

IN THE MATTER OF THE INTESTATE ESTATE OF EDWARD E. CHRISTENSEN, DECEASED. ADOLFO C. AZNAR, EXECUTOR AND APPELLEE, VS. MARIA LUCY CHRISTENSEN DUNCAN, OPPOSITOR AND APPELLANT, MAR...

G. R. No. 24365. June 30, 1966

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Edward E. Christensen, a citizen of California with domicile in the Philippines, died leaving a will executed on March 5, 1951. The will was admitted to probate by the Court of First Instance of Davao in its decision of February 28, 1954. In that same decision the court declared that Maria Helen Christensen Garcia (hereinafter referred to as Helen Garcia) was a natural child of the deceased. The declaration was appealed to this Court, and was affirmed in its decision of February 14, 1958 (G. R. No. L-11484).

In another incident relative to the partition of the deceased's estate, the trial court approved the project submitted by the executor in accordance with the provisions of the will, which said court found to be valid under the law of California. Helen Garcia appealed from the order of approval, and this Court, on January 31, 1963, reversed the same on the ground that the validity of the provisions of the will should be governed by Philippine law, and returned the case to the lower court with instructions that the partition be made as provided by said law (G. R. No. L-16749).

On October 29, 1964 the Court of First Instance of Davao issued an order approving the project of partition submitted by the executor, dated June 30, 1964, wherein the properties of the estate were divided equally between Maria Lucy Christensen Duncan (named in the will as Maria Lucy Christensen Daney, and hereinafter referred to as merely Lucy Duncan), whom the testator had expressly recognized in his will as his daughter (natural) and Helen Garcia, who had been judicially declared as such after his death. The said order was based on the proposition that since Helen Garcia had been preterited in the will the institution of Lucy Duncan as heir was annulled, and hence the properties passed to both of them as if the deceased had died intestate, saving only the legacies left in favor of certain other persons, which legacies have been duly approved by the lower court and distributed to the legatees.

The case is once more before us on appeal, this time by Lucy Duncan, on the sole question of whether the estate, after deducting the legacies, should pertain to her and to Helen Garcia in equal shares, or whether the inheritance of Lucy Duncan as instituted heir should be merely reduced to the extent necessary to cover the legitime of Helen Garcia, equivalent to 1/4 of the entire estate.

The will of Edward E. Christensen contains, among others, the following clauses which are pertinent to the issue in this case:

"3. I declare *** that I have but ONE (1) child, named MARIA LUCY CHRISTENSEN (Now Mrs. Bernard

Daney), who was born in the Philippines about twenty-eight years ago, and who is now residing at No. 665 Rodger Young Village, Los Angeles, California, U.S.A.

"4. I further declare that I now have no living ascendants, and no descendants except my above named daughter, MARIA LUCY CHRISTENSEN DANEY.

* * * * *

"7. I give, devise and bequeath unto MARIA HELEN CHRISTENSEN, now married to Eduardo Garcia, about eighteen years of age and who, notwithstanding the fact that she was baptized Christensen, is not in any way related to me, nor has she been at any time adopted by me, and who, from all information I have now resides in Eguit, Digos, Davao, Philippines, the sum of THREE THOUSAND SIX HUNDRED PESOS (P3,600.00), Philippine Currency, the same to be deposited in trust for the said Maria Helen Christensen with the Davao Branch of the Philippine National Bank, and paid to her at the rate of One Hundred Pesos (P100.00), Philippine Currency per month until the principal thereof as well as any interest which may have accrued thereon, is exhausted."

