Arnaldo, were brothers.[3] Petitioners are thus grandchildren, the relatives within the fifth degree of consanguinity, of Justa by her cousin Primitiva Arnaldo Uriarte.

The other petitioners are the children of Primitiva and those of her brother Gregorio.[4] The children of Primitiva by Conrado Uriarte, aside from Pascasio, are Josefina, Gaudencio, Simplicio, Domingo and Virgilio, all surnamed Uriarte. The children of Gregorio Arnaldo, Primitiva's brother, by Julieta Ilogon, are Jorencio, Enecia, Nicolas, Lupecino and Felisa. These other petitioners are thus grandchildren and relatives within the fifth degree of consanguinity of Justa by her cousins Gregorio Arnaldo and Primitiva Arnaldo.

Private respondent Benedicto Estrada brought this case in the Regional Trial Court for the partition of the land left by Justa Arnaldo-Sering. The land, consisting of 2.7 hectares, had been acquired by Justa as follows: 0.5 hectare by inheritance from her parents Juan Arnaldo and Ursula Tubil, and 2.2 hectares by purchase.[5] Private respondent claimed to be the sole surviving heir of Justa, on the ground that the latter died without issue. He complained that Pascasio Uriarte who, he claimed, worked the land as Justa's tenant, refused to give him (private respondent) his share of the harvest.[6] He contended that Pascasio had no right to the entire land of Justa but could claim only one-half of the 0.5 hectare land which Justa had inherited from her parents Juan Arnaldo and Ursula Tubil.[7]

Pascasio died during the pendency of the case and was substituted by his heirs.[8] In their answer, the heirs denied they were mere tenants of Justa[9] but the latter's heirs entitled to her entire land.

They claimed that the entire land, subject of the case, was originally owned by Ambrocio Arnaldo,[10] their great granduncle. It was allegedly bequeathed to Domingo and Juan Arnaldo, Ambrocio's nephews, in a holographic will executed by Ambrocio in 1908.[11] Domingo was to receive two-thirds of the land and Juan, one-third.[12] The heirs claimed that the land had always been in their possession and that in her lifetime Justa never asserted exclusive right over the property but only received her share of the harvest from it.[13] They alleged that private respondent did not have any right to the property because he was not an heir of Ambrocio Arnaldo, [14] the original owner of the property.

The trial court sustained petitioners' contention. In its decision rendered on November 8, 1991 it ruled:

As earlier stated, the land of Ambrosio Arnaldo which he left to his two nephews, Domingo and Juan Arnaldo, was only .5481 hectares, divided as follows: two-thirds or 3,654 square meters to Domingo, and one-third or 1,827 square meters to Juan. The area increased to 2.7588 hectares from .5481 hectares because the adjacent lot of about two hectares was acquired by Justa Arnaldo Sering, daughter of Juan Arnaldo, after the latter's death. The entire 2.7588 hectares was covered by tax declaration in the name of Justa Arnaldo Sering. The latter however died intestate and without issue. Her nearest surviving relatives are the children of her uncle Domingo Arnaldo, to whom her entire estate passed on after her death by operation of law, to the exclusion of all other relatives. Thus, the rights to the succession are transmitted from the moment of the death of the decedent (Art. 277, Civil Code).[15]

Accordingly, the court ordered:

WHEREFORE, judgment is hereby rendered in favor of the defendants and the intervenors [herein petitioners] and against the plaintiff [private respondent], declaring the defendants and the intervenors, together with the other heirs of the late Domingo Arnaldo, as entitled to the entire parcel of land described in Tax Declaration No. 124 and subsequent revising tax declarations in the name of Justa Arnaldo Sering. No cost.

SO ORDERED.[16]

On appeal, the Court of Appeals reversed. Contrary to the trial court's finding, the appellate court found that the 0.5 hectares had been acquired by Justa's parents, Juan Arnaldo and Ursula Tubil, during their marriage. As the nephew of Justa by her half-sister Agatonica, private respondent was held to be entitled to share in the estate of Justa. In the dispositive portion of its decision the appellate court ordered:

WHEREFORE, the judgment appealed from is hereby REVERSED and another is hereby entered -

Ordering the partition of the property described in the second amended complaint in the following manner:

(1)

.2500 hectare as the share of defendants-intervenors, and

(2)

2.58 hectare as the share of the plaintiff.

