

ETHEL GRIMM ROBERTS, PETITIONERS, VS. JUDGE TOMAS R. LEONIDAS, BRANCH 38, COURT OF FIRST INSTANCE OF MANILA; MAXINE TATE-GRIMM, EDWARD MILLER GRIMM II AND LINDA GRIMM, RESPONDENTS.

G.R. No. 55509. April 27, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

The question in this case is whether a petition for allowance of wills and to annul a partition, approved in an intestate proceeding by Branch 20 of the Manila Court of First Instance, can be entertained by its Branch 38 (after a probate in the Utah district court).

Antecedents.- Edward M. Grimm, an American resident of Manila, died at 78 in the Makati Medical Center on November 27, 1977. He was survived by his second wife, Maxine Tate Grimm, and their two children, named Edward Miller Grimm II (Pete) and Linda Grimm, and by Juanita Grimm Morris and Ethel Grimm Roberts (McFadden), his two children by a first marriage which ended in divorce (Sub-annexes A and B, pp. 36-47, Rollo).

He executed on January 23, 1959 two wills in San Francisco, California. One will disposed of his Philippine estate which he described as conjugal property of himself and his second wife. The second will disposed of his estate outside the Philippines.

In both wills, the second wife and two children were favored. The two children of the first marriage were given their legitimes in the will disposing of the estate situated in this country. In the will dealing with his property outside this country, the testator said:

"I purposely have made no provision in this will for my daughter, Juanita Grimm Morris, or my daughter, Elsa Grimm McFadden (Ethel Grimm Roberts), because I have provided for each of them in a separate will disposing of my Philippine property." (First clause, pp. 43-47, Rollo).

The two wills and a codicil were presented for probate by Maxine Tate Grimm and E. LaVar Tate on March 7, 1978 in Probate No. 3720 of the Third Judicial District Court of Tooele County, Utah. Juanita Grimm Morris of Cupertino, California and Mrs. Roberts of 15 C. Benitez Street, Horseshoe Village, Quezon City were notified of the probate proceeding (Sub-Annex C, pp. 48-55, Rollo).

Maxine admitted that she received notice of the intestate petition filed in Manila by Ethel in January, 1978 (p. 53, Rollo). In its order dated April 10, 1978, the Third Judicial District Court admitted to probate the two wills and the codicil. It was issued upon consideration of the stipulation dated April 4, 1978 "by and between the attorneys for Maxine Tate Grimm, Linda Grimm, Edward Miller Grimm II, E. LaVar Tate, Juanita Kegley Grimm (first wife), Juanita Grimm Morris and Ethel Grimm Roberts" (Annex C, pp. 48-51, Rollo).

Two weeks later, or on April 25, 1978, Maxine and her two children Linda and Pete as the first parties, and Ethel, Juanita Grimm Morris and their mother Juanita Kegley Grimm, as the second parties, with knowledge of the intestate proceeding in Manila, entered into a compromise agreement in Utah regarding the estate. It was signed by David E. Salisbury and Donald B. Holbrook, as lawyers of the parties, by Pete and Linda and the attorney-in-fact of Maxine and by the attorney-in-fact of Ethel, Juanita Grimm Morris and Juanita Kegley Grimm.

In that agreement, it was stipulated that Maxine, Pete and Ethel would be designated as personal representatives (administrators) of Grimm's Philippine estate (par. 2). It was also stipulated that Maxine's one-half conjugal share in the estate should be reserved for her and that would not be less than \$1,500,000 plus the homes in Utah and Santa Mesa, Manila (par. 4). The agreement indicated the computation of the "net distributable estate". It recognized that the estate was liable to pay the fees of the Angara law firm (par. 5).

It was stipulated in paragraph 6 that the decedent's four children "shall share equally in the Net Distributable Estate" and that Ethel and Juanita Morris should each receive at least 12-1/2% of the total of the net distributable estate and marital share. A supplemental memorandum also dated April 25, 1978 was executed by the parties (Sub-Annex F, pp. 49-61, Annex F-1, pp. 75-76, Testate case).

Intestate proceeding No. 113024.- At this juncture, it should be stated that forty-three days after Grimm's death, or January 9, 1978, his daughter of the first marriage, Ethel, 49, through lawyers Deogracias T. Reyes and Gerardo B. Macaraeg, filed with Branch 20 of the Manila Court of First Instance intestate proceeding No. 113024 for the settlement of his estate. She was named special administratrix.

On March 11, the second wife, Maxine, through the Angara law office, filed an opposition and motion to dismiss the intestate proceeding on the ground of the pendency in Utah of a proceeding for the probate of Grimm's will. She also moved that she be appointed special administratrix. She submitted to the court a copy of Grimm's will disposing of his Philippine estate. It is found in pages 58 to 64 of the record.

The intestate court in its orders of May 23 and June 2 noted that Maxine, through a new lawyer, William C. Limqueco (partner of Gerardo B. Macaraeg, p. 78, testate case), withdrew that opposition and motion to dismiss and, at the behest of Maxine, Ethel and Pete, appointed them joint administrators. Apparently, this was done pursuant to the aforementioned Utah compromise agreement. The court ignored the will already found in the record.