* * * * *

"12. I hereby give, devise and bequeath, unto my well beloved daughter, the said MARIA LUCY CHRISTENSEN DANEY (Mrs. Bernard Daney), now residing as aforesaid at No. 665 Rodger Young Village, Los Angeles, California, U.S.A., all the income from the rest, remainder, and residue of my property and estate, real, personal and/or mixed, of whatsoever kind or character, and wheresoever situated, of which I may be possessed at my death and which may have come to me from any source whatsoever, during her lifetime: Provided, however, that should the said MARIA LUCY CHRISTENSEN DANEY at any time prior to her decease having living issue, then and in that event, the life interest herein given shall terminate, and if so terminated, then I give, devise, and bequeath to my daughter, the said MARIA LUCY CHRISTENSEN DANEY the rest, remainder and residue of my property with the same force and effect as if I had originally so given, devised and bequeathed it to her; and provided, further, that should the said MARIA LUCY CHRISTENSEN DANEY die without living issue, then, and in that event, I give, devise and bequeath all the rest, remainder and residue of my property, one-half (½) to my well-beloved sister, Mrs. CARRIE LOUISE C. BORTON, now residing at No. 2124 Twentieth Street, Bakersfield, California, U.S.A., and one-half (½) to the children of my deceased brother, JOSEPH C. CHRISTENSEN, namely: Mrs. Carol F. Ruggaver, of Los Angeles, California, U.S.A.; and Joseph Raymond Christensen, of Manhattan Beach, California, U.S.A., share and share alike, the share of any of the three above named who may predecease me, to go in equal parts to the descendants of the deceased; and, provided further, that should my sister Mrs. Carol Louise C. Borton die before my own decease, then, and in that event, the share of my estate devised to her herein I give, devise and bequeath to her children, Elizabeth Borton de Treviño, of Mexico City, Mexico; Barbara Borton Philips, of Bakersfield, California, U.S.A., and Richard Borton, of Bakersfield, California, U.S.A., or to the heirs of any of them who may die before my own decease, share and share alike."

The trial court ruled, and appellee now maintains, that there has been preterition of Helen Garcia, a compulsory heir in the direct line, resulting in the annulment of the institution of heir pursuant to Article 854 of the Civil Code, which provides:

"ART. 854. The preterition or omission of one or some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious."

On the other hand, appellant contends that this is not a case of preterition, but is governed by Article 906 of the Civil Code, which says: "Any compulsory heir to whom the testator has left by any title less than the legitimate belonging to him may demand that the same be fully satisfied." Appellant also suggests that considering the

provisions of the will whereby the testator expressly denied his relationship with Helen Garcia, but left to her a legacy nevertheless, although less than the amount of her legitime, she was in effect defectively disinherited within the meaning of Article 918, which reads:

"ART. 918. Disinheritance without a specification of the cause, or for a cause the truth of which, if contradicted, is not proved, or which is not one of those set forth in this Code, shall annul the institution of heirs insofar as it may prejudice the person disinherited; but the devisee and legacies and other testamentary dispositions shall be valid to such extent as will not impair the legitime."

Thus, according to appellant, under both Articles 906 and 918, Helen Garcia is entitled only to her legitime, and not to a share of the estate equal that of Lucy Duncan as if the succession were intestate.

Article 854 is a reproduction of Article 814 of the Spanish Civil Code; and Article 906, of Article 815. Commenting on Article 815, Manresa explains:

"Como dice Goyena, en el caso de pretericion puede presumirse ignorancia o falta de memoria en el testador; on el de dejar algo al heredero forzoso, no. Este no se encuentra privado totalmente de su legitima; ha recibido por cualquier titulo una porcion de los bienes hereditarios, porcion que no alcanza a completar la legitima, pero que influye poderosamente en el animo del legislador para decidirle a adoptar una solucion bien diferente de la señalada para el caso de pretericion."

"El testador no ha olvidado por completo al heredero forzoso; le ha dejado bienes; pero haciendo un calculo equivocado, ha repartido en favor de extraños o en favor de otros legatarios por via de legado, donacion o mejora mayor cantidad de la que la ley le consentia disponer. El heredero forzoso no puede perder su legitima, pero tampoco puede pedir mas que la misma. De aqui su derecho a reclamar solamente lo que le falta; el complemento de la porcion que forzosamente le corresponde."

