

VOLTAIRE ARBOLARIO, LUCENA ARBOLARIO TA-ALA, FE ARBOLARIO, EXALTACION ARBOLARIO, CARLOS ARBOLARIO, AND SPOUSES ROSALITA RODRIGUEZ AND CARLITO SALHAY, PETITIONERS, VS. COURT OF A...

G.R. No. 129163. April 22, 2003

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Once a valid marriage is established, it is deemed to continue until proof that it has been legally ended is presented. Thus, the mere cohabitation of the husband with another woman will not give rise to a presumption of legitimacy in favor of the children born of the second union, until and unless there be convincing proof that the first marriage had been lawfully terminated; and the second, lawfully entered into.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, challenging the February 28, 1995 Decision[2] and the March 5, 1997 Resolution[3] of the Court of Appeals (CA) in CA-GR No. 38583. The assailed Decision disposed as follows:

“WHEREFORE, premises considered, the judgment appealed from is hereby REVERSED and a new one is accordingly entered –

“(a) in Civil Case No. 385, DISMISSING the complaint and [counter-claim];

“(b) in Civil Case No. 367, ORDERING the defendant spouses to vacate the premises occupied within Lot 323, Ilog Cadastre, registered under T.C.T. No. 140081 in favor of Irene Colinco, Ruth Colinco, Orpha Colinco and Goldelina Colinco.”[4]

On the other hand, the assailed Resolution denied reconsideration:[5]

The Facts

The facts of the case are summarized by the CA as follows:

“The original owners of the controverted lot, spouses Anselmo Baloyo and Macaria Lirazan had five (5) children, namely: (1) Agueda Colinco, (2) Catalina Baloyo, (3) Eduardo Baloyo, (4) Gaudencia Baloyo, and (5) Julian Baloyo. All of the above-named persons are now dead.

“The first child, Agueda Colinco, was survived by her two children, namely, Antonio Colinco and [respondent] Irene Colinco. Antonio Colinco predeceased his three daughters, herein [respondents], Ruth, Orpha, and Goldelina, all surnamed Colinco.

“The second child, Catalina Baloyo, was married to Juan Arbolario. Their union was blessed with the birth of only one child, Purificacion Arbolario, who, in 1985, died a spinster and without issue.

“Records disclose moreover that decedent Purificacion’s father, Juan Arbolario, consorted with another

woman by the name of Francisca Malvas. From this cohabitation was born the [petitioners], viz, Voltaire Arbolario, Lucena Arbolario Taala, Fe Arbolario, Exaltacion Arbolario, and Carlos Arbolario (referred to hereinafter as 'Arbolarios'). It is significant to note, at this juncture, that all the foregoing [petitioners] were born well before the year 1951.

"In 1946, it appears that the third child, Eduardo Baloyo, sold his entire interest in Lot 323 to his sister, Agueda Baloyo Colinco, by virtue of a notarized document acknowledged before Notary Public Deogracias Riego.

"In 1951, a notarized declaration of heirship was executed by and between Agueda, Catalina, Gaudencia, and their brothers Eduardo and Julian, who extrajudicially declared themselves to be the only heirs of the late spouses Anselmo Baloyo and Macaria Lirazan. The fourth child, Gaudencia Baloyo, conveyed her interest in the said lot in favor of her two nieces, Irene Colinco to one-half (1/2) and Purificacion Arbolario to the other half.

"And as far as Julian Baloyo -- the fifth and last child --was concerned, records could only show that he was married to a certain Margarita Palma; and that he died, presumably after 1951 without any issue.

"Purificacion Arbolario was then allowed to take possession of a portion of the disputed parcel until her death sometime in 1984 or 1985.

