

REMELA ZALDARRIAGA, MINOR, REPRESENTED BY GUARDIAN AD LITEM, GORGONIA DE LA PEÑA, PETITIONER and APPELLEE, VS. ENRIQUE F. MARIÑO

G.R. No. 19566. May 25, 1964

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from an order of dismissal of the Court of First Instance of Negros Occidental.

The factual background of this case is set forth in our decision in case G. R. No. L-14636, entitled "Gorgonia de la Petia, in behalf of her daughter Remela Zaldarriaga vs. Consuelo Vda. de Zaldarriaga at al.", decided on June 30, 1960, involving an appeal from an order of dismissal of said court in Civil Case No. 4895 thereof. We quote, from said decision:-

"On July 2, 1958, plaintiff in behalf of her minor daughter Remela Zaldarriaga, filed with the above-mentioned court, a complaint against defendants

Consuelo Vda. de Zaldarriaga, as judicial administratrix of the Intestate Estate of Pedro Zaldarriaga;

Ernesto Zaldarriaga, Guadalupe Zaldarriaga and Jesus Zaldarriaga, Jr. as heirs, and the first as Judicial Administrator of the Intestate Estate of Jesus Zaldarriaga, son of Pedro Zaldarriaga; and

Basilisa Vda. de Zaldarriaga, as Judicial Administratrix of the Intestate Estate of Jose Zaldarriaga, another son of Pedro Zaldarriaga

alleging, inter alia, as to the first cause of action, that from 1938 to 1944, plaintiff Gorgonia de la Peña and the late Julio Zaldarriaga (a third son of Pedro Zaldarriaga) lived together as common-law husband and wife of Barrio Mabini, Cadiz, Negros Occidental; that out of said relationship, 3 children were born, namely, Julio, Jr., who died when he was 14 days old; Toto, who died at the age of 2 years; and Remela, who was born on November 16, 1940; that said Julio Zaldarriaga died in 1944 when Remela was only 4 years old; and that from November 16, 1940 until the latter part of 1944, Remela was in continuous possession of the status of an acknowledged natural child of Julio Zaldarriaga by virtue of the latter's overt acts and those of his family represented by the defendants. In respect to the second cause of action, she alleged, among other things, that the late Pedro Zaldarriaga had 4 sons, namely, Jesus, Jose, Manuel, and Julio Zaldarriaga that Pedro Zaldarriaga and his said sons were the registered co-owners of Lots Nos. 936, 937, 940, and 941 of the Cadastral Survey of Cadiz, Negros Occidental, in the following proportions: Pedro, 4/8 share; Jesus, 1/8 share; Jose, 1/8 share; Manuel, 1/8 share; and Julio, 1/8 share; that said Julio Zaldarriaga died intestate; that plaintiff Remela Zaldarriaga inherited the 1/8 share of her natural father Julio Zaldarriaga, including the 1/8 sugar quota pertaining to said lots; and that she made repeated demands on defendants to deliver the 1/8 part of said lots to her, but the latter refused to do so. Plaintiff prayed in the first cause of action, that Remela Zaldarriaga be declared as the acknowledged natural daughter of the late Julio Zaldarriaga. In the second cause of action, she prayed, inter alia, for an order partitioning said lots Nos. 936, 937,

940, and 941, in order that the 1/8 portion of the same be registered in the name of Remela Zaldarriaga .

"On July 25, 1958, defendants filed a motion to dismiss on the ground that the court had no jurisdiction over the subject matter of the action, inasmuch as there was then pending before this Court a case (G.R. No. L-13424) involving the partition of the same lots (Lots Nos. 936, 937, 940, and 941) subject matter of the complaint. On July 29, 1958, plaintiff filed an answer to said motion to dismiss.

"On August 16, 1958, defendants filed a supplementary motion to dismiss, on the ground that there was then pending another action (Special Proceeding ho. 4476) in the Court of First Instance of Negros Occidental, between the same parties, for the same cause. On August 22, 1958, plaintiff filed an answer to said supplementary motion to dismiss, to which, defendants filed a reply on August 25, 1958. On August 27, 1958, plaintiff filed an answer to said reply.

"On August 28, 1958, defendant Basilia Vda. de Zaldarriaga, filed her answer to plaintiff's complaint. On the same date, the court dismissed plaintiff's complaint, * *."

A reconsideration of this order of dismissal having denied, Gorgonia de la Peña appealed to the Supreme Court - and docketed therein as G. R. No. L-14636 - which reversed said order the same being erroneously predicated upon the theory that the issues in said case No. 4895 - or G. R. No. L-14636 of the Supreme Court - were already in litigation in Civil Case No. 2705 of the aforementioned inferior court, which is not true, because said case No. 2705 referred to the estate of Jose Zaldarriaga, whereas case No. 4895 involved the estate of Julio Zaldarriaga.

