

MICHAEL C. GUY, PETITIONER, PRESENT: VS. HON. COURT OF APPEALS, HON. SIXTO MARELLA, JR., PRESIDING JUDGE, RTC, BRANCH 138, MAKATI CITY AND MINORS, KAREN DANES WEI AND KAMILLE DA...

G.R. NO. 163707. September 15, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari assails the January 22, 2004 Decision[1] of the Court of Appeals in CA-G.R. SP No. 79742, which affirmed the Orders dated July 21, 2000[2] and July 17, 2003[3] of the Regional Trial Court of Makati City, Branch 138 in SP Proc. Case No. 4549 denying petitioner's motion to dismiss; and its May 25, 2004 Resolution[4] denying petitioner's motion for reconsideration.

The facts are as follows:

On June 13, 1997, private respondent-minors Karen Oanes Wei and Kamille Oanes Wei, represented by their mother Remedios Oanes (Remedios), filed a petition for letters of administration[5] before the Regional Trial Court of Makati City, Branch 138. The case was docketed as Sp. Proc. No. 4549 and entitled Intestate Estate of Sima Wei (a.k.a. Rufino Guy Susim).

Private respondents alleged that they are the duly acknowledged illegitimate children of Sima Wei, who died intestate in Makati City on October 29, 1992, leaving an estate valued at P10,000,000.00 consisting of real and personal properties. His known heirs are his surviving spouse Shirley Guy and children, Emy, Jeanne, Cristina, George and Michael, all surnamed Guy. Private respondents prayed for the appointment of a regular administrator for the orderly settlement of Sima Wei's estate. They likewise prayed that, in the meantime, petitioner Michael C. Guy, son of the decedent, be appointed as Special Administrator of the estate. Attached to private respondents' petition was a Certification Against Forum Shopping[6] signed by their counsel, Atty. Sedfrey A. Ordoñez.

In his Comment/Opposition,[7] petitioner prayed for the dismissal of the petition. He asserted that his deceased father left no debts and that his estate can be settled without securing letters of administration pursuant to Section 1, Rule 74 of the Rules of Court. He further argued that private respondents should have established their status as illegitimate children during the lifetime of Sima Wei pursuant to Article 175 of the Family Code.

The other heirs of Sima Wei filed a Joint Motion to Dismiss[8] on the ground that the certification against forum shopping should have been signed by private respondents and not their counsel. They contended that Remedios should have executed the certification on behalf of her minor daughters as mandated by Section 5, Rule 7 of the Rules of Court.

In a Manifestation/Motion as Supplement to the Joint Motion to Dismiss,[9] petitioner and his co-heirs alleged that private respondents' claim had been paid, waived, abandoned or otherwise extinguished by reason of Remedios' June 7, 1993 Release and Waiver of Claim stating that in exchange for the financial and educational

assistance received from petitioner, Remedios and her minor children discharge the estate of Sima Wei from any and all liabilities.

The Regional Trial Court denied the Joint Motion to Dismiss as well as the Supplemental Motion to Dismiss. It ruled that while the Release and Waiver of Claim was signed by Remedios, it had not been established that she was the duly constituted guardian of her minor daughters. Thus, no renunciation of right occurred. Applying a liberal application of the rules, the trial court also rejected petitioner's objections on the certification against forum shopping.

Petitioner moved for reconsideration but was denied. He filed a petition for certiorari before the Court of Appeals which affirmed the orders of the Regional Trial Court in its assailed Decision dated January 22, 2004, the dispositive portion of which states:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit. Consequently, the assailed Orders dated July 21, 2000 and July 17, 2003 are hereby both AFFIRMED. Respondent Judge is hereby DIRECTED to resolve the controversy over the illegitimate filiation of the private respondents (sic) minors [-] Karen Oanes Wei and Kamille Oanes Wei who are claiming successional rights in the intestate estate of the deceased Sima Wei, a.k.a. Rufino Guy Susim.

SO ORDERED.[10]

The Court of Appeals denied petitioner's motion for reconsideration, hence, this petition.

Petitioner argues that the Court of Appeals disregarded existing rules on certification against forum shopping; that the Release and Waiver of Claim executed by Remedios released and discharged the Guy family and the estate of Sima Wei from any claims or liabilities; and that private respondents do not have the legal personality to institute the petition for letters of administration as they failed to prove their filiation during the lifetime of Sima Wei in accordance with Article 175 of the Family Code.

Private respondents contend that their counsel's certification can be considered substantial compliance with the rules on certification of non-forum shopping, and that the petition raises no new issues to warrant the reversal of the decisions of the Regional Trial Court and the Court of Appeals.

The issues for resolution are: 1) whether private respondents' petition should be dismissed for failure to comply with the rules on certification of non-forum shopping; 2) whether the Release and Waiver of Claim precludes private respondents from claiming their successional rights; and 3) whether private respondents are barred by prescription from proving their filiation.