For this purpose, the court a quo is hereby directed to proceed with the partition in accordance with the procedure laid down in Rule 69 of the Rules of Court.

SO ORDERED.[17]

Hence, this petition by the heirs of Pascasio Uriarte, the heirs of Primitiva Uriarte, and the heirs of Gregorio Arnaldo. Petitioners allege:

I

THE RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK AND/OR IN EXCESS OF JURISDICTION IN HOLDING THAT THE PLAINTIFF IS THE SON OF AGATONA ARREZA, THE HALF SISTER OF JUSTA ARNALDO SERING;

II

THE RESPONDENT COURT OF APPEALS PREFERRED TECHNICALITY OVER SUBSTANTIALITY WHEN IT GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT THE HOLOGRAPHIC WILL LEFT BY THE DECEASED AMBROCIO ARNALDO CANNOT PASS REAL OR PERSONAL PROPERTY;

III

THE PRAYERS FOR RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION AND DAMAGES IS MERITORIOUS;

IV

AND THE INSTANT PETITION IS IMPRESSED WITH MERIT AND SHOULD HAVE BEEN GRANTED.
[18]

After due consideration of the petition, we find it to be without merit. As already stated, Justa left a piece of land consisting 2.7 hectares. Half of this land (0.5 hectares), as the Court of Appeals found, formerly was conjugal property of her parents, Juan Arnaldo and Ursula Tubil. The rest, consisting of 2.2 hectares, was acquired by Justa after the death of her parents. Accordingly, the division of Justa's property should be as follows as private respondent contends:

A - The first 1/2 hectare should be divided into two parts, the share of Juan Arnaldo which will accrue to petitioners and the second half which pertains to Ursula Tubil, which will accrue to private respondent.

B - As to the second portion of the area of the land in question which as already stated was consolidated with the 1/2 hectare originally belonging to the conjugal partnership of Juan Arnaldo and Ursula Tubil, the same shall accrue to private respondent, who is the son of Agatonica Arreza, and who is only three degrees from Justa Arnaldo, whereas petitioners who are the children of Primitiva Arnaldo and Gregorio Arnaldo, are five degrees removed from Justa Arnaldo.[19]

The issue in this case is who among the petitioners and the private respondent is entitled to Justa's estate as her nearest relatives within the meaning of Art. 962 of the Civil Code.

As a preliminary matter, petitioners contend that the Court of Appeals gravely abused its discretion in holding that private respondent is the son of Agatonica Arreza, who was the half-sister of Justa Arnaldo. Petitioners are raising this issue only now. It is well-settled, however, that questions not taken up during the trial of a case cannot be raised for the first time on appeal. With more reason, therefore, should such a question be disallowed when raised

for the first time on appeal to this Court.[20]

It is noteworthy that, in their brief before the Court of Appeals,[21] petitioners admitted that private respondent is Justa's nephew, his mother, Agatonica, being Justa's half-sister. Apparently they are now questioning private respondent's filiation because, as explained by the Court of Appeals, private respondent is the nearest relative of Justa and, therefore, the only one entitled to her estate.

Indeed, given the fact that 0.5 hectares of the land in question belonged to the conjugal partnership of Justa's parents, Justa was entitled to 0.125 hectares of the half hectare land as her father's (Juan Arnaldo's) share in the conjugal property, while petitioners are entitled to the other 0.125 hectares. In addition, Justa inherited her mother's (Ursula Tubil's) share consisting of 0.25 hectares. Plus the 2.2 hectares which belonged to her in her own right, Justa owned a total of 2.575 or 2.58 hectares of the 2.7-hectare land. This 2.58-hectare land was inherited by private respondent Benedicto Estrada as Justa's nearest surviving relative. As the Court of Appeals held:

According to Article 962 of the Civil Code, In every inheritance, the relative nearest in degree excludes the more distant ones, saving the right of representation when it properly takes place.