"It was under the foregoing set of facts that [respondents] Irene Colinco, Ruth Colinco, Orpha Colinco, and Goldelina Colinco, believing themselves to be the only surviving heirs of Anselmo Baloyo and Macaria Lirazan, executed a 'Declaration of Heirship and Partition Agreement', dated May 8, 1987 where they adjudicated upon themselves their proportionate or ideal shares in O.C.T. No. 16361, viz: Irene Colinco, to one-half (1/2); while the surviving daughters of her (Irene's) late brother Antonio, namely Ruth, Orpha, and Goldelina Colinco, to share in equal, ideal proportions to the remaining half (1/2). This forthwith brought about the cancellation of O.C.T. No. 16361, and the issuance of T.C.T. No. T-140018 in their names and conformably with the aforesaid distribution.

"On October 2, 1987, the Colincos filed Civil Case No. 367 against Spouses Rosalita Rodriguez Salhay and Carlito Salhay, seeking to recover possession of a portion of the aforesaid lot occupied by [respondent] spouses ('Salhays' hereinafter) since 1970.

"The Salhays alleged in their defense that they have been the lawful lessees of the late Purificacion Arbolario since 1971 up to 1978; and that said spouses allegedly purchased the disputed portion of Lot No. 323 from the deceased lessor sometime in [September] 1978.

"Meanwhile, or on May 9, 1988 -- before Civil Case No. 367 was heard and tried on the merits -- Voltaire M. Arbolario, Fe Arbolario, Lucena Arbolario Ta-ala, Exaltacion Arbolario, Carlos Arbolario ('Arbolarios', collectively) and spouses Carlito Salhay and Rosalita Rodriguez Salhay (the same defendants in Civil Case No. 367), filed Civil Case No. 385 '[f]or Cancellation of Title with Damages', against the plaintiffs in Civil Case No. 367. The Arbolarios, joined by the Salhays, contend that the 'Declaration of Heirship and Partition Agreement' executed by the Colincos was defective and thus voidable as they (Arbolarios) were excluded therein. The Arbolarios claim that they succeeded intestate to the inheritance of their alleged half-sister, Purificacion Arbolario; and, as forced heirs, they should be included in the distribution of the aforesaid lot." [6]

Ruling of the Trial Court

After a full-blown trial on the consolidated cases, the Regional Trial Court (RTC) of Kabankalan, Negros Occidental (Branch 61) [7] rendered its judgment, the dispositive portion of which reads thus:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the [Arbolarios] and against the [Colincos] in Civil Case No. 385 --

1) Declaring that the Declaration of Heirship and Partition Agreement, dated May 8, 1987, executed by Irene,

Ruth, Orpha and Goldelina, all surnamed Colinco, as null and void and of no effect insofar as the share of Purificacion Arbolario in Lot No. 323 is concerned[;]

2) Ordering the Register of Deeds of Negros Occidental to cancel Transfer Certificate of Title No. T-140018 and issue a new one in the names of Voltaire Arbolario, Lucena Arbolario Ta-ala, Carlos Arbolario, Fe Arbolario and Exaltacion Arbolario, 3/8 share or One thousand Six Hundred Forty Three Point Five (643.5) square meters, and the remaining 5/8 share or One Thousand Seventy Two Point Five (1,072.5) square meters in the names of Irene Colinco, Ruth Colinco, Orpha Colinco and Goldelina Colingco or other heirs, if any[;]

3) Ordering the [Respondents] Irene, Ruth, Orpha and Goldelina, all surnamed Colinco, to pay jointly and severally to [Petitioners] Voltaire M. Arbolario, et al., the sum of Ten Thousand Pesos (P10,000.00) as moral damages, Five Thousand Pesos (Normal 0 false false EN-PH X-NONE X-NONE /* Style Definitions */
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5,000.00) as attorney's fees and the x x x sum of One Thousand Pesos (P1,500.00) as appearance fees; and

in Civil Case No. 367 --

1) Ordering the dismissal of [respondents'] complaint and the [petitioners'] counter-claim for lack of legal basis.

