

POLLY CAYETANO, PETITIONER, VS. HON. TOMAS T. LEONIDAS, IN HIS CAPACITY AS THE PRE-SIDING JUDGE OF BRANCH XXXVIII; COURT OF FIRST INSTANCE OF MANILA AND NENITA CAMPOS PAGUIA, RE...

G.R. No. 54919. May 30, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari, seeking to annul the order of the respondent judge of the Court of First Instance of Manila, Branch XXXVIII, which admitted to and allowed the probate of the last will and testament of Adoracion C. Campos, after an ex-parte presentation of evidence by herein private respondent.

On January 31, 1977, Adoracion C. Campos died, leaving her father, petitioner Hermogenes Campos and her sisters, private respondent Nenita C. Pagua, Remedios C. Lopez and Marieta C. Medina as the surviving heirs. As Hermogenes Campos was the only compulsory heir, he executed an Affidavit of Adjudication under Rule 74, Section I of the Rules of Court whereby he adjudicated unto himself the ownership of the entire estate of the deceased Adoracion Campos.

Eleven months after, on November 25, 1977, Nenita C. Pagua filed a petition for the reprobate of a will of the deceased, Adoracion Campos, which was allegedly executed in the United States and for her appointment as administratrix of the estate of the deceased testatrix.

In her petition Nenita alleged that the testatrix was an American citizen at the time of her death and was a permanent resident of 4633 Ditman Street, Philadelphia, Pennsylvania, U.S.A.; that the testatrix died in Manila on January 31, 1977 while temporarily residing with her sister at 2167 Leveriza, Malate, Manila; that during her lifetime, the testatrix made her last will and testament on July 10, 1975, according to the laws of Pennsylvania, U.S.A., nominating Wilfredo Barzaga of New Jersey as executor; that after the testatrix' death, her last will and testament was presented, probated, allowed, and registered with the Registry of Wills at the County of Philadelphia, U.S.A., that Clement L. McLaughlin, the administrator who was appointed after Dr. Barzaga had declined and waived his appointment as executor in favor of the former, is also a resident of Philadelphia, U.S.A., and that therefore, there is an urgent need for the appointment of an administratrix to administer and eventually distribute the properties of the estate located in the Philippines.

On January 11, 1978, an opposition to the reprobate of the will was filed by herein petitioner alleging among other things, that he has every reason to believe that the will in question is a forgery; that the intrinsic provisions of the will are null and void; and that even if pertinent American laws on intrinsic provisions are invoked, the same could not apply inasmuch as they would work injustice and injury to him.

On December 1, 1978, however, the petitioner through his counsel, Atty. Franco Loyola, filed a Motion to Dismiss Opposition (With Waiver of Rights or Interests) stating that he "has been able to verify the veracity

thereof (of the will) and now confirms the same to be truly the probated will of his daughter Adoracion." Hence, an ex-parte presentation of evidence for the reprobate of the questioned will was made.

On January 10, 1979, the respondent judge issued an order, to wit:

"At the hearing, it has been satisfactorily established that Adoracion C. Campos, in her lifetime, was a citizen of the United States of America with a permanent residence at 4633 Ditman Street, Philadelphia, PA 19124, (Exhibit D); that when alive, Adoracion C. Campos executed a Last Will and Testament in the county of Philadelphia, Pennsylvania, U.S.A., according to the laws thereat (Exhibits E-3 to E-3-b); that while in temporary sojourn in the Philippines, Adoracion C. Campos died in the City of Manila (Exhibit C) leaving property both in the Philippines and in the United States of America; that the Last Will and Testament of the late Adoracion C. Campos was admitted and granted probate by the Orphan's Court Division of the Court of Carmon Pleas, the probate court of the Commonwealth of Pennsylvania, County of Philadelphia, U.S.A., and letters of administration were issued in favor of Clement J. McLaughlin, all in accordance with the laws of the said foreign country on procedure and allowance of wills (Exhibits E to E-10); and that the petitioner is not suffering from any disqualification which would render her unfit as administratrix of the estate in the Philippines of the late Adoracion C. Campos.

"WHEREFORE, the Last Will and Testament of the late Adoracion C. Campos is hereby admitted to and allowed probate in the Philippines, and Nenita Campos Pagua is hereby appointed Administratrix of the estate of said decedent; let Letters of Administration with the Will annexed issue in favor of said Administratrix upon her filing of a bond in the amount of P5,000.00 conditioned under the provisions of Section I, Rule 81 of the Rules of Court.

