

TESTATE ESTATE OF C. O. BOHANAN, DECEASED. PHILIPPINE TRUST CO., EXECUTOR AND APPELLEE, VS. MAGDALENA C. BOHANAN, EDWARD C. BOHANAN, AND MARY LYDIA BOHANAN, OPPOSITORS AND APPEL...

G.R. No. 12105. January 30, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal against an order of the Court of First Instance of Manila, Hon. Ramon San Jose, presiding, dismissing the objections filed by Magdalena C. Bohanan, Mary Bohanan and Edward Bohanan to the project of partition submitted by the executor and approving the said project.

On April 24, 1950, the Court of First Instance of Manila, Hon. Rafael Amparo, presiding, admitted to probate a last will and testament of C. O. Bohanan, executed by him on April 23, 1944 in Manila. In the said order, the court made the following findings:

"According to the evidence of the opponents the testator was born in Nebraska and therefore a citizen of that state, or at least a citizen of California where some of his properties are located. This contention is untenable. Notwithstanding the long residence of the decedent in the Philippines, his stay here was merely temporary, and he continued and remained to be a citizen of the United States and of the state of his particular choice, which is Nevada, as stated in his will. He had planned to spend the rest of his days in that state. His permanent residence or domicile in the United States depended upon his personal intent or desire, and he selected Nevada as his domicile and therefore at the time of his death, he was a citizen of that state. Nobody can choose his domicile or permanent residence for him. That is his exclusive personal right.

Wherefore, the court finds that the testator C. O. Bohanan was at the time of his death a citizen of the United States and of the State of Nevada and declares that his will and testament, Exhibit A, is fully in accordance with the laws of the state of Nevada and admits the same to probate. Accordingly, the Philippine Trust Company, named as the executor of the will, is hereby appointed to such executor and upon the filing of a bond in the sum of P10,000.00, let letters testamentary be issued and after taking the prescribed oath, it may enter upon the execution and performance of its trust." (pp. 26-27, R.O.A.)

It does not appear that the order granting probate was ever questioned on appeal. The executor filed a project of partition dated January 24, 1956, making, in accordance with the provisions of the will, the following adjudications: (1) one-half of the residuary estate, to the Farmers and Merchants National Bank of Los Angeles, California, U.S.A. in trust only for the benefit of testator's grandson Edward George Bohanan, which consists of P90,819.67 in cash and one-half in shares of stock of several mining companies; (2) the other half of the residuary estate to the testator's brother, F. L. Bohanan, and his sister, Mrs. M. B. Galbraith, share and share alike. This consists in the same amount of cash and of shares of mining stock similar to those given to testator's grandson; (3) legacies of P6,000 each to his (testator) son, Edward Gilbert Bohanan, and his daughter, Mary Lydia Bohanan, to be paid in three yearly installments; (4) legacies to Clara Daen, in the amount of P10,000.00; Katherine

Woodward, P2,000; Beulah Fox, P4,000; and Elizabeth Hastings, P2,000;

It will be seen from the above that out of the total estate (after deducting administration expenses) of P211,639.33 in cash, the testator gave his grandson P90,819.67 and one-half of all shares of stock of several mining companies and to his brother and sister the same amount. To his children he gave a legacy of only P6,000 each, or a total of P12,000.

The wife Magdalena C. Bohanan and her two children question the validity of the testamentary provisions disposing of the estate in the manner above indicated, claiming that they have been deprived of the legitime that the laws of the forum concede to them.

The first question refers to the share that the wife of the testator, Magdalena C. Bohanan, should be entitled to receive. The will has not given her any share in the estate left by the testator. It is argued that it was error for the trial court to have recognized the Reno divorce secured by the testator from his Filipino wife Magdalena C. Bohanan, and that said divorce should be declared a nullity in this jurisdiction, citing the cases of Querubin vs. Querubin, 87 Phil., 124, 47 Off. Gaz., (Sup, 12) 315, Cousins Hiz vs. Fluemer, 55 Phil., 851, Ramirez vs. Gmur, 42 Phil., 855 and Gorayeb vs. Hashim, 50 Phil., 22. The court below refused to recognize the claim of the widow on the ground that the laws of Nevada, of which the deceased was a citizen, allow him to dispose of all of his properties without requiring him to leave any portion of his estate to his wife. Section 9905 of Nevada Compiled Laws of 1925 provides:

"Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his or her estate, real and personal, the same being chargeable with the payment of the testator's debts."

