

**CAROLINA ABAD GONZALES, PETITIONER, VS. COURT OF APPEALS,
HONORIA EMPAYNADO, CECILIA H. ABAD, MARIAN H. ABAD AND
ROSEMARIE S. ABAD, RESPONDENTS.**

G.R. No. 117740. October 30, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

Before us is a petition for certiorari to annul the decision of the Court of Appeals dated October 19, 1994, finding private respondents as the heirs of Ricardo de Mesa Abad as well as annulling petitioners' extra-judicial partition of the decedent's estate.

The facts are as follows:

On April 18, 1972, petitioners Carolina Abad Gonzales, Dolores de Mesa Abad and Cesar de Mesa Tioseco sought the settlement of the intestate estate of their brother, Ricardo de Mesa Abad, before the then Court of First Instance of Manila. In their petition, docketed as Special Proceedings No. 86792, petitioners claimed that they were the only heirs of Ricardo de Mesa Abad, as the latter allegedly died a bachelor, leaving no descendants or ascendants, whether legitimate or illegitimate. On May 9, 1972, petitioners amended their petition by alleging that the real properties covered by TCT Nos. 13530, 53671, and 64021, listed therein as belonging to the decedent, were actually only administered by the latter, the true owner being their late mother, Lucila de Mesa. On June 16, 1972, the trial court appointed Cesar de Mesa Tioseco as administrator of the intestate estate of Ricardo de Mesa Abad.

Meanwhile, on May 2, 1972, petitioners executed an extrajudicial settlement of the estate of their late mother Lucila de Mesa, copying therein the technical descriptions of the lots covered by TCT Nos. 13530, 53671, and 64021. By virtue thereof, the Register of Deeds cancelled the above-mentioned TCTs in the name of Ricardo Abad and issued, in lieu thereof, TCT No. 108482 in the name of Dolores de Mesa Abad, TCT No. 108483 in the name of Cesar de Mesa Tioseco and TCT No. 108484 in the name of Carolina Abad Gonzales. The three promptly executed real estate mortgages over the real properties in favor of Mrs. Josefina Viola, the wife of their counsel, Escolastico Viola.

On July 7, 1972, private respondents Honoria Empaynado, Cecilia Abad Empaynado, and Marian Abad Empaynado filed a motion to set aside proceedings and for leave to file opposition in Special Proceedings No. 86792. In their motion, they alleged that Honoria Empaynado had been the common-law wife of Ricardo Abad for twenty-seven years before his death, or from 1943 to 1971, and that during these period, their union had produced two children, Cecilia Abad Empaynado and Marian Abad Empaynado. Private respondents also disclosed the existence of Rosemarie Abad, a child allegedly fathered by Ricardo Abad with another woman, Dolores Saracho. As the law awards the entire estate to the surviving children to the exclusion of collateral relatives, private respondents charged petitioners with deliberately concealing the existence of said three children in order to deprive the latter of their rights to the estate of Ricardo Abad.

On July 24, 1972, private respondents filed a motion to withdraw their first motion and, in lieu thereof, filed a motion for reconsideration praying that Cecilia Abad be appointed administrator instead of Cesar Tioseco. The trial court denied private respondents' motion to remove Cesar Tioseco as administrator, but allowed them to appear in the proceedings to establish their right as alleged heirs of Ricardo Abad.

Private respondents later discovered that petitioners had managed to cancel TCT Nos. 13530, 53671, and 64021 through the stratagem of extra-judicially partitioning their mother's estate. Accordingly, on October 4, 1973, private respondents filed a motion to annul the extra-judicial partition executed by petitioners, as well as TCT Nos. 108482, 108483, and 108484, the Torrens titles issued in substitution of TCT Nos. 13530, 53671, and 64021 and the real estate mortgages constituted by the latter on said properties.

