

PAULA DE LA CERNA, ET AL., PETITIONERS, VS. MANUELA REBACA POTOT, ET AL., AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. 20234. December 23, 1964

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Appeal by Paula de la Cerna and others from a decision of the Court of Appeals, Sixth Division (C.A.-G.R. No. 23763-R) reversing that of the Court of First Instance of Cebu (Civ. Case No. R-3819) and ordering the dismissal of an action for partition.

The factual background appears in the following portion of the decision of the Court of Appeals (Petition, Annex A, pp. 2-4):

"It appear that on May 9, 1939, the spouses, Bernabe de la Cerna and Gervasia Rebaca, executed a joint last will and testament in the local dialect whereby they willed that 'our two parcels of land acquired during our marriage together with all improvements thereon shall be given to Manuela Rebaca, our niece, whom we have nurtured since childhood, because God did not give us any child in our union, Manuela Rebaca being married to Nicolas Potot', and that 'while each of the testator is yet living, he or she will continue to enjoy the fruits of the two lands aforementioned', the said two parcels of land being' covered by Tax No. 4676 and Tax No. 6677, bold situated in sitio Bucao, barrio Lugo, municipality of Borbon, province of Cebu. Bernabe de la Cerna died on August 30, 1939, and the aforesaid will was submitted to probate by said Gervasia and Manuela before the Court of First Instance of Cebu which, after due publication as required by law and there being no opposition, heard the evidence, and, by Order of October 31, 1939, in Special Proceedings No. 499, 'declara legalizado el documento Exhibito A corao cl tcstamento y ultima voluntad del finado Bernabe de la Cerna con derecho por parte de su viuda superstite Gervasia Rebaca y otra testadora al propio tiempo segun el Exhibito A de gozar de los frutos de los terrenos degeritos en dicho documento; y habido consideracion de la cuantia de dichos bienes, se directa la distribution sumaria de los mismos en favor de la legataria universal Manuela Rebaca de Potot previa prestacion por parte do la misma de una fianza en la suma de P500.00 para responder de cualesquiera reclamaciones que se presentare contra los bienes del finado Bernabe de la Cerna dentro de los años desde esta fecha.' (Act. Esp. 499, Testamentaria Finado Bernabe de la Cerna). Upon the death of Gervasia Rebaca on October 14, 1952, another petition for the probate of the same will insofar as Gervasia was concerned was filed on November 6, 1952, being Special Proceedings No. 1016-R of the same Court of First Instance of Cebu, but for failure of the petitioner, Manuela R. Potot, and her attorney, Manuel Potot to appear, for the hearing of said petition, the case was dismissed on March 30, 1954 (Spec. Proc. No. 1016-R, In the matter of the Probate of the Will of Gervasia Rebaca)."

The Court of First Instance ordered the petition heard and declared the testament null and void, for being executed contrary to the prohibition of joint wills in the Civil Code (Art. 669, Civil Code of 1889 and Art. 818, Civil Code of the Philippines); but on appeal by the testamentary heir, the Court of Appeals reversed, on the ground that the decree of probate in 1939 was issued by a court of probate jurisdiction and conclusive on the due execution of the

testament. Further, the Court of Appeals declared that:

"x x x. It is true the law (Art. 669, old Civil Code; Art. 818, new Civil Code) prohibits the making of a will jointly by two or more persons either for their reciprocal benefit or for the benefit of a third person. However, this form of will has long been sanctioned by use, and the same has continued to be used; and when, as in the present case, one such joint last will and testament has been admitted to probate by final order of a Court of competent jurisdiction, there, seems to be no alternative except to give effect to the provisions thereof that are not contrary to law, as was done in the case of *Macrohon vs. Saavedra*, 51 Phil. 267, wherein our Supreme Court gave effect to the provisions of the joint will therein mentioned, saying 'assuming that the joint will in question is valid'."

Whence this appeal by the heirs intestate of the deceased husband, Bernabe de la Cerna.

The appealed decision correctly held that the final decree of probate, entered in 1939 by the Court of First Instance of Cebu (when the testator, Bernabe de la Cerna, died), has conclusive effect as to his last will and testament, despite the fact that even then the Civil Code already decreed the invalidity of joint wills, whether in favor of the joint testators, reciprocally, or in favor of a third party (Art. 669, old Civil Code). The error thus committed by the probate court was an error of law, that should have been collected by appeal, but which did not affect the jurisdiction of the probate court, nor the conclusive effect of its final decision, however erroneous. A final judgment rendered on a petition for the probate of a will is binding upon the whole world (*Manalo vs. Paredes*, 47 Phil. 938; *In re Estate of Johnson*, 39 Phil. 156); and public policy and sound practice demand that at the risk of occasional errors, judgment of courts should become final at some definite date fixed by law. *Interest rei publicae ut finis sit litium* (*Dy Cay us. Crossfield*, 38 Phil. 521, and other cases cited in 2 *Moran*, *Comments on the Rules of Court* 1963 Ed., p. 322).

Petitioners, as heirs and successors of the late Bernabe de la Cerna, are concluded by the 1939 decree admitting his will to probate. The contention that being void the will cannot be validated, overlooks that the ultimate decision on whether an act is valid or void rests with the courts, and here they have spoken with finality when the will was probated in 1939. On this count, the dismissal of their action for partition was correct.

But the Court of Appeals should have taken into account also, to avoid future misunderstanding, that the probate decree in 1939 could only affect the share of the deceased husband, Bernabe de la Cerna. It could not include the disposition of the share of the wife, Gervasia Rebaca, who was then still alive, and over whose interest in the conjugal properties the probate court acquired no jurisdiction, precisely because her estate could not then be in issue. Be it remembered that prior to the Civil Code, a will could not be probated during the testator's lifetime.

It follows that the validity of the joint will, in so far as the estate of the wife was concerned, must be, on her death, reexamined and adjudicated *de novo*, since a joint will is considered a separate will of each testator. Thus regarded, the holding of the Court of First Instance of Cebu that the joint will is one prohibited by law was correct as to the participation of the deceased Gervasia Rebaca in the properties in question, for the reasons extensively discussed in our decision in *Bilbao vs. Bilbao*, 87 Phil. 144, that explained the previous holding in *Macrohon vs. Saavedra*, 51 Phil., 267.

Therefore, the undivided interest of Gervasia Rebaca should pass upon her death to her heirs intestate, and not exclusively to the testamentary heir, unless some other valid will in her favor is shown to exist, or unless she be the only heir intestate of said Gervasia.

It is unnecessary to emphasize that the fact that joint wills should be in common usage could not make them valid when our Civil Codes consistently invalidated them, because laws are only repealed by other subsequent laws, and no usage to the contrary may prevail against their observance (Art. 5, Civ. Code of 1889; Art. 7, Civil Code of

the Philippines of 1950).

With the foregoing modification, the judgment of the Court of Appeals in CA-G.R. No. 23763-R is affirmed. No costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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