Besides, the right of the former wife of the testator, Magdalena C. Bohanan, to a share in the testator's estate had already been passed upon adversely against her in an order dated June 18, 1955, (pp. 155-159, Vol. II Records, Court of First Instance), which had become final, as Magdalena C. Bohanan does not appear to have appealed therefrom to question its validity. On December 16, 1953, the said former wife filed a motion to withdraw the sum of P20,000 from the funds of the estate, chargeable against her share in the conjugal property, (See pp. 294-297, Vol. I, Record, Court of First Instance), and the court in its said order found that there exists no community property owned by the decedent and his former wife at the time the decree of divorce was issued. As already adverted to, the decision of the court had become final and Magdalena C. Bohanan may no longer question the fact contained therein, i.e. that there was no community property acquired by the testator and Magdalena C. Bohanan during their coverture.

Moreover, the court below had found that the testator and Magdalena C. Bohanan were married on January 30, 1909, and that divorce was granted to him on May 20, 1922; that sometime in 1925, Magdalena C. Bohanan married Carl Aaron and this marriage was subsisting at the time of the death of the testator. Since no right to share in the inheritance in favor of a divorced wife exists in the State of Nevada and since the court below had already found that there was no conjugal property between the testator and Magdalena C. Bohanan, the latter can now have no legal claim to any portion of the estate left by the testator.

The most important issue is the claim of the testator's children, Edward and Mary Lydia, who had received legacies in the amount of P6,000 each only, and, therefore, have not been given their shares in the estate which, in accordance with the laws of the forum, should be two-thirds of the estate left by the testator. Is the failure of the testator to give his children two-thirds of the estate left by him at the time of his death, in accordance with the laws of the forum valid?

The old Civil Code, which is applicable to this case because the testator died in 1944, expressly provides that successional rights to personal property are to be governed by the national law of the person whose succession is

in question. Says the law on this point:

"Nevertheless, legal and testamentary successions, in respect to the order of succession as well as to the extent of the successional rights and the intrinsic validity of their provisions, shall be regulated by the national law of the person whose succession is in question, whatever may be the nature of the property and the country in which it is found." (par. 2, Art. 10, old Civil Code, which is the same as par. 2 Art. 16, new Civil Code.)

In the proceedings for the probate of the will, it was found out and it was decided that the testator was a citizen of the State of Nevada because he had selected this as his domicile and his permanent residence. (See Decision dated April 24, 1950, *supra*). So the question at issue is whether the testamentary dispositions, especially those for the children which are short of the legitime given them by the Civil Code of the Philippines, are valid. It is not disputed that the laws of Nevada allow a testator to dispose of all his properties by will (Sec. 9905, Compiled Nevada Laws of 1925, *supra*). It does not appear that at the time of the hearing of the project of partition, the above-quoted provision was introduced in evidence, as it was the executor's duty to do. The law of Nevada, being a foreign law, can only be proved in our courts in the form and manner provided for by our Rules, which are as follows:

"Sec. 41. Proof of public or official record.—An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody." * * * (Rule 123).

We have, however, consulted the records of the case in the court below and we have found that during the hearing on October 4, 1954 of the motion of Magdalena C. Bohanan for withdrawal of P20,000 as her share, the foreign law, especially Section 9905, Compiled Nevada Laws, was introduced in evidence by appellants' (herein) counsel as Exhibit "2" (See pp. 77-79, Vol. II, and t.s.n. pp. 24-44, Records, Court of First Instance). Again said law was presented by the counsel for the executor and admitted by the Court as Exhibit "B" during the hearing of the case on January 23, 1950 before Judge Rafael Amparo (see Records, Court of First Instance, Vol. 1). .

In addition, the other appellants, children of the testator, do not dispute the above-quoted provision of the laws of the State of Nevada. Under all the above circumstances, we are constrained to hold that the pertinent law of Nevada, specially Section 9905 of the Compiled Nevada Laws of 1925, can be taken judicial notice of by us, without proof of such law having been offered at the hearing of the project of partition.

As in accordance with Article 10 of the old Civil Code, the validity of testamentary dispositions are to be governed by the national law of the testator, and as it has been decided and it is not disputed that the national law of the testator is that of the State of Nevada, already indicated above, which allows a testator to dispose of all his property according to his will, as in the case at bar, the order of the court approving the project of partition made in accordance with the testamentary provisions, must be, as it is hereby affirmed, with costs against appellants.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, and Endencia, JJ., concur.
Barrera, J., concurs in the result.

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