In both cases --

1) Ordering the Colincos to pay costs.”[8]

The trial court held that the Arbolarios were the brothers and the sisters of the deceased Purificacion Arbolario, while the Colincos were her cousins and nieces. Pursuant to Article 1009 of the Civil Code, the Colincos could not inherit from her, because she had half-brothers and half-sisters. Their 1987 Declaration of Heirship and Partition Agreement was made in bad faith, because they knew all along the existence of, and their relationship with, the Arbolarios. The Salhays, on the other hand, had no document to prove their acquisition and possession of a portion of the disputed lot.

Ruling of the Court of Appeals

On appeal, the CA rejected the contention of petitioners that “the cohabitation of their father with their natural mother, Francisca Malvas, was by virtue of a valid marriage.” The appellate court observed that the Arbolarios had all been born before the death of Catalina Baloyo, as shown by the Deed of Declaration of Heirship, which she had executed in 1951. No evidence was ever presented showing that her conjugal union with Juan Arbolario had been judicially annulled or lawfully ended before that year. Because it was also in 1951 when Juan Arbolario cohabited with Francisca Malvas, their union was presumably extramarital. Consequently, their children are illegitimate half-brothers and half-sisters of Purificacion, the daughter of Juan and Catalina.

Illegitimate children are barred by Article 992 of the Civil Code from inheriting intestate from the legitimate children and relatives of their father or mother. As the illegitimate siblings of the late Purificacion Arbolario, petitioners cannot conveniently undermine the legal limitations by insisting that they were treated as half-brothers and half-sisters by the deceased.

On the other hand, there is no impediment for respondents to declare themselves as the sole and forced heirs of Anselmo Baloyo and Macaria Lirazan. Moreover, there is no clear and reliable evidence to support the allegation of the Salhays that they purchased from the decedent, Purificacion Arbolario, the lot that they have been occupying since 1970.

Hence, this Petition.[9]

Issues

In their Memorandum, petitioners raise the following issues for our consideration:

I

“The Honorable Court of Appeals committed grave and serious error in considering the Arbolarios illegitimate children and not entitled to inherit from their half-sister Purificacion Arbolario.

II

“The Honorable Court of Appeals committed grave and serious error in considering the purchase of the property by Rosela Rodriguez and subsequent acquisition by Petitioners Rosalita Rodriguez and Carlito Salhay improper.

III

“The Honorable Court of Appeals committed grave and serious error in deciding that the court a quo had no right to distribute the said property.”[10]

In other words, petitioners are questioning the CA pronouncements on (1) the illegitimacy of their relationship with Purificacion; (2) the validity of the Salhays’ purchase of a portion of the disputed lot; and (3) the impropriety of the RTC Order partitioning that lot.

This Court’s Ruling

The Petition has no merit.

First Issue:

Illegitimacy of Petitioners

Petitioners contend that their illegitimacy is a “far-fetched and scurrilous claim” that is not supported by the evidence on record. They maintain that the CA declared them illegitimate on the unproven allegation that Catalina Baloyo had signed the Declaration of Heirship in 1951. They aver that this 1951 Declaration does not contain her signature, and that she died in 1903:

“Que Agueda Baloyo, Catalina Baloyo y Eduardo Baloyo murieron ab intestate en Ilog, Negros Occ.; la primera fallecio en 11 de Noviembre de 1940, la segunda murio el ano 1903 y el ultimo en 28 de Marzo de 1947 x x x.”[11]

We are not persuaded.

We begin our ruling with the general principle that the Supreme Court is not a trier of facts.[12] However, where the trial court and the CA arrived at different factual findings, a review of the evidence on record may become necessary.[13]

Petitioners, in effect, are asking us to evaluate the 1951 Declaration of Heirship, deduce that Catalina Baloyo had long been dead before it was ever executed, and conclude that the Arbolarios are legitimate half-brothers and half-sisters of Juan and Catalina’s only daughter, Purificacion. What we see, on the other hand, is a series of non sequiturs.

