

OFELIA HERNANDO BAGUNU, PETITIONER, VS. PASTORA PIEDAD, RESPONDENT.*G.R. No. 140975. December 08, 2000*

Ponente: VITUG, J.

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On 28 August 1995, herein petitioner Ofelia Hernando Bagunu moved to intervene in Special Proceedings No. 3652, entitled "In the Matter of the Intestate Proceedings of the Estate of Augusto H. Piedad," pending before the Regional Trial Court ("RTC"), Branch 117, of Pasay City. Asserting entitlement to a share of the estate of the late Augusto H. Piedad, petitioner assailed the finality of the order of the trial court awarding the entire estate to respondent Pastora Piedad contending that the proceedings were tainted with procedural infirmities, including an incomplete publication of the notice of hearing, lack of personal notice to the heirs and creditors, and irregularity in the disbursements of allowances and withdrawals by the administrator of the estate. The trial court denied the motion, prompting petitioner to raise her case to the Court of Appeals. Respondent sought the dismissal of the appeal on the thesis that the issues brought up on appeal only involved pure questions of law. Finding merit in that argument, the appellate court dismissed the appeal, citing Section 2(c) of Rule 41 of the 1997 Revised Rules on Civil Procedure which would require all appeals involving nothing else but questions of law to be raised before the Supreme Court by petition for review on certiorari in accordance with Rule 45 thereof and consistently with Circular 2-90 of the Court.

In a well-written resolution, the Court of Appeals belabored the distinctions between questions of law and questions of fact, thus:

"There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts. There is question of fact when the query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevance of specific surrounding circumstances, and their relation to each other and to the whole and the probabilities of the situation."^[1]

Justice Eugenio S. Labitoria, speaking for the appellate court, ratiocinated that whether or not the RTC erred in denying the intervention considering (1) that the intervenor-appellant had a prima facie interest over the case, (2) that the jurisdiction over the person of the proper parties was not acquired in view of the deficient publication or notice of hearing, and (3) that the proceedings had yet to be closed and terminated, were issues which did not qualify as "questions of fact" as to place the appeal within the jurisdiction of the appellate court; thus:

"The issues are evidently pure questions of law because their resolution are based on facts not in dispute. Admitted are the facts that intervenor-appellant is a collateral relative within the fifth degree of Augusto H. Piedad; that she is the daughter of the first cousin of Augusto H. Piedad; that as such, intervenor-appellant seek to inherit from the estate of Augusto H. Piedad; that the notice of hearing was published for three consecutive weeks in a newspaper of general circulation; that there was no order of closure of proceedings that has been issued by the intestate court; and that the intestate court has already issued an order for the transfer of the

remaining estate of Augusto H. Piedad to petitioner-appellee.

"These facts are undisputed.

"In this case, there is no doubt nor difference that arise as to the truth or falsehood on alleged facts. The question as to whether intervenor-appellant as a collateral relative within the fifth civil degree, has legal interest in the intestate proceeding which would justify her intervention; the question as to whether the publication of notice of hearing made in this case is defective which would amount to lack of jurisdiction over the persons of the parties and the question as to whether the proceedings has already been terminated when the intestate court issued the order of transfer of the estate of Augusto H. Piedad to petitioner-appellee, in spite the absence of an order of closure of the intestate court, all call for the application and interpretation of the proper law. There is doubt as to what law is applicable on a certain undisputed state of facts.

"The resolution of the issues raised does not require the review of the evidence, nor the credibility of witnesses presented, nor the existence and relevance of specific surrounding circumstances. Resolution on the issues may be had even without going to examination of facts on record."[2]

Still unsatisfied, petitioner contested the resolution of the appellate court in the instant petition for review on certiorari.

The Court finds no reversible error in the ruling of the appellate court. But let us set aside the alleged procedural decrepitude and take on the basic substantive issue. Specifically, can petitioner, a collateral relative of the fifth civil degree, inherit alongside respondent, a collateral relative of the third civil degree? Elsewise stated, does the rule of proximity in intestate succession find application among collateral relatives?