The petition lacks merit.

Rule 7, Section 5 of the Rules of Court provides that the certification of non-forum shopping should be executed by the plaintiff or the principal party. Failure to comply with the requirement shall be cause for dismissal of the case. However, a liberal application of the rules is proper where the higher interest of justice would be served. In *Sy Chin v. Court of Appeals*,^[11] we ruled that while a petition may have been flawed where the certificate of non-forum shopping was signed only by counsel and not by the party, this procedural lapse may be overlooked in the interest of substantial justice.^[12] So it is in the present controversy where the merits^[13] of the case and the absence of an intention to violate the rules with impunity should be considered as compelling reasons to temper the strict application of the rules.

As regards Remedios' Release and Waiver of Claim, the same does not bar private respondents from claiming successional rights. To be valid and effective, a waiver must be couched in clear and unequivocal terms which

leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him. A waiver may not be attributed to a person when its terms do not explicitly and clearly evince an intent to abandon a right.[14]

In this case, we find that there was no waiver of hereditary rights. The Release and Waiver of Claim does not state with clarity the purpose of its execution. It merely states that Remedios received P300,000.00 and an educational plan for her minor daughters "by way of financial assistance and in full settlement of any and all claims of whatsoever nature and kind x x x against the estate of the late Rufino Guy Susim." [15] Considering that the document did not specifically mention private respondents' hereditary share in the estate of Sima Wei, it cannot be construed as a waiver of successional rights.

Moreover, even assuming that Remedios truly waived the hereditary rights of private respondents, such waiver will not bar the latter's claim. Article 1044 of the Civil Code, provides:

ART. 1044. Any person having the free disposal of his property may accept or repudiate an inheritance.

Any inheritance left to minors or incapacitated persons may be accepted by their parents or guardians. Parents or guardians may repudiate the inheritance left to their wards only by judicial authorization.

The right to accept an inheritance left to the poor shall belong to the persons designated by the testator to determine the beneficiaries and distribute the property, or in their default, to those mentioned in Article 1030. (Emphasis supplied)

Parents and guardians may not therefore repudiate the inheritance of their wards without judicial approval. This is because repudiation amounts to an alienation of property[16] which must pass the court's scrutiny in order to protect the interest of the ward. Not having been judicially authorized, the Release and Waiver of Claim in the instant case is void and will not bar private respondents from asserting their rights as heirs of the deceased.

Furthermore, it must be emphasized that waiver is the intentional relinquishment of a known right. Where one lacks knowledge of a right, there is no basis upon which waiver of it can rest. Ignorance of a material fact negates waiver, and waiver cannot be established by a consent given under a mistake or misapprehension of fact.[17]

In the present case, private respondents could not have possibly waived their successional rights because they are yet to prove their status as acknowledged illegitimate children of the deceased. Petitioner himself has consistently denied that private respondents are his co-heirs. It would thus be inconsistent to rule that they waived their hereditary rights when petitioner claims that they do not have such right. Hence, petitioner's invocation of waiver on the part of private respondents must fail.

Anent the issue on private respondents' filiation, we agree with the Court of Appeals that a ruling on the same would be premature considering that private respondents have yet to present evidence. Before the Family Code took effect, the governing law on actions for recognition of illegitimate children was Article 285 of the Civil Code, to wit:

ART. 285. The action for the recognition of natural children may be brought only during the lifetime of the presumed parents, except in the following cases:

- (1) If the father or mother died during the minority of the child, in which case the latter may file the action before the expiration of four years from the attainment of his majority;
- (2) If after the death of the father or of the mother a document should appear of which nothing had been heard and in which either or both parents recognize the child.

In this case, the action must be commenced within four years from the finding of the document. (Emphasis

supplied)

We ruled in *Bernabe v. Alejo*[18] that illegitimate children who were still minors at the time the Family Code took effect and whose putative parent died during their minority are given the right to seek recognition for a period of up to four years from attaining majority age. This vested right was not impaired or taken away by the passage of the Family Code.[19]

On the other hand, Articles 172, 173 and 175 of the Family Code, which superseded Article 285 of the Civil Code, provide:

ART. 172. The filiation of legitimate children is established by any of the following:

- (1) The record of birth appearing in the civil register or a final judgment; or
- (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

- (1) The open and continuous possession of the status of a legitimate child; or
- (2) Any other means allowed by the Rules of Court and special laws.

ART. 173. The action to claim legitimacy may be brought by the child during his or her lifetime and shall be transmitted to the heirs should the child die during minority or in a state of insanity. In these cases, the heirs shall have a period of five years within which to institute the action.

The action already commenced by the child shall survive notwithstanding the death of either or both of the parties.