First, a review of the 1951 Declaration reveals that the year of Catalina’s death was intercalated. The first two

numbers (1 and 9) and the last digit (3) are legible; but the third digit has been written over to make it look like a "0." Further, the paragraph quoted by petitioners should show a chronological progression in the heirs' years of death: Agueda died in 1940 and Eduardo in 1947. Hence, if Catalina had indeed died in 1903, why then was her name written after Agueda's and not before it? Moreover, the document, being in Spanish, requires an official translation. We cannot readily accept the English translation proffered by petitioners, since respondents did not agree to its correctness. Besides, it consisted of only a paragraph of the whole document.

Second, there is no solid basis for the argument of petitioners that Juan Arbolario's marriage to Francisca Malvas was valid, supposedly because Catalina Baloyo was already dead when they were born. It does not follow that just because his first wife has died, a man is already conclusively married to the woman who bore his children. A marriage certificate or other generally accepted proof is necessary to establish the marriage as an undisputable fact.

Third, clear and substantial evidence is required to support the claim of petitioners that they were preterited from the 1951 Declaration of Heirship. The RTC Decision merely declared that they were half-brothers and half-sisters of Purificacion, while respondents were her cousins and nieces (collateral relatives). It made no pronouncement as to whether they were her legitimate or illegitimate siblings. We quote the appellate court:

"x x x. Therefore, in the absence of any fact that would show that conjugal union of Juan Arbolario and Catalina Baloyo had been judicially annulled before 1951, or before Juan Arbolario cohabited with Francisca Malvas, it would only be reasonable to conclude that the foregoing union which resulted in the birth of the [Arbolarios] was extra-marital. And consequently, x x x Voltaire Arbolario, et al., are illegitimate children of Juan Arbolario.

"There is no presumption of legitimacy or illegitimacy in this jurisdiction (Article 261, New Civil Code); and whoever alleges the legitimacy or illegitimacy of a child born after the dissolution of a prior marriage or the separation of the spouses must introduce such evidence to prove his or her allegation (Ibid.; Sec. 4, Rule 131, New Rules on Evidence). It is the x x x Arbolarios, claiming to be born under a validly contracted subsequent marriage, who must show proof of their legitimacy. But this, they have miserably failed to do." [14]

Paternity or filiation, or the lack of it, is a relationship that must be judicially established.[15] It stands to reason that children born within wedlock are legitimate.[16] Petitioners, however, failed to prove the fact (or even the presumption) of marriage between their parents, Juan Arbolario and Francisca Malvas; hence, they cannot invoke a presumption of legitimacy in their favor.

As it is, we have to follow the settled rule that the CA's factual findings cannot be set aside, because they are supported by the evidence on record.[17] As held by the appellate court, without proof that Catalina died in 1903, her marriage to Juan is presumed to have continued. Even where there is actual severance of the filial companionship between spouses, their marriage subsists, and either spouse's cohabitation with any third party cannot be presumed to be between "husband and wife." [18]

Second Issue:

Evidence of Purchase

Petitioners contend that the CA committed a serious error when it disregarded the testimony that the Salhays had purchased the portion of the lot they had been occupying since 1970. This issue, according to them, was not even raised by respondents in the latter's appeal to the CA.

We disagree. Although the sale was not expressly assigned as an error in their Brief, respondents (as petitioners in the CA) still assailed the existence of the sale when they argued thus:

“As to the spouses Carlito Salhay and Rosalita R. Salhay, they could not present any written contract to support their claim to having purchased a portion of Lot 323 where their house stands. Rosalita R. Salhay on the witness stand testified under oath that she has no contract of sale in her favor because it was her mother, Rosela Rodriguez who had purchased the land, but she was not able to produce any evidence of such sale in favor of her mother. She declared that she has never paid land taxes for the land.”[19]

Hence, they prayed for the reversal of the appealed RTC Decision in toto. The CA, on the other hand, categorically ruled that “no clear and reliable evidence had been introduced to prove such bare [allegation]” that a portion of the disputed lot had ever been purchased by the Salhays. Besides, no favorable supporting evidence was cited by petitioners in their Memorandum. Thus, we find no reason to overturn the CA’s factual finding on this point.