Another manifestation was filed by the petitioner on April 14, 1979, confirming the withdrawal of his opposition, acknowledging the same to be his voluntary act and deed.

On May 25, 1979, Hermogenes Campos filed a petition for relief, praying that the order allowing the will be set aside on the ground that the withdrawal of his opposition to the same was secured through fraudulent means. According to him, the "Motion to Dismiss Opposition" was inserted among the papers which he signed in connection with two Deeds of Conditional Sales which he executed with the Construction and Development Corporation of the Philippines (CDCP). He also alleged that the lawyer who filed the withdrawal of the opposition was not his counsel-of-record in the special proceedings case.

The petition for relief was set for hearing but the petitioner failed to appear. He made several motions for postponement until the hearing was set on May 29, 1980.

On May 18, 1980, petitioner filed another motion entitled "Motion to Vacate and/or Set Aside the Order of January 10, 1979, and/or dismiss the case for lack of jurisdiction. In this motion, the notice of hearing provided:

"Please include this motion in your calendar for hearing on May 29, 1980 at 8:30 in the morning for submission for reconsideration and resolution of the Honorable Court. Until this Motion is resolved, may I also request for the future setting of the case for hearing on the Oppositor's motion to set aside previously filed."

The hearing of May 29, 1980 was re-set by the court for June 19, 1980. When the case was called for hearing on this date, the counsel for petitioner tried to argue his motion to Vacate instead of adducing evidence in support of the petition for relief. Thus, the respondent judge issued an order dismissing the petition for relief for failure to present evidence in support thereof. Petitioner filed a motion for reconsideration but the same was denied. In the same order, respondent judge also denied the motion to vacate for lack of merit. Hence, this petition.

Meanwhile, on June 6, 1982, petitioner Hermogenes Campos died and left a will, which, incidentally has been questioned by the respondent, his children and forced heirs as, on its face, patently null and void, and a

fabrication, appointing Polly Cayetano as the executrix of his last will and testament. Cayetano, therefore, filed a motion to substitute herself as petitioner in the instant case which was granted by the court on September 13, 1982.

A motion to dismiss the petition on the ground that the rights of the petitioner Hermogenes Campos merged upon his death with the rights of the respondent and her sisters, I only remaining children and forced heirs was denied on September 12, 1983.

Petitioner Cayetano persists with the allegations that the respondent judge acted without or in excess of his jurisdiction when:

"1) He ruled the petitioner lost his standing in court deprived the Right to Notice (sic) upon the filing of the Motion to Dismiss opposition with waiver of rights or interests against the estate of deceased Adoracion C. Campos, thus, paving the way for the ex-parte hearing of the petition for the probate of decedent will.

"2) He ruled that petitioner can waive, renounce or repudiate (not made in a public or authenticated instrument, or by way of a petition presented to the court but by way of a motion presented prior to an order for the distribution of the estate - the law especially providing that repudiation of an inheritance must be presented, within 30 days after it has issued an order for the distribution of the estate in accordance with the rules of Court.

"3) He ruled that the right of a forced heir to his legitime can be divested by a decree admitting a will to probate in which no provision is made for the forced heir in complete disregard of Law of Succession.

"4) He denied petitioner's petition for Relief on the ground that no evidence was adduced to support the Petition for Relief when no Notice nor hearing was set to afford petitioner to prove the merit of his petition - a denial of the due process and a grave abuse of discretion amounting to lack of jurisdiction.

"5) He acquired no jurisdiction over the testate case, the fact that the Testator at the time of death was a usual resident of Dasmariñas, Cavite, consequently Cavite Court of First Instance has exclusive jurisdiction over the case (De Borja vs. Tan, G.R. No. L-7792, July 1955)."

The first two issues raised by the petitioner are anchored on the allegation that the respondent judge acted with grave abuse of discretion when he allowed the withdrawal of the petitioner's opposition to the reprobate of the will.

We find no grave abuse of discretion on the part of the respondent judge. No proof was adduced to support petitioner's contention that the motion to withdraw was secured through fraudulent means and that Atty. Franco Loyola was not his counsel of record. The records show that after the filing of the contested motion, the petitioner at a later date, filed a manifestation wherein he confirmed that the Motion to Dismiss Opposition was his voluntary act and deed. Moreover, at the time the motion was filed, the petitioner's former counsel, Atty. Jose P. Lagrosa had long withdrawn from the case and had been substituted by Atty. Franco Loyola who in turn filed the motion. The present petitioner cannot, therefore, maintain that the old man's attorney of record was Atty. Lagrosa at the time of filing the motion. Since the withdrawal was in order, the respondent judge acted correctly in hearing the probate of the will ex-parte, there being no other opposition to the same.