"*** Dejar el testador por cualquier titulo, equivale a disponer en testamento por titulo de herencia, legado o mejora, y en favor de legitimarios, de alguna cantidad o porcion de bienes menor que la legitima o Igual a la misma. Tal Sentido, que es el mas propio en el articulo 815, no pugna tampoco con la doctrina de la ley. Cuando en el testamento se deja algo al heredero forzoso, la pretericion es incomplete : es mas formularia que real. Cuando en el testamento nada se deja al legitimario, hay verdadera pretericion." (6 Manresa, 7th Ed., 1951, p. 437.)

On the difference between preterition of a compulsory heir and the right to ask for completion of his legitime, Sanchez Roman says;

"La desheredacion, como expresaa, es siempre voluntaria; la pretericion puede serlo, pero se presume involuntaria la omision en que consiste, en cuanto olvida o no atiende el testador en su testamento a la satisfaccion del derecho a la legitima del heredero forzoso preterido, prescindiendo absoluta y totalmente de el y no mencionandole en ninguna de sus disposiciones testamentarias, o no instituyendolo en parte alguna de la herencia, ni por titulo de heredero ni por el de legatario aunque le mencionara o nombrara sin dejarle mas o menos bienes. Si le dejara algunos, por pocos que sean e insuficientes para cubrir su legitima, ya no seria caso de pretericion, sino de complemento o de aquella. El primer supuesto o de pretericion se regula por el articulo 814, y produce accion de nulidad de la institucion de heredero; y el segundo, o de complemento; o de legitima, por el 815 y solo origina la accion ad suplementum, para completar la legitima." (Sanchez Roman. Tomo VI, Vol. 2, p. 1131)

Manresa defines preterition as the omission of the heir in the will, either by not naming him at all or, while mentioning him as father, son, etc., by not instituting him as heir without disinheriting him expressly, nor assigning to him some part of the properties. Manresa continues:

"Se necesita, pues: (a) Que la omision se refiera a un heredero forzoso; (b) Que la omision sea completa; que

el heredero forzoso oada reciba en el testamento.

"B. Que la omision sea completa Esta cendicion se deduce del mismo Artículo 814 y resulta con evldencia al relacionar esce articulo con el 815. El heredero forzoso a quien el testador deja algo por cualquier titulo en su testamento, no se halla proplamente omitido, pues se le nombra y se le reconoce participaclon en los bienes heredltarlos. Podria dlscutlrse en el Artículo 814 si era o no necesario que se reconociese el derecho del heredero como tal heredero, pero el articulo 815 desvaeoce esta duda. Aquel se ocupa de prlvacлон completa o total, taclta; este, de la prlvacлон parcial. Los efectos deben ser y son, como veremos, completamente distiotos." (6 Manresa pp. 428).

"La prlvacлон de la legltlma puede ser total o parclal. "Privar totalmente de la legltlma es negarla en absoluto al legltlmarlo, despojarle de ella por complete A este caso se reflere el articulo 814. Prlvar parclalmente de la legltlma, es manguarla o reduclrla, dejar al legltlmarlo una porcl6n menor que la que le corresponde. A este caso se reflere el articulo 815. El 813 slenta, pues, una regla general, y las consecuencias del quebrantamiento de esta regla se determlna en los articulos 814 y 815." (6 Hanresa p. 418).

Again Sanchez Roman:

"QUE LA OMISION SEA TOTAL. — Aunque el articulo 814 no consigna de modo expreso esta clrcunstancia de que la preterclclon o falta de mencion e institucion o dlapoBicion testamentaria a su favor, sea total, completa y absoluta, asl se deduce de no hacer distlncion o salvedad alguna empleandola en terminos generales; pexo sirve a confirmarlo de un modo Indudable el sigulente articulo 815, al deoir que el heredero forzoso a qulen el testador haya dejado, por cualquier titulo, menos de la legitima que le correspoada, podrlapedlr el complemento de la mlsma, lo cual ya do son el caso ni los efectos de la ureterclclon. que anula la institucion, sino simplemente los del 8uplemento pecesarlo para cubrir su legitima." (Sanchez Roman Tomo VI, Vol. 2.0 p. 1133).

