

ANTONIA ARMAS Y CALISTERIO, PETITIONER, VS. MARIETTA CALISTERIO, RESPONDENT.

G.R. No. 136467. April 06, 2000

Ponente: VITUG, J.

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VITUG, J.:

On 24 April 1992, Teodorico Calisterio died intestate, leaving several parcels of land with an estimated value of P604,750.00. Teodorico was survived by his wife, herein respondent Marietta Calisterio.

Teodorico was the second husband of Marietta who had previously been married to James William Bounds on 13 January 1946 at Caloocan City. James Bounds disappeared without a trace on 11 February 1947. Teodorico and Marietta were married eleven years later, or on 08 May 1958, without Marietta having priorly secured a court declaration that James was presumptively dead.

On 09 October 1992, herein petitioner Antonia Armas y Calisterio, a surviving sister of Teodorico, filed with the Regional Trial Court ("RTC") of Quezon City, Branch 104, a petition entitled, "In the Matter of Intestate Estate of the Deceased Teodorico Calisterio y Cacabelos, Antonia Armas, Petitioner," claiming to be inter alia, the sole surviving heir of Teodorico Calisterio, the marriage between the latter and respondent Marietta Espinosa Calisterio being allegedly bigamous and thereby null and void. She prayed that her son Sinfroniano C. Armas, Jr., be appointed administrator, without bond, of the estate of the deceased and that the inheritance be adjudicated to her after all the obligations of the estate would have been settled.

Respondent Marietta opposed the petition. Marietta stated that her first marriage with James Bounds had been dissolved due to the latter's absence, his whereabouts being unknown, for more than eleven years before she contracted her second marriage with Teodorico. Contending to be the surviving spouse of Teodorico, she sought priority in the administration of the estate of the decedent.

On 05 February 1993, the trial court issued an order appointing jointly Sinfroniano C. Armas, Jr., and respondent Marietta administrator and administratrix, respectively, of the intestate estate of Teodorico.

On 17 January 1996, the lower court handed down its decision in favor of petitioner Antonia; it adjudged:

"WHEREFORE, judgment is hereby rendered finding for the petitioner and against the oppositor whereby herein petitioner, Antonia Armas y Calisterio, is declared as the sole heir of the estate of Teodorico Calisterio y Cacabelos." [1]

Respondent Marietta appealed the decision of the trial court to the Court of Appeals, formulating that-

"1. The trial court erred in applying the provisions of the Family Code in the instant case despite the fact that the controversy arose when the New Civil Code was the law in force.

"2. The trial court erred in holding that the marriage between oppositor-appellant and the deceased Teodorico Calisterio is bigamous for failure of the former to secure a decree of the presumptive death of her first spouse.

"3. The trial court erred in not holding that the property situated at No. 32 Batangas Street, San Francisco del Monte, Quezon City, is the conjugal property of the oppositor-appellant and the deceased Teodorico Calisterio.

"4. The trial court erred in holding that oppositor-appellant is not a legal heir of deceased Teodorico Calisterio.

"5. The trial court erred in not holding that letters of administration should be granted solely in favor of oppositor-appellant."[2]

On 31 August 1998, the appellate court, through Mr. Justice Conrado M. Vasquez, Jr., promulgated its now assailed decision, thus:

"IN VIEW OF ALL THE FOREGOING, the Decision appealed from is REVERSED AND SET ASIDE, and a new one entered declaring as follows:

"(a) Marietta Calisterio's marriage to Teodorico remains valid;

"(b) The house and lot situated at #32 Batangas Street, San Francisco del Monte, Quezon City, belong to the conjugal partnership property with the concomitant obligation of the partnership to pay the value of the land to Teodorico's estate as of the time of the taking;

"(c) Marietta Calisterio, being Teodorico's compulsory heir, is entitled to one half of her husband's estate, and Teodorico's sister, herein petitioner Antonia Armas and her children, to the other half;

"(d) The trial court is ordered to determine the competence of Marietta E. Calisterio to act as administrator of Teodorico's estate, and if so found competent and willing, that she be appointed as such; otherwise, to determine who among the deceased's next of kin is competent and willing to become the administrator of the estate."[3]

On 23 November 1998, the Court of Appeals denied petitioner's motion for reconsideration, prompting her to interpose the present appeal. Petitioner asseverates:

"It is respectfully submitted that the decision of the Court of Appeals reversing and setting aside the decision of the trial court is not in accord with the law or with the applicable decisions of this Honorable Court."[4]

It is evident that the basic issue focuses on the validity of the marriage between the deceased Teodorico and respondent Marietta, that, in turn, would be determinative of her right as a surviving spouse.