After due trial, the lower court, on November 2, 1973, rendered the following judgment:

WHEREFORE, judgment is hereby rendered as follows:

(1) Declaring Cecilia E. Abad, Marian E. Abad and Rosemarie S. Abad acknowledged natural children of the deceased Ricardo M. Abad;

(2) Declaring said acknowledged natural children, namely: Cecilia E. Abad, Marian E. Abad, and Rosemarie S. Abad the only surviving legal heirs of the deceased Ricardo M. Abad and as such entitled to succeed to the entire estate of said deceased, subject to the rights of Honoria Empaynado, if any, as co-owner of any of the property of said estate that may have been acquired thru her joint efforts with the deceased during the period they lived together as husband and wife;

(3) Denying the petition of decedent's collateral relatives, namely: Dolores M. Abad, Cesar M. Tioseco and Carolina M. Abad to be declared as heirs and excluding them from participating in the administration and settlement of the estate of Ricardo Abad;

(4) Appointing Honoria Empaynado as the administratrix in this intestacy with a bond of THIRTY THOUSAND (P30,000.00) PESOS; and

(5) Ordering Cesar Tioseco to surrender to the new administratrix all property or properties, monies and such papers that came into his possession by virtue of his appointment as administrator, which appointment is hereby revoked.[1]

The trial court, likewise, found in favor of private respondents with respect to the latter's motion for annulment of certain documents. On November 19, 1974, it rendered the following judgment:

WHEREFORE, this Court finds oppositors' Motion for Annulment, dated October 4, 1973 to be meritorious and accordingly -

1. Declares that the six (6) parcels of land described in TCT Nos. 13530, 53671 and 64021, all registered in the name of Ricardo Abad, as replaced by TCT No. 108482 in the name of Dolores de Mesa Abad, TCT No. 108483 in the name of Cesar de Mesa Tioseco and TCT No. 108484 in the name of Carolina de Mesa Abad-Gonzales, and the residential house situated at 2432 Opalo Street, San Andres Subdivision, Manila, to be the properties of the late Ricardo Abad;

2. Declares the deed of Extra Judicial Settlement of the Estate of the Deceased Lucila de Mesa, executed on May 2, 1972 (Doc. No. 445, Page No. 86, Book No. VII, Series of 1972 of the notarial book of Faustino S. Cruz) by petitioners and Carolina de Mesa Abad-Gonzales, to be inexistent and void from the beginning;

3. Declares as null and void the cancellation of TCT Nos. 13530, 53671 and 64021 and issuance in lieu thereof, of TCT Nos. 108482, 108483 and 108484;

4. Orders the Register of Deeds of Manila to cancel TCT No. 108482 of Dolores de Mesa Abad; TCT No. 108483 of Cesar de Mesa Tioseco; and TCT No. 108484 of Carolina de Mesa Abad-Gonzales and in lieu thereof, restore and/or issue the corresponding certificate of title in the name of Ricardo Abad;

5. Declares as inexistent and void from the beginning the three (3) real estate mortgages executed on July 7, 1972 executed by (a) petitioner Dolores de Mesa Abad, identified as Doc. No. 145, Page No. 30, Book No. XX, Series of 1972; (b) petitioner Cesar de Mesa Tioseco, identified as Doc. No. 146, Page 31, Book No. XX, Series of 1972; and (c) Carolina de Mesa Abad-Gonzales, identified as Doc. No. 144, Page No. 30, Book No. XX, Series of 1972, all of the notarial book of Ricardo P. Yap of Manila, in favor of Mrs. Josefina C. Viola, and orders the Register of Deeds of Manila to cancel the registration or annotation thereof from the back of the torrens title of Ricardo Abad; and

6. Orders Atty. Escolastico R. Viola and his law associate and wife, Josefina C. Viola, to surrender to the new administratrix, Honoria Empaynado, TCT Nos. 108482, 108483, and 108484 within five (5) days from receipt hereof.

SO ORDERED.[2]

Petitioners' motion for reconsideration of the November 2, 1973 decision was denied by the trial court. Their notice of appeal was likewise denied on the ground that the same had been filed out of time. Because of this ruling, petitioners instituted certiorari and mandamus proceedings with the Court of Appeals, docketed there as C.A.-G.R. No. SP-03268-R. On November 2, 1974, the appellate court granted petitioners' petition and ordered the lower court to give due course to the latter's appeal. The trial court, however, again dismissed petitioners' appeal on the ground that their record on appeal was filed out of time.

Likewise, on January 4, 1975, petitioners filed their notice of appeal of the November 19, 1974 ruling of the trial court. On March 21, 1975, this appeal was similarly denied on the ground that it had been filed out of time.