The three administrators submitted an inventory. With the authority and approval of the court, they sold for P75,000 on March 21, 1979 the so-called Palawan Pearl Project, a business owned by the deceased. Linda and Juanita allegedly conformed with the sale (pp. 120-129, Record). It turned out that the buyer, Makiling Management Co., Inc., was incorporated by Ethel and her husband, Rex Roberts, and by lawyer Limqueco (Annex L, p. 90, testate case).

Also with the court's approval and the consent of Linda and Juanita, they sold for P1,546,136 to Joseph Server and others 193,267 shares of RFM Corporation (p. 135, Record).

Acting on the declaration of heirs and project of partition signed and filed by lawyers Limqueco and Macaraeg (not signed by Maxine and her two children), Judge Conrado M. Molina in his order of July 27, 1979 adjudicated to Maxine one-half (4/8) of the decedent's Philippine estate and one-eighth (1/8) each to his four children or 12-1/2% (pp. 140-142, Record). No mention at all was made of the will in that order.

Six days later, or on August 2, Maxine and her two children replaced Limqueco with Octavio del Callar as their lawyer, who on August 9, moved to defer approval of the project of partition. The court considered the motion moot considering that it had already approved the declaration of heirs and project of partition (p. 149, Record).

Lawyer Limqueco in a letter to Maxine dated August 2, 1979 alleged that he was no longer connected with Makiling Management Co., Inc. when the Palawan Pearl Project was sold; that it was Maxine's son Pete who negotiated the sale with Rex Roberts and that he (Limqueco) was going to sue Maxine for the lies she imputed to him (Annex H, p. 78, testate case).

Ethel submitted to the court a certification of the Assistant Commissioner of Internal Revenue dated October 2, 1979. It was stated therein that Maxine paid P1,992,233.69 as estate tax and penalties and that he interposed no objection to the transfer of the estate to Grimm's heirs (p. 153, Record). The court noted the certification as in conformity with its order of July 27, 1979.

After November, 1979 or for a period of more than five months, there was no movement or activity in the intestate case. On April 18, 1980 Juanita Grimm Morris, through Ethel's lawyers, filed a motion for accounting "so that the Estate properties can be partitioned among the heirs and the present intestate estate be closed". Del Callar, Maxine's lawyer was notified of that motion.

Before that motion could be heard, or on June 10, 1980, the Angara law firm filed again its appearance in collaboration with Del Callar as counsel for Maxine and her two children, Linda and Pete. It should be recalled that the firm had previously appeared in the case as Maxine's counsel on March 11, 1978, when it filed a motion to dismiss the intestate proceeding and furnished the court with a copy of Grimm's will. As already noted, the firm was then superseded by lawyer Limqueco.

Petition to annul partition and testate proceeding No. 134559.- On September 8, 1980, Rogelio A. Vinluan of the Angara law firm, in behalf of Maxine, Pete and Linda, filed in Branch 38 of the lower court a petition praying for the probate of Grimm's two wills (already probated in Utah), that the 1979 partition approved by the intestate court be set aside and the letters of administration revoked, that Maxine be appointed executrix and that Ethel and Juanita Morris be ordered to account for the properties received by them and to return the same to Maxine (pp. 25-35, Rollo).

Grimm's second wife and two children alleged that they were defrauded due to the machinations of the Roberts spouses, that the 1978 Utah compromise agreement was illegal, that the intestate proceeding is void because Grimm died testate and that the partition was contrary to the decedent's wills.

Ethel filed a motion to dismiss the petition. Judge Leonidas denied it for lack of merit in his order of October 27, 1980. Ethel then filed a petition for certiorari and prohibition in this Court, praying that the testate proceeding be dismissed, or, alternatively, that the two proceedings be consolidated and heard in Branch 20 and that the matter of the annulment of the Utah compromise agreement be heard prior to the petition for probate (pp. 22-23, Rollo).

Ruling.- We hold that respondent judge did not commit any grave abuse of discretion, amounting to lack of jurisdiction, in denying Ethel's motion to dismiss.

A testate proceeding is proper in this case because Grimm died with two wills and "no will shall pass either real or personal property unless it is proved and allowed" (Art. 838, Civil Code; sec. 1, Rule 75, Rules of Court).

The probate of the will is mandatory (Guevara vs. Guevara, 74 Phil. 479 and 98 Phil. 249; Baluyot vs. Paño, L-42088, May 7, 1976, 71 SCRA 86). It is anomalous that the estate of a person who died testate should be settled in an intestate proceeding. Therefore, the intestate case should be consolidated with the testate proceeding and the judge assigned to the testate proceeding should continue hearing the two cases.

Ethel may file within twenty days from notice of the finality of this judgment an opposition and answer to the petition unless she considers her motion to dismiss and other pleadings sufficient for the purpose. Juanita G.

Morris, who appeared in the intestate case, should be served with copies of orders, notices and other papers in the testate case.

WHEREFORE, the petition is dismissed. The temporary restraining order is dissolved. No costs.

SO ORDERED.

Makasiar, (Chairman), Guerrero, and De Castro, JJ., concur.

Escolin, J., in the result.

Concepcion, Jr. and Abad Santos, JJ., no part.

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