The marriage between the deceased Teodorico and respondent Marietta was solemnized on 08 May 1958. The law in force at that time was the Civil Code, not the Family Code which took effect only on 03 August 1988. Article 256 of the Family Code[5] itself limited its retroactive governance only to cases where it thereby would not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.

Verily, the applicable specific provision in the instant controversy is Article 83 of the New Civil Code which provides:

"Art. 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

"(1) The first marriage was annulled or dissolved; or

"(2) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or if the absentee, though he has been absent for less than seven years, is generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, or if the absentee is presumed dead according to articles 390 and 391. The marriage so contracted shall be valid in any of the three cases until declared null and void by a competent

court."

Under the foregoing provisions, a subsequent marriage contracted during the lifetime of the first spouse is illegal and void ab initio unless the prior marriage is first annulled or dissolved. Paragraph (2) of the law gives exceptions from the above rule. For the subsequent marriage referred to in the three exceptional cases therein provided, to be held valid, the spouse present (not the absentee spouse) so contracting the later marriage must have done so in good faith.[6] Bad faith imports a dishonest purpose or some moral obliquity and conscious doing of wrong - it partakes of the nature of fraud, a breach of a known duty through some motive of interest or ill will.[7] The Court does not find these circumstances to be here extant.

A judicial declaration of absence of the absentee spouse is not necessary[8] as long as the prescribed period of absence is met. It is equally noteworthy that the marriage in these exceptional cases are, by the explicit mandate of Article 83, to be deemed valid "until declared null and void by a competent court." It follows that the burden of proof would be, in these cases, on the party assailing the second marriage.

In contrast, under the 1988 Family Code, in order that a subsequent bigamous marriage may exceptionally be considered valid, the following conditions must concur; viz.: (a) The prior spouse of the contracting party must have been absent for four consecutive years, or two years where there is danger of death under the circumstances stated in Article 391 of the Civil Code at the time of disappearance; (b) the spouse present has a well-founded belief that the absent spouse is already dead; and (c) there is, unlike the old rule, a judicial declaration of presumptive death of the absentee for which purpose the spouse present can institute a summary proceeding in court to ask for that declaration. The last condition is consistent and in consonance with the requirement of judicial intervention in subsequent marriages as so provided in Article 41[9], in relation to Article 40,[10] of the Family Code.

In the case at bar, it remained undisputed that respondent Marietta's first husband, James William Bounds, had been absent or had disappeared for more than eleven years before she entered into a second marriage in 1958 with the deceased Teodorico Calisterio. This second marriage, having been contracted during the regime of the Civil Code, should thus be deemed valid notwithstanding the absence of a judicial declaration of presumptive death of James Bounds.

The conjugal property of Teodorico and Marietta, no evidence having been adduced to indicate another property regime between the spouses, pertains to them in common. Upon its dissolution with the death of Teodorico, the property should rightly be divided in two equal portions -- one portion going to the surviving spouse and the other portion to the estate of the deceased spouse. The successional right in intestacy of a surviving spouse over the net estate[11] of the deceased, concurring with legitimate brothers and sisters or nephews and nieces (the latter by right of representation), is one-half of the inheritance, the brothers and sisters or nephews and nieces, being entitled to the other half. Nephews and nieces, however, can only succeed by right of representation in the presence of uncles and aunts; alone, upon the other hand, nephews and nieces can succeed in their own right which is to say that brothers or sisters exclude nephews and nieces except only in representation by the latter of their parents who predecease or are incapacitated to succeed. The appellate court has thus erred in granting, in paragraph (c) of the dispositive portion of its judgment, successional rights, to petitioner's children, along with their own mother Antonia who herself is invoking successional rights over the estate of her deceased brother.

WHEREFORE, the assailed judgment of the Court of Appeals in CA G.R. CV No. 51574 is AFFIRMED except insofar only as it decreed in paragraph (c) of the dispositive portion thereof that the children of petitioner are likewise entitled, along with her, to the other half of the inheritance, in lieu of which, it is hereby DECLARED that said one-half share of the decedent's estate pertains solely to petitioner to the exclusion of her own children.

No costs.

SO ORDERED.

Melo, (Chairman), Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, p. 45.

[2] Rollo, pp. 29-30.

[3] Rollo, pp. 35-36.

[4] Rollo, p. 15.

[5] Article 256. This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.

[6] The good faith or bad faith of the other contracting party to the subsequent marriage is not all that consequential (See *Lapuz Sy vs. Eufemio*, 43 SCRA 177).

[7] *Commissioner of Internal Revenue vs. Court of Appeals*, 267 SCRA 557.

[8] *Jones vs. Hortiguella*, 64 Phil. 179.

[9] Article 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the civil code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

[10] Article 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

[11] First deducting to her favor her one-half share of the conjugal property.

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