The question may be posed: In order that the right of a forced heir may be limited only to the completion of his legitime (instead of the annulment of the institution of heirs) is it necessary that what has been left to him in the will "by any title," as by legacy, be granted to him in his capacity as heir, that is, a titulo de heredero? In other words, should he be recognized or referred to in the will as heir? This question is pertinent because in the will of the deceased Edward E. Christensen Helen Garcia is not mentioned as an heir - indeed her status as such is denied - but is given a legacy of P3,600.00.

While the classical view, pursuant to the Roman law, gave an affirmative answer to the question, according to both Manresa (6 Manresa 7th ed. 436) and Sanchez Roman (Tomo VI, vol. 2.0 - p. 937), that view was changed by Article 645 of the "Proyecto deCodigo de 1851," later on copied in Article 815 of the Spanish Civil Code, which is now Article 906 of our own Code. Sanchez Roman, in the citation given above, comments as follows:

"RESPECTO DEL COMPLEMENTO BE LA LEGITIMA.- Se inspira el Codigo en esta materia en la doctrlna clasica del Derecho romano y patrio (2); pero con alguna racional modificacion. Concedlan aquellos precedentes legales al heredero forzoso, a quien no se le dejaba por titulo de tal el completo de su legitima, la accion para invalidar la institucion hecha en el testamento y reclamar y obtener aquella mediante el ejercicio de la querella de inoficioso, y aun cuando resultara favorecldo como donatario, porque se atendia, no solo a la deficiencia de la cuantia de lo que se le hubiere dejado por otro titulo que no fuera el de heredero, sino al honor de aue se le privaba no dandole este caracter. y solo cuando era instituido heredero en narte o cantidad Inferior a lo que le correspondiera por legitima. era cuando bastaba el elercicio de la accion ad suplementum para completarla. sin necesidad de anular las otras instituciones de heredero o demas disposiciones contenidas en el testamento.

El Artículo 814 se aparta de este criterio estricto y se ajusta a la unica necesidad que le inspira, cual es la de que se complete la legitima del heredero forzoso, a quien por cualquier titulo se haya dejado menos de lo que

le corresponda, y se le otorga tan solo el derecho de pedir el complemento de la misma sin necesidad de que se anulen las disposiciones testamentarias, que se reduzcan en lo que sean inoficiosas, conforme al artículo 817, cuya interpretación y sentido tienen ya en su apoyo la saneación de la jurisprudencia (3); siendo condición precisa que lo que se hubiere dejado de menos de la legítima al heredero forzoso, lo haya sido en el testamento, o sea por disposición del testador, según lo revela el texto del artículo, "el heredero forzoso a quien el testador haya dejado, etc., esto es, por título de legado o donación mortis causa en el testamento y no fuera de él." (Sanchez Roman, Tomo VI, Vol. 2.0 - p. 937)."

Manresa cites particularly three decisions of the Supreme Court of Spain dated January 16, 1895, May 25, 1917, and April 23, 1932, respectively. In each one of those cases the testator left to one who was a forced heir a legacy worth less than the legitime, but without referring to the legatee as an heir or even as a relative, and willed the rest of the estate to other persons. It was held that Article 815 applied, and the heir could not ask that the institution of heirs be annulled entirely, but only that the legitime be completed. (6 Manresa, pp. 438, 441.)

The foregoing solution is indeed more in consonance with the expressed wishes of the testator in the present case as may be gathered very clearly from the provisions of his will. He refused to acknowledge Helen Garcia as his natural daughter, and limited her share to a legacy of P3,600.00. The fact that she was subsequently declared judicially to possess such status is no reason to assume that had the judicial declaration come during his lifetime his subjective attitude towards her would have undergone any change and that he would have willed his estate equally to her and to Lucy Duncan, who alone was expressly recognized by him.

The decision of this Court in *Neri et al. vs. Akutin*, 74 Phil. 185, is cited by appellees in support of their theory of preterition. That decision is not here applicable, because it referred to a will where "the testator left all his property by universal title to the children by his second marriage, and (that) without expressly disinheriting the children by his first marriage, he left nothing to them or, at least, some of them." In the case at bar the testator did not entirely omit oppositor-appellee Helen Garcia, but left her a legacy of P3,600.00.

