

IN THE MATTER OF THE ESTATE OF THE DECEASED FRANCISCO VARELA CALDERON. ANTONIO GUTIERREZ DEL CAMPO, ADMINISTRATOR AND APPELLEE, VS. MIGUEL VARELA CALDERON ET AL., OPPOSITORS AND...

G. R. No. 39796. March 09, 1934

Ponente: GODDARD, J.

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GODDARD, J.:

The Court of First Instance of Manila issued, in this case, the following orders:

"Llamado a vista el proyecto de particion y adjudicacion presentado por el administrador judicial, este, por medio de su abogado, se opuso a que se considere la oposicion interpuesta por Miguel Varela Calderon, Angel Varela Calderon, Jesus Varela Calderon, Trinidad Varela Calderon, Paula Varela Calderon, Pilar Varela Calderon y Maria Varela Calderon, a la aprobacion de dicho proyecto y a que se admita o reciba cualquiera prueba que los mencionados opositores desearan presentar en apoyo de su oposicion, bajo el fundamento de que los mismos no son herederos forzosos del finado Dr. Francisco Varela Calderon y no tienen, por tal motivo, ningun interes o participacion en los bienes dejados por dicho finado y de los cuales este ha dispuesto por testamento que ha sido legalizado y aprobado por este Juzgado, cuya decision ha sido confirmada por el Tribunal Supremo en apelacion.

"Habiendo la representacion tanto del administrador judicial como de los opositores admitido como hechos indiscutibles que el finado Dr. Francisco Varela Calderon fallecio soltero y sin dejar ningun ascendiente y que los opositores son hermanos legitimos del mismo, es manifiesto que los mencionados opositores no tienen la condicion de herederos forzosos (art. 807,Codigo Civil) y, por tanto, no tienen derecho a intervenir en la consideracion del referido proyecto de particion y adjudicacion de bienes, ni impugnar la institucion de herederos hecha por el citado finado en su testamento, toda vez que este, por ser soltero y no tener herederos forzosos, podia disponer por testamento de todos sus bienes o de parte de ellos en favor de cualquiera persona que tenga capacidad para adquirirlos (art. 763, Codigo Civil).

"Por tanto, SE DESESTIMA la oposicion interpuesta por los mencionados opositores y se declara que estos no tienen derecho a intervenir en la consideracion del proyecto de particion y adjudicacion de los bienes del finado Dr. Francisco Varela Calderon, la cual queda aplazada para el dia 29 de noviembre de 1932, a las 8.30 a. m. Asi se ordena.

"Asi se ordena.

"Manila, noviembre 17, 1932.

"E. P. REVILLA

"Juez"

"Visto el proyecto de particion y adjudicacion de bienes relictos del finado Don Francisco Varela Calderon

presentado por el administrador de esta testamentarfa el 10 de noviembre de 1932; examinado el mismo y apareciendo que se halla de acuerdo con las disposiciones contenidas en el testamento otorgado por el finado y debidamente legalizado por este Juzgado; y no existiendo motivos ni razones que se opongan a su aprobacion;

"Por la presente, se aprueba el referido proyecto de particion y adjudicacion de bienes, el cual se hace parte integrante de esta orden.

"Se requiere al administrador que, dentro del plazo de diez dias a partir de la fecha en que fuere notificado de esta orden, pague el correspondiente impuesto sobre herencia y proceda a la entrega de los bienes adjudicados a los herederos instituidos en el testamento conforme al proyecto de particion y adjudicacion de bienes aqui aprobado, dando cuenta dentro del mismo plazo del cumplimiento de los terminos de esta orden, a fin de que pueda ordenarse el cierre y archivo definitivo de este expediente. Asi se ordena.

"Manila, I. F., 29 de noviembre de 1932.

"E. P. REVILLA

"Juez"

The appellants duly excepted to both of these orders and upon appeal to this court make the following assignments of error:

"I. The trial court erred in refusing to admit and to consider the opposition filed by the oppositors-appellants to the approval of the project of partition, not being the forced heirs of the late Francisco Varela Calderon, and refused them to present their proofs in support of their contention.

"II. The trial court erred in approving the partition and adjudication of the properties of the late Francisco Varela Calderon in favor of the supposed heirs mentioned in the probated will Exhibit B, disregarding completely the rights of the oppositors-appellants to inherit all the said properties."

The judicial administrator of the estate of Francisco Varela Calderon, deceased, submitted a project of partition for the approval of the lower court. The appellants filed an opposition to the approval of said project. The administrator objected to the intervention of the appellants in this case.

Quære: Did the trial court err in refusing to allow the appellants to intervene? If this question is answered in the affirmative there will be no necessity for considering the second assignment of error.