Relatives in the same degree shall inherit in equal shares, subject to the provisions of Article 1006 with respect to relatives of the full and half blood, and of Article 987, paragraph 2, concerning division between paternal and maternal lines.

The manner of determining the proximity of relationship are provided by Articles 963 - 966 of the Civil Code. They provide:

ART. 963. Proximity of relationship is determined by the number of generations. Each generation forms a degree.

ART. 964. A series of degrees forms a line, which may be either direct or collateral.

A direct line is that constituted by the series of degrees among ascendants and descendants.

A collateral line is that constituted by the series of degrees among persons who are not ascendants and descendants, but who come from a common ancestor.

ART. 965. The direct line is either descending or ascending.

The former unites the head of the family with those who descend from him.

The latter binds a person with those from whom he descends.

ART. 966. In the line, as many degrees are counted as there are generations or persons, excluding the progenitor.

In the direct line, ascent is made to the common ancestor. Thus the child is one degree removed from the parent, two from the grandfather, and three from the great-grandparent.

In the collateral line, ascent is made to the common ancestor and then descent is made to the person with whom the computation is to be made. Thus, a person is two degrees removed from his brother, three from his uncle, who is the brother of his father, four from his first cousin, and so forth.

In this case, plaintiff is the son of Agatonica, the half-sister of Justa. He is thus a third degree relative of Justa.

On the other hand, defendants and intervenors are the sons and daughters of Justa's cousin. They are thus fifth degree relatives of Justa.

Applying the principle that the nearest excludes the farthest, then plaintiff is the lawful heir of Justa. The fact that his mother is only a half-sister of Justa is of no moment.[22]

Nevertheless, petitioners make much of the fact that private respondent is not an Arnaldo, his mother being Ursula's daughter not by Juan Arnaldo but by Pedro Arreza. They claim that this being the case, private respondent is not an heir of Justa and thus not qualified to share in her estate.

Petitioners misappreciate the relationship between Justa and private respondent. As already stated, private respondent is the son of Justa's half-sister Agatonica. He is therefore Justa's nephew. A nephew is considered a collateral relative who may inherit if no descendant, ascendant, or spouse survive the decedent.[23] That private respondent is only a half-blood relative is immaterial. This alone does not disqualify him from being his aunt's heir. As the Court of Appeals correctly pointed out, "The determination of whether the relationship is of the full or half blood is important only to determine the extent of the share of the survivors." [24]

Because of the conclusion we have thus reached, the third and fourth grounds of the petition for review must fail.

WHEREFORE, the petition is DENIED. The temporary restraining order issued by this Court is LIFTED, and the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Regalado, (Chairman), Puno, and Martinez, JJ., concur.

[1] Per Justice Oscar M. Herrera and concurred in by Justices Bernardo P. Pardo and Delilah Vidallon-Magtolis.

[2] Records, p. 190.

[3] Id., p. 191.

[4] Id., pp. 100, 191.

[5] Id., p. 1.

[6] Id., p. 2.

[7] pp. 2-3.

[8] Id., pp. 21, 24.

[9] Id., p. 35.

[10] Id., p. 100.

[11] Id., pp. 100 103-106.

[12] Id., p. 100.

[13] Id., p. 101.

[14] Id., p. 102.

[15] Records, p. 191.

[16] Records, pp. 191-192.

[17] Rollo, p. 32.

[18] Rollo, p. 11.

[19] Rollo, pp. 27-28.

[20] E.g., *Abella v. Court of Appeals*, 257 SCRA 482 (1996); *Lopez Realty, Inc. v. Court of Appeals*, 247 SCRA 738 (1995); *National Power Corp. v. Gutierrez*, 193 SCRA 1 (1991).

[21] CA Rollo, p. 80.

[22] *Id.*, pp. 92-93.

[23] Civil Code, Arts. 1003, 1005, and 1008.

[24] CA Rollo, p. 94.

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