Due to the dismissal of their two appeals, petitioners again instituted certiorari and mandamus proceedings with the Court of Appeals, docketed therein as C.A.-G.R. No. SP-04352. The appellate court affirmed the dismissal of the two appeals, prompting petitioners to appeal to the Supreme Court. On July 9, 1985, this Court directed the trial court to give due course to petitioners' appeal from the order of November 2, 1973 declaring private respondents heirs of the deceased Ricardo Abad, and the order dated November 19, 1974, annulling certain documents pertaining to the intestate estate of deceased.

The two appeals were accordingly elevated by the trial court to the appellate court. On October 19, 1994, the Court of Appeals rendered judgment as follows:

WHEREFORE, all the foregoing considered, the instant appeal is DENIED for lack of merit. The orders of the court a quo in SP No. 86792, to wit:

1. Order dated November 2, 1973, declaring in substance that Cecilia, Marian and Rosemarie, all surnamed Abad as the acknowledged natural children and the only surviving heirs of the deceased Ricardo Abad;

2. Order dated November 19, 1974, declaring in substance that the six (6) parcels of land described in TCT Nos. 13530, 53671 and 64021 are the properties of Ricardo Abad; that the extra-judicial partition of the estate of the deceased Lucila de Mesa executed on May 2, 1972 is inexistent and void from the beginning; the cancellation of the aforementioned TCTs is null and void; the Register of Deeds be ordered to restore and/or issue the corresponding Certificates of Title in the name of Ricardo Abad; and

3. Order dated March 21, 1975 denying the appeal of Dolores de Mesa Abad and Cesar de Mesa Tioseco from the latter Order, for being filed out of time, are all AFFIRMED in toto. With costs against petitioner-appellants.

SO ORDERED.[3]

Petitioners now seek to annul the foregoing judgment on the following grounds:

I. THE COURT OF APPEALS AND THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT RESPONDENTS CECILIA E. ABAD, MARIAN E. ABAD AND ROSEMARIE S. ABAD ARE THE ACKNOWLEDGED NATURAL CHILDREN OF THE DECEASED RICARDO DE MESA ABAD.

II. PETITIONERS ARE ENTITLED TO THE SUBJECT ESTATE WHETHER THE SAME IS OWNED BY THE DECEASED RICARDO DE MESA ABAD OR BY LUCILA DE MESA, THE MOTHER OF PETITIONERS AND RICARDO DE MESA ABAD.

We are not persuaded.

Petitioners, in contesting Cecilia, Marian and Rosemarie Abad's filiation, submits the startling theory that the husband of Honoria Empaynado, Jose Libunao, was still alive when Cecilia and Marian Abad were born in 1948 and 1954, respectively.

It is undisputed that prior to her relationship with Ricardo Abad, Honoria Empaynado was married to Jose Libunao, their union having produced three children, Angelita, Cesar, and Maria Nina, prior to the birth of Cecilia and Marian. But while private respondents claim that Jose Libunao died in 1943, petitioners claim that the latter died sometime in 1971.

The date of Jose Libunao's death is important, for if he was still alive in 1971, and given that he was legally married to Honoria Empaynado, the presumption would be that Cecilia and Marian are not Ricardo Abad's children with the latter, but of Jose Libunao and Honoria Empaynado. Article 256, the applicable provision of the Civil Code, provides:

Art. 256. The child shall be presumed legitimate, although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.[4]

To bolster their theory, petitioners presented in evidence the application for enrolment at Mapua Institute of Technology of Angelita Libunao, accomplished in 1956, which states:

Father's Name: Jose Libunao
Occupation: engineer (mining)
Mother's Name: Honoria Empaynado[5]

as well as Cesar Libunao's 1958 application for enrolment at the Mapua Institute of Technology, which states:

Father's Name: Jose Libunao
Occupation: none
Mother's Name: Honoria Empaynado[6]

Petitioners claim that had Jose Libunao been dead during the time when said applications were accomplished, the enrolment forms of his children would have stated so. These not being the case, they conclude that Jose Libunao must have still been alive in 1956 and 1958.

Additionally, petitioners presented the joint affidavit of Juan Quiambao and Alejandro Ramos[7] stating that to their knowledge Jose Libunao had died in 1971, leaving as his widow, Honoria Empaynado, and that the former had been interred at the Loyola Memorial Park.