Third Issue:

Partition

Petitioners also contend that the Court of Appeals overstepped its bounds when it ruled that since respondents did not raise the issue of partition on appeal, the RTC had no jurisdiction to divide the disputed lot. The CA held, however, that the partition of the property had not been contemplated by the parties, because respondents merely sought recovery of possession of the parcel held by the Salhays, while petitioners sought the annulment of the Deed of Partition respondents had entered into.

We agree with the appellate court. The purpose of partition is to put an end to co-ownership. It seeks a severance of the individual interests of co-owners, vesting in each of them a sole estate in a specific property and a right to enjoy the allotted estate without supervision or interference.[20]

Petitioners in this case were unable to establish any right to partition, because they had failed to establish that they were legitimate half-brothers and half-sisters of the deceased Purificacion. Questions as to the determination of the heirs of a decedent, the proof of filiation, and the determination of the estate of a decedent and claims thereto should be brought up before the proper probate court or in special proceedings instituted for the purpose. Such issues cannot be adjudicated in an ordinary civil action for the recovery of ownership and possession.[21]

WHEREFORE, the Petition is DENIED, and the appealed Decision AFFIRMED. Costs against petitioners.

SO ORDERED.

Puno (Chairman), Sandoval-Gutierrez, Corona, and Carpio Morales, JJ., concur.

[1] Rollo, pp. 10-22.

[2] Promulgated by the Twelfth Division of the Court of Appeals; penned by Justice Ricardo P. Galvez and concurred in by Justices Alfredo L. Benipayo (Division chairman) and Romeo J. Callejo Sr. (member, now a justice of this Court).

[3] Penned by Justice Ricardo P. Galvez and concurred in by Justices Romeo J. Callejo Sr. and Celia L. Reyes.

[4] Assailed Decision, p. 8; rollo, p. 35.

[5] Rollo, p. 39.

[6] Assailed Decision, pp. 1-3; rollo, pp. 28-30. Citations omitted.

[7] Presided by Judge Rodolfo S. Layumas.

[8] RTC Decision, pp. 14-15; CA rollo, pp. 48-49.

[9] The case was deemed submitted for decision on December 11, 2001, upon this Court's receipt of private respondents' Memorandum and Compliance signed by Atty. Ivan G. Nemenzo. Petitioners' Memorandum and Compliance, signed by Atty. Raymundo T. Pandan Jr. of the Valencia Law Offices, was received by this Court on July 19, 2000.

[10] Petitioners' Memorandum and Compliance, p. 5; rollo, p. 108. Original in upper case.

[11] Id., pp. 7-8 & 110-111.

[12] *Tecson v. Sandiganbayan*, 318 SCRA 80, 91, November 16, 1999; *Union Insurance Society of Canton v. Court of Appeals*, 260 SCRA 431, 440, August 8, 1996.

[13] *Lustan v. Court of Appeals*, 266 SCRA 663, 670, January 27, 1997.

[14] Assailed Decision, p. 6; rollo, p. 33.

[15] *De Asis v. Court of Appeals*, 303 SCRA 176, 183, February 15, 1999.

[16] *Tison v. Court of Appeals*, 276 SCRA 582, 591, July 31, 1997.

[17] *Ceremonia v. Court of Appeals*, 314 SCRA 731, 739, September 21, 1999.

[18] *Niñal v. Bayadog*, 328 SCRA 122, 133, March 14, 2000.

[19] Appellants' Brief, p. 9; CA rollo, p. 25.

[20] *Noceda v. Court of Appeals*, 313 SCRA 504, September 2, 1999.

[21] *Agapay v. Palang*, 276 SCRA 340, 350-351, July 28, 1997.

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