However, Gorgonia de la Peña had filed in said case G.R. No. L-14636 (or No. 4895 of the court of first instance) a motion to withdraw the appeal therein, for the reason that she had meanwhile instituted in the lower court Special Proceeding No. 5267, for the settlement of the estate of the deceased Julio Zaldarriaga, in which the issues raised in case No. 4895 could be settled, and said motion to withdraw the appeal was objected to upon the ground that the lower court was disposed to dismiss said case No. 5267. Consequently, we did not deem it advisable to dismiss the appeal in G.R. No. L-14636 (or case No. 4895) and, instead our decision, promulgated on June 30, 1960, remanded the case (No. 4895) "to the court of origin for further proceedings, without prejudice to appellant's choosing either to proceed with this case or the intestate proceeding No. 5267 instituted by her.

Soon thereafter, or on July 14, 1960, Gorgonia de la Peña filed in said case No. 5267 a "manifestation" inviting attention of the Court of First Instance of Negros Occidental to said decision of the Supreme Court in G.R. No. L-14636 (Case No. 4895), and stating that she preferred to continue said civil case rather than case No. 5267, and praying, accordingly, that the latter be dismissed.

On September 2, 1960, Enrique F. Marino, who had been appointed, in said Special Proceeding No. 5267, judicial administrator of the estate of Julio Zaldarriaga, objected to said manifestation and/or petition for dismissal; but, this notwithstanding, the lower court granted the petition and issued an order, dated October 4, 1960, dismissing said case No. 5267. Marino sought a reconsideration of this order, to no avail.

Hence, its propriety is now assailed by him, upon the ground that, upon institution of said case No. 5267, the probate court has acquired exclusive jurisdiction over the settlement of the estate of Julio Zaldarriaga to the exclusion of all other courts, and, consequently, case No. 4895 was automatically abandoned; that it is improper for a declaration of heirs to be made in an ordinary civil action (Case No. 4895), in view of the pendency of case No. 5267 for the settlement of the estate of said deceased; that the question as to who are his heirs and what are their respective shares, should be determined in said case No. 5267; that Marino should recover the property of the deceased and the rentals and fruits thereof, as well as the sugar quota pertaining thereto, from Ernesto, Guadalupe and Jesus, Jr., all surnamed Zaldarriaga, who have illegally possessed said property and collected the

aforementioned rentals, fruits and sugar quota; that the estate and inheritance taxes due to the Government should be determined and paid in said case No. 5267; that the order of distribution of the residue of the estate of Julio Zaldarriaga to the persons entitled thereto should, also, be issued in that case; and that the estate of the deceased was not duly represented in said case No. 4895.

We find no merit in this appeal, far Ernesto, Guadalupe and Jesus, Jr., all surnamed Zaldarriaga, and all other persons who claim an interest in the estate of Julio Zaldarriaga, are parties in case No. 4895, and none of them has objected to the dismissal of case No. 5267. In fact, appellant has not named anybody having an interest in both cases who is not a party in case No. 4895. Upon the other hand, it is well settled that the matter of acknowledgement of an alleged natural child and his claim as such to a share in the estate of the alleged natural father may be determined either in an ordinary civil action or in special proceedings for the settlement of the estate of the deceased father (*Escoval vs. Escoval*, 48 Off. Ga. 616; *Tiamson vs. Tiamson*, 52 Phil. 62; *Briz vs. Briz*, 43 Phil. 763, 768; *Suarez vs. Suarez*, 43 Phil. 903, 905; *Conde vs. Abaya*, 13 Phil. 249; *Capistrano vs. Fabella*, 8 Phil. 249; *Siguion vs. Siguion*, 8 Phil. 5). As a consequence, the remedies sought by Gorgonia dela Peña may be entertained either in case No. 4895 or in case No. 5267. So too, the question whether Ernesto, Guadalupe and Jesus, Jr., all surnamed Zaldarriaga, should surrender the possession of the property of the deceased Julio Zaldarriaga and refund the rentals, fruits and sugar quota thereof allegedly collected by them, may, likewise, be determined in case No. 4895.

Should persons, other than those who are parties in case No. 4895, feel that their interest in the estate of the deceased may be affected by the proceedings therein, they may intervene in such case; and this includes the Government, as regards estate and inheritance taxes, if any were due. Hence, we do not find that, in issuing the order appealed from, the lower court has adversely affected the right of any person who possesses a substantial interest in the aforementioned estate.

WHEREFORE, said order is hereby affirmed, with the costs of this instance against herein appellant Enrique F. Marino.

It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

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