Augusto H. Piedad died without any direct descendants or ascendants. Respondent is the maternal aunt of the decedent, a third-degree relative of the decedent, while petitioner is the daughter of a first cousin of the deceased, or a fifth-degree relative of the decedent.

The various provisions of the Civil Code on succession embody an almost complete set of law to govern, either by will or by operation of law, the transmission of property, rights and obligations of a person upon his death. Each article is construed in congruity with, rather than in isolation of, the system set out by the Code.

The rule on proximity is a concept that favors the relatives nearest in degree to the decedent and excludes the more distant ones except when and to the extent that the right of representation can apply. Thus, Article 962 of the Civil Code provides:

"ART. 962. 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 the paternal and maternal lines."

By right of representation, a more distant blood relative of a decedent is, by operation of law, "raised to the same place and degree" of relationship as that of a closer blood relative of the same decedent. The representative thereby steps into the shoes of the person he represents and succeeds, not from the latter, but from the person to whose estate the person represented would have succeeded.

"ART. 970. Representation is a right created by fiction of law, by virtue of which the representative is raised to the place and the degree of the person represented, and acquires the rights which the latter would have if he were living or if he could have inherited."

"ART. 971. The representative is called to the succession by the law and not by the person represented. The

representative does not succeed the person represented but the one whom the person represented would have succeeded."

In the direct line, right of representation is proper only in the descending, never in the ascending, line. In the collateral line, the right of representation may only take place in favor of the children of brothers or sisters of the decedent when such children survive with their uncles or aunts.

"ART. 972. The right of representation takes place in the direct descending line, but never in the ascending.

"In the collateral line, it takes place only in favor of the children of brothers or sisters, whether they be of the full or half blood."

"ART. 974. Whenever there is succession by representation, the division of the estate shall be made per stirpes, in such manner that the representative or representatives shall not inherit more than what the person they represent would inherit, if he were living or could inherit."

"ART. 975. When children of one or more brothers or sisters of the deceased survive, they shall inherit from the latter by representation, if they survive with their uncles or aunts. But if they alone survive, they shall inherit in equal portions."

The right of representation does not apply to "other collateral relatives within the fifth civil degree" (to which group both petitioner and respondent belong) who are sixth in the order of preference following, firstly, the legitimate children and descendants, secondly, the legitimate parents and ascendants, thirdly, the illegitimate children and descendants, fourthly, the surviving spouse, and fifthly, the brothers and sisters/nephews and nieces, of the decedent. Among collateral relatives, except only in the case of nephews and nieces of the decedent concurring with their uncles or aunts, the rule of proximity, expressed in Article 962, aforequoted, of the Code, is an absolute rule. In determining the degree of relationship of the collateral relatives to the decedent, Article 966 of the Civil Code gives direction.

"Article 966. x x x

"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."

Accordingly -

Respondent, being a relative within the third civil degree, of the late Augusto H. Piedad excludes petitioner, a relative of the fifth degree, from succeeding ab intestato to the estate of the decedent.

The provisions of Article 1009 and Article 1010 of the Civil Code -

"Article 1009. Should there be neither brothers nor sisters nor children of brothers or sisters, the other collateral relatives shall succeed to the estate.

"The latter shall succeed without distinction of lines or preference among them by reason of relationship by the whole blood."

"Article 1010. The right to inherit ab intestato shall not extend beyond the fifth degree of relationship in the collateral line." -

invoked by petitioner do not at all support her cause. The law means only that among the other collateral relatives (the sixth in the line of succession), no preference or distinction shall be observed "by reason of relationship by the whole blood." In fine, a maternal aunt can inherit alongside a paternal uncle, and a first cousin of the full

blood can inherit equally with a first cousin of the half blood, but an uncle or an aunt, being a third-degree relative, excludes the cousins of the decedent, being in the fourth-degree of relationship; the latter, in turn, would have priority in succession to a fifth-degree relative.

WHEREFORE, the instant Petition is DENIED. No costs.

SO ORDERED.

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

[1]Rollo, p. 30.

[2]Rollo, p. 31.

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