The estate of the deceased Christensen upon his death consisted of 339 shares of stocks in the Christensen Plantation Company and a certain amount in cash. One-fourth (1/4) of said estate descended to Helen Garcia as her legitime. Since she became the owner of her share as of the moment of the death of the decedent (Arts. 774, 777, Civil Code), she is entitled to a corresponding portion of all the fruits or increments thereof subsequently accruing. These include the stock dividends on the corporate holdings. The contention of Lucy Duncan that all such dividends pertain to her according to the terms of the will cannot be sustained, for it would in effect impair the right of ownership of Helen Garcia with respect to her legitime.

One point deserves to be here mentioned, although no reference to it has been made in the brief for oppositor-appellant. It is the institution of substitute heirs to the estate bequeathed to Lucy Duncan in the event she should die without living issue. This substitution results in effect from the fact that under paragraph 12 of the will she is entitled only to the income from said estate, unless prior to her decease she should have living issue, in which event she would inherit in full ownership; otherwise the property will go to the other relatives of the testator named in the will. Without deciding this point, since it is not one of the issues raised before us, we might call attention to the limitations imposed by law upon this kind of substitution, particularly that which says that it can never burden the legitime (Art. 864 Civil Code), which means that the legitime must descend to the heir concerned in fee simple.

WHEREFORE, the order of the trial court dated October 29, 1964, approving the project of partition as submitted by the executor-appellee, is hereby set aside; and the case is remanded with instructions to partition the hereditary estate anew as indicated in this decision, that is, by giving to oppositor-appellee Maria Helen Christensen Garcia no more than the portion corresponding to her as legitime, equivalent to one-fourth (1/4) of the hereditary estate,

after deducting all debts and charges, which shall not include those imposed in the will of the decedent, In accordance with Article 908 of the Civil Code. Costs against appellees in this instance.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

RESOLUTION

July 30, 1966

MAKALINTAL, J.:

Oppositor-appellant has filed an ex-parte petition dated July 11, 1966, making reference to an alleged oversight and asking for the corresponding correction, in the last paragraph before the dispositive part of our decision, which reads as follows:

"One point deserves to be here mentioned, although no reference to it has been made in the brief for oppositor-appellant. It is the institution of substitute heirs to the estate bequeathed to Lucy Duncan in the event she should die without living issue. This substitution results in effect from the fact that under paragraph 12 of the will she is entitled only to the income from said estate, unless prior to her decease she should have living issue, in which event she would inherit in full ownership; otherwise the property will go to the other relatives of the testator named in the will. Without deciding this point, since it is not one of the issues raised before us, we might call attention to the limitations imposed by law upon this kind of substitution, particularly that which says that it can never burden the legitime (Art. 864, Civil Code), which means that the legitime must descend to the heir concerned in fee simple." (Decision, June 30, 1966, pages 14-15; underscoring ours).

Oppositor-appellant points out that the matter of substitution of heirs was taken up and discussed in her brief, particularly in pages 28 to 32 thereof. This is indeed quite true, but the reference to and discussion of the rights of the substitute heirs (called American heirs in the brief) appears to be merely for the purpose of refuting the theory advanced by appellees and not for the purpose of having the rights of said heirs defined in so far as, under the terms of the will, they may affect the legitime of oppositor-appellant. This point of course was not and could hardly have been squarely raised as an issue inasmuch as the substitute heirs are not parties in this case. We have nevertheless called attention "to the limitations imposed by law upon this kind of substitution," because in the brief for oppositor-appellant, at page 45, she makes the conclusion "that the testamentary provisions contained in paragraph 12 of the Last Will and Testament of Edward E. Christensen are valid under Philippine law and must be given full force and effect;" and to give them full force and effect would precisely affect the legitime of oppositor-appellant.

Wherefore, the last paragraph before the dispositive part of our decision quoted above is amended by eliminating the following phrase in the first sentence: "although no reference to it has been made in the brief for oppositor-appellant."

Concepcion, C. J., Reyes, J.B.L., Barrera, Dizon, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

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