The third issue raised deals with the validity of the provisions of the will. As a general rule, the probate court's authority is limited only to the extrinsic validity of the will, the due execution thereof, the testatrix's testamentary capacity and the compliance with the requisites or solemnities prescribed by law. The intrinsic validity of the will normally comes only after the court has declared that the will has been duly authenticated. However, where practical considerations demand that the intrinsic validity of the will be passed upon, even before it is probated, the court should meet the issue. (*Maninang v. Court of Appeals*, 114 SCRA 478).

In the case at bar, the petitioner maintains that since the respondent judge allowed the reprobate of Adoracion's will, Hermogenes C. Campos was divested of his legitime which was reserved by the law for him.

This contention is without merit.

Although on its face, the will appeared to have preterited the petitioner and thus, the respondent judge should have denied its reprobate outright, the private respondents have sufficiently established that Adoracion was, at the time of her death, an American citizen and a permanent resident of Philadelphia, Pennsylvania, U.S.A. Therefore, under Article 16 par. (2) and 1039 of the Civil which respectively provide:

Art. 16 par. (2).

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"However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found."

Art. 1039.

"Capacity to succeed is governed by the law of the nation of the decedent."

the law which governs Adoracion Campo's will is the law of Pennsylvania, U.S.A., which is the national law of the decedent. Although the parties admit that the Pennsylvania law does not provide for legitimes and that all the estate may be given away by the testatrix to a complete stranger, the petitioner argues that such law should not apply because it would be contrary to the sound and established public policy and would run counter to the specific provisions of Philippine Law.

It is a settled rule that as regards the intrinsic validity of the provisions of the will, as provided for by Article 16 (2) and 1039 of the Civil Code, the national law of the decedent must apply, This was squarely applied in the case of *Bellis v. Bellis* (20 SCRN 358) wherein we ruled:

"It is therefore evident that whatever public policy or good customs may be involved in our system of legitimes, Congress has not intended to extend the same to the succession of foreign nationals. For it has specifically chosen to leave, inter alia, the amount of successional rights, to the decedent's national law. Specific provisions must prevail over general ones.

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"The parties admit that the decedent, Amos G. Bellis, was a citizen of the State of Texas, U.S.A. and under the law of Texas, there are no forced heirs or legitimes. Accordingly, since the intrinsic validity of the provision of the will and the amount of successional rights are to be determined under Texas law, the Philippine Law on legitimes cannot be applied to the testacy of Amos G. Bellis."

As regards the alleged absence of notice of hearing for the petition for relief, the records will bear the fact that what was repeatedly scheduled for hearing on separate dates until June 19, 1980 was the petitioner's petition for relief and not his motion to vacate the order of January 10, 1979. There is no reason why the petitioner should have been led to believe otherwise. The court even admonished the petitioner's failing to adduce evidence when his petition for relief was repeatedly set for hearing. There was no denial of due process. The fact that he requested "for the future setting of the case for hearing xxx" did not mean that at the next hearing, the motion to vacate would be heard and given preference in lieu of the petition for relief. Furthermore, such request should be embodied in a motion and not in a mere notice of hearing.

Finally, we find the contention of the petition as to the issue of jurisdiction utterly devoid of merit. Under Rule 73, Section 1, of the Rules of Court, it is provided that:

"SECTION 1. Where estate of deceased persons settled. -If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance in the province in which he resided at the time of his death, and if he is an inhabitant of a foreign country, the Court of First Instance of any province in which he had estate. The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record."

Therefore, the settlement of the estate of Adoracion Campos was correctly filed with the Court of First Instance of Manila where she had an estate since it was alleged and proven that Adoracion at the time of her death was a citizen and permanent resident of Pennsylvania, United States of America and not a "usual resident of Cavite" as alleged by the petitioner. Moreover, petitioner is now estopped from questioning the jurisdiction of the probate court in the petition for relief. It is a settled rule that a party cannot invoke the jurisdiction of a court to secure affirmative relief, against his opponent and after failing to obtain such relief, repudiate or question that same jurisdiction. (See *Saulog Transit, Inc. v. Hon. Manuel Lazaro, et al.*, G.R. No. 63284, April 4, 1984).

WHEREFORE, the petition for certiorari and prohibition is hereby dismissed for lack of merit.

SO ORDERED.

Melencio-Herrera, Plana, Relova, and De La Fuente, JJ., concur.

Teehankee, (Chairman), J., no part.

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