ART. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same, evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

Under the Family Code, when filiation of an illegitimate child is established by a record of birth appearing in the civil register or a final judgment, or an admission of filiation in a public document or a private handwritten instrument signed by the parent concerned, the action for recognition may be brought by the child during his or her lifetime. However, if the action is based upon open and continuous possession of the status of an illegitimate child, or any other means allowed by the rules or special laws, it may only be brought during the lifetime of the alleged parent.

It is clear therefore that the resolution of the issue of prescription depends on the type of evidence to be adduced by private respondents in proving their filiation. However, it would be impossible to determine the same in this case as there has been no reception of evidence yet. This Court is not a trier of facts. Such matters may be resolved only by the Regional Trial Court after a full-blown trial.

While the original action filed by private respondents was a petition for letters of administration, the trial court is not precluded from receiving evidence on private respondents' filiation. Its jurisdiction extends to matters incidental and collateral to the exercise of its recognized powers in handling the settlement of the estate, including the determination of the status of each heir.[20] That the two causes of action, one to compel recognition and the other to claim inheritance, may be joined in one complaint is not new in our jurisprudence.[21] As held in *Briz v.*

Briz:[22]

The question whether a person in the position of the present plaintiff can in any event maintain a complex action to compel recognition as a natural child and at the same time to obtain ulterior relief in the character of heir, is one which in the opinion of this court must be answered in the affirmative, provided always that the conditions justifying the joinder of the two distinct causes of action are present in the particular case. In other words, there is no absolute necessity requiring that the action to compel acknowledgment should have been instituted and prosecuted to a successful conclusion prior to the action in which that same plaintiff seeks additional relief in the character of heir. Certainly, there is nothing so peculiar to the action to compel acknowledgment as to require that a rule should be here applied different from that generally applicable in other cases. x x x

The conclusion above stated, though not heretofore explicitly formulated by this court, is undoubtedly to some extent supported by our prior decisions. Thus, we have held in numerous cases, and the doctrine must be considered well settled, that a natural child having a right to compel acknowledgment, but who has not been in fact acknowledged, may maintain partition proceedings for the division of the inheritance against his coheirs (*Siguiong vs. Siguiong*, 8 Phil., 5; *Tiamson vs. Tiamson*, 32 Phil., 62); and the same person may intervene in proceedings for the distribution of the estate of his deceased natural father, or mother (*Capistrano vs. Fabella*, 8 Phil., 135; *Conde vs. Abaya*, 13 Phil., 249; *Ramirez vs. Gmur*, 42 Phil., 855). In neither of these situations has it been thought necessary for the plaintiff to show a prior decree compelling acknowledgment. The obvious reason is that in partition suits and distribution proceedings the other persons who might take by inheritance are before the court; and the declaration of heirship is appropriate to such proceedings.

WHEREFORE, the instant petition is DENIED. The Decision dated January 22, 2004 of the Court of Appeals in CA-G.R. SP No. 79742 affirming the denial of petitioner's motion to dismiss; and its Resolution dated May 25, 2004 denying petitioner's motion for reconsideration, are AFFIRMED. Let the records be REMANDED to the Regional Trial Court of Makati City, Branch 138 for further proceedings.

SO ORDERED.

Panganiban, C. J., (Chairperson), Asutria-Martinez, Callejo, Sr., and Chico-Nazario, JJ. concur.

[1] Rollo, pp. 19-26. Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Mario L. Guariña III and Jose C. Reyes, Jr.

[2] *Id.* at 48-49. Penned by Judge Sixto Marella, Jr.

[3] *Id.* at 53.

[4] *Id.* at 28.

[5] *Id.* at 29-31.

[6] *Id.* at 31.

[7] *Id.* at 35-36.

[8] *Id.* at 37-41.

[9] *Id.* at 42-44.

[10] *Id.* at 25.

[11] 399 Phil. 442 (2000).

[12] Id. at 454.

[13] Twin Towers Condominium Corporation v. Court of Appeals, G.R. No. 123552, February 27, 2003, 398 SCRA 203, 212.

[14] Thomson v. Court of Appeals, 358 Phil. 761, 778 (1998).

[15] Rollo, p. 44.

[16] Tolentino, Civil Code of the Philippines, Vol. III, p. 554.

[17] D.M. Consunji, Inc. v. Court of Appeals, G.R. No. 137873, April 20, 2001, 357 SCRA 249, 266.

[18] 424 Phil. 933 (2002).

[19] Id. at 944.

[20] Borromeo-Herrera v. Borromeo, G.R. Nos. L-41171, L-55000, L-62895, L-63818 and L-65995, July 23, 1987, 152 SCRA 171, 182-183.

[21] Tayag v. Court of Appeals, G.R. No. 95229, June 9, 1992, 209 SCRA 665, 672.

[22] 43 Phil. 763, 768-769 (1922).

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