It is admitted that Francisco Varela Calderon was a bachelor, a citizen of the Philippine Islands, and at the time he made his will was residing temporarily in France and that at the time of his death he left no ascendants. The appellants are brothers and sisters of full blood of the deceased and therefore they are not his forced heirs. Article 763 of the Civil Code reads: "Any person who has no forced heirs may dispose by will of all his property or any part of it in favor of any person qualified to acquire it. * * *"

The appellants contend that the beneficiaries under the will of Francisco Varela Calderon are illegitimate children and that they are not qualified to inherit from the deceased. This court has held in *Barrios vs. Enriquez* (52 Phil., 509), that "while it is true that article 845 of the Civil Code provides that illegitimate children who have not the status of natural children shall be entitled to support only,' and therefore cannot demand anything more of those bound by law to support them, it does not prohibit said illegitimate children from receiving, nor their parents from giving them, something more than support, so long as the legitimate children are not prejudiced. If the law permits a testator to dispose of the free third of his hereditary estate in favor of a stranger (art. 808 of the Civil Code), there is no legal, moral or social reason to prevent him from making over that third to his illegitimate son who has not the status of a natural son. On the contrary, by reason of blood, the son, although illegitimate, has a

preferential right over a stranger unless by his behavior he has become unworthy of such consideration."

Manresa commenting on article 763 of the Civil Code says:

"Como expusimos al comentar los articulos 752 al 754, discuten los autores si los hijos naturales no reconocidos pueden ser instituidos herederos por sus padres en el todo o parte de la herencia de libre disposicion, por entender algunos que no tienen capacidad para adquirir por testamento, y el articulo 763 exige expresamente esa capacidad. No creemos que exista fundamento alguno serio que pueda motivar esa duda: los hijos naturales no reconocidos, aun los adulterinos y sacrilegos, no tienen incapacidad alguna para adquirir, ni puede señalarse articulo alguno que la establezca; no tienen derecho a legitima, segun el articulo 845, esto es todo. En cuanto a su capacidad para adquirir en general o por testamento la parte en su caso, de libre disposicion, los hijos naturales no reconocidos, no son ante la ley de peor condicion que las personas extranas." (Comentarios al Codigo Civil Espanol, por Manresa, Tomo 6, pag. 94, edicion 5.ª);

From the above citations it is apparent that the beneficiaries under the will of Francisco Varela Calderon, granting that they are illegitimate children, are not incapacitated to take property under the will of their father.

In a decision of the Supreme Court of Spain of December 24, 1913, it was held:

"Que la facultad de impugnar la legitimacion y el reconocimiento otorgados a favor de hijos que no tengan la condicion legal de naturales, consignada en los articulos 128 y 138 del Codigo Civil, de modo claro y preciso se establece y confiere a los que se crean perjudicados o realmente lo hayan sido en sus derechos:

"Que no asiste derecho para oponerse al reconocimiento al que no tenga el caracter de heredero forzoso de la persona que hizo aquel." (Jurisprudencia Civil, Tomo 128, pags. 1087 y 1088.)

In that case the court commented as follows:

"Considerando que la facultad de impugnar la legitimacion y el reconocimiento otorgados a favor de hijos que no tengan la condicion legal de naturales, consignada en los articulos 128 y 138 del Codigo Civil, de modo claro y preciso se establece y confiere a los que se crean perjudicados o realmente lo hayan sido en sus derechos, y atendido que la actora asienta la accion ejercitada y funda su demanda en el hecho de ser sobrina carnal del difunto D. Anastasio Martin, basta tomar en cuenta este parentesco, base primordial de la presente litis, para deducir como indudable consecuencia, que no siendo Dona Manuela de Pablo Martin heredera forzosa de su citado tio el testador fallecido, no la asiste derecho a oponerse a lo por aquel dispuesto." (Jurisprudencia Civil, Tomo 128, pags. 1094, 1095.)

Article 806 of the Civil Code reads: "The legitime is that part of his property of which the testator can not dispose because the law has reserved it for certain heirs, called, on that account, forced heirs."

As stated above the appellants in this case are not forced heirs of the deceased and therefore have no right to any part of the property left by the testator, once he had disposed of the same by will. If any of them were forced heirs they would be entitled to intervene in this case and protect their interest in so far as they may have been prejudiced by the will. It is evident therefore that they have not been injured or prejudiced in any manner whatsoever. Only forced heirs whose rights have been prejudiced have a right to intervene in a case of this character.

For the foregoing reasons no error was committed by the lower court in the orders appealed from. Both orders are affirmed with costs against the appellants.

Malcolm, Villa-Real, Hull, and Imperial, JJ., concur.

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