Lastly, petitioners presented the affidavit of Dr. Pedro Arenas,[8] Ricardo Abad's physician, declaring that in 1935, he had examined Ricardo Abad and found him to be infected with gonorrhea, and that the latter had become

sterile as a consequence thereof.

With these pieces of evidence, petitioners claim that Cecilia and Marian Abad are not the illegitimate children of Ricardo Abad, but rather the legitimate children of the spouses Jose Libunao and Honoria Empaynado.

At the outset, it must be noted that petitioners are disputing the veracity of the trial court's finding of facts. It is a fundamental and settled rule that factual findings of the trial court, adopted and confirmed by the Court of Appeals, are final and conclusive and may not be reviewed on appeal.[9] Petitioners, however, argue that factual findings of the Court of Appeals are not binding on this Court when there appears in the record of the case some fact or circumstance of weight and influence which has been overlooked, or the significance of which has been misinterpreted, that if considered, would affect the result of the case.[10]

This Court finds no justifiable reason to apply this exception to the case at bar.

First, the evidence presented by petitioners to prove that Jose Libunao died in 1971 are, to say the least, far from conclusive. Failure to indicate on an enrolment form that one's parent is "deceased" is not necessarily proof that said parent was still living during the time said form was being accomplished. Furthermore, the joint affidavit of Juan Quiambao and Alejandro Ramos as to the supposed death of Jose Libunao in 1971 is not competent evidence to prove the latter's death at that time, being merely secondary evidence thereof. Jose Libunao's death certificate would have been the best evidence as to when the latter died. Petitioners have, however, inexplicably failed to present the same, although there is no showing that said death certificate has been lost or destroyed as to be unavailable as proof of Jose Libunao's death. More telling, while the records of Loyola Memorial Park show that a certain Jose Bautista Libunao was indeed buried there in 1971, this person appears to be different from Honoria Empaynado's first husband, the latter's name being Jose Santos Libunao. Even the name of the wife is different. Jose Bautista Libunao's wife is listed as Josefa Reyes while the wife of Jose Santos Libunao was Honoria Empaynado.

As to Dr. Arenas' affidavit, the same was objected to by private respondents as being privileged communication under Section 24 (c), Rule 130 of the Rules of Court.[11] The rule on confidential communications between physician and patient requires that: a) the action in which the advice or treatment given or any information is to be used is a civil case; b) the relation of physician and patient existed between the person claiming the privilege or his legal representative and the physician; c) the advice or treatment given by him or any information was acquired by the physician while professionally attending the patient; d) the information was necessary for the performance of his professional duty; and e) the disclosure of the information would tend to blacken the reputation of the patient.[12]

Petitioners do not dispute that the affidavit meets the first four requisites. They assert, however, that the finding as to Ricardo Abad's "sterility" does not blacken the character of the deceased. Petitioners conveniently forget that Ricardo Abad's "sterility" arose when the latter contracted gonorrhea, a fact which most assuredly blackens his reputation. In fact, given that society holds virility at a premium, sterility alone, without the attendant embarrassment of contracting a sexually-transmitted disease, would be sufficient to blacken the reputation of any patient. We thus hold the affidavit inadmissible in evidence. And the same remains inadmissible in evidence, notwithstanding the death of Ricardo Abad. As stated by the trial court:

In the case of *Westover vs. Aetna Life Insurance Company*, 99 N.Y. 59, it was pointed out that: "The privilege of secrecy is not abolished or terminated because of death as stated in established precedents. It is an established rule that the purpose of the law would be thwarted and the policy intended to be promoted thereby would be defeated, if death removed the seal of secrecy, from the communications and disclosures which a patient should make to his physician. After one has gone to his grave, the living are not permitted to impair his

name and disgrace his memory by dragging to light communications and disclosures made under the seal of the statute.

Given the above disquisition, it is clearly apparent that petitioners have failed to establish their claim by the quantum of evidence required by law. On the other hand, the evidence presented by private respondents overwhelmingly prove that they are the acknowledged natural children of Ricardo Abad. We quote with approval the trial court's decision, thus:

In his individual statements of income and assets for the calendar years 1958 and 1970, and in all his individual income tax returns for the years 1964, 1965, 1967, 1968, 1969 and 1970, he has declared therein as his legitimate wife, Honoria Empaynado; and as his legitimate dependent children, Cecilia, Marian (except in Exh. 12) and Rosemarie Abad (Exhs. 12 to 19; TSN, February 26, 1973, pp. 33-44).

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In December 1959, Ricardo Abad insured his daughters Cecilia, then eleven (11) years old, and Marian, then (5) years old, on [a] twenty (20) year-endowment plan with the Insular Life Assurance Co., Ltd. and paid for their premiums (Exh. 34 and 34-A; 34-B to C; 35, 35-A to D; TSN, February 27, 1973, pp. 7-20).

In 1966, he and his daughter Cecilia Abad opened a trust fund account of P100,000.00 with the People's Bank and Trust Company which was renewed until (sic) 1971, payable to either of them in the event of death (Exhs. 36-A; 36-E). On January 5, 1971, Ricardo Abad opened a trust fund of P100,000.00 with the same bank, payable to his daughter Marian (Exh. 37-A). On January 4, 1971, Ricardo Abad and his sister Dolores Abad had (sic) agreed to stipulate in their PBTC Trust Agreement that the 9% income of their P100,000.00 trust fund shall (sic) be paid monthly to the account reserved for Cecilia, under PBTC Savings Account No. 49053 in the name of Ricardo Abad and/or Cecilia Abad (Exh. 38) where the income of the trust fund intended for Cecilia was also deposited monthly (TSN, February 27, 1973, pp. 21-36). Ricardo Abad had also deposited (money) with the Monte de Piedad and Savings Bank in the name of his daughter Marian, represented by him, as father, under Savings Account 17348 which has (sic) a balance of P34,812.28 as of June 30, 1972. (Exh. 60-B)"

With the finding that private respondents are the illegitimate children of Ricardo Abad, petitioners are precluded from inheriting the estate of their brother. The applicable provisions are:

Art. 988. In the absence of legitimate descendants or ascendants, the illegitimate children shall succeed to the entire estate of the deceased.

Art. 1003. If there are no..illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles. (Italics supplied)

As to petitioners' claim that the properties in the name of Ricardo Abad actually belong to their mother Lucila de Mesa, both the trial court and the appellate court ruled that the evidence presented by private respondents proved that said properties in truth belong to Ricardo Abad. As stated earlier, the findings of fact by the trial court are entitled to great weight and should not be disturbed on appeal, it being in a better position to examine the real evidence, as well as to observe the demeanor of the witnesses while testifying in the case.[13] In fact, petitioners seem to accept this conclusion, their contention being that they are entitled to the subject estate whether the same is owned by Ricardo Abad or by Lucila de Mesa.

Digressing from the main issue, in its decision dated October 19, 1994, the Court of Appeals affirmed the trial court's order dated March 21, 1975 denying the appeal of Dolores de Mesa Abad and Cesar de Mesa Tioseco on the ground that the same was filed out of time. This affirmance is erroneous, for on July 9, 1985, this Court had already ruled that the same was not filed out of time. Well-settled is the dictum that the rulings of the Supreme Court are binding upon and may not be reversed by a lower court.

WHEREFORE, premises considered, the instant petition is hereby DENIED. The decision of the Court of Appeals in CA-G.R. CV No. 30184 dated October 19, 1994 is AFFIRMED with the MODIFICATION that the affirmance of the Order dated March 21, 1975 denying the appeal of Dolores de Mesa Abad and Cesar de Mesa Tioseco for being filed out of time is SET ASIDE. Costs against petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Kapunan, Purisima, and Pardo, JJ., concur.

[1] Order, November 2, 1973, pp. 19-20.

[2] Records, pp. 109-111.

[3] Rollo, pp. 55-56.

[4] The Family Code has a substantially similar provision, thus:

Art. 167. The children shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

[5] Records, p. 152.

[6] Records, p. 153.

[7] Records, p. 151.

[8] Records, p. 156.

[9] GSIS vs. CA, G.R. No. 128471, March 6, 1998.

[10] Lee vs. CA, 201 SCRA 405 (1991).

[11] Section 24. Disqualification by reason of privileged communication. " The following persons cannot testify as to matters learned in confidence in the following cases:

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(c) A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient;

x x x x x x x x.

[12] Francisco, Evidence, 3rd ed., pp. 159-162.

[13] Producers' Bank vs. CA, G.R. No. 110495, January 29, 1998.

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