

**RAFAEL E. MANINANG AND SOLEDAD L. MANINANG, PETITIONERS,
VS. COURT OF APPEALS, HON. RICARDO L. PRONOVE, JR., AS JUDGE
OF THE COURT OF FIRST INSTANCE OF RIZAL AND BERNARDO S.
ASE...**

G.R. No. 57848. June 19, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A Petition to Review the Decision of April 28, 1981 of respondent Appellate Court in CA-G.R. No. 12032-R entitled "Rafael E. Maninang and Soledad L. Maninang vs Hon. Ricardo Pronove, Judge of the Court of First Instance of Rizal, Pasig, Branch XI, and Bernardo S. Aseneta".

Pertinent to the controversy are the following antecedental facts:

On May 21, 1977, Clemencia Aseneta, single, died at the Manila Sanitarium Hospital at age 81. She left a holographic will, the pertinent portions of which are quoted hereunder:

"x x x

"It is my will that all my real properties located in Manila, Makati, Quezon City, Albay and Legaspi City and all my personal properties shall be inherited upon my death by Dra. Soledad L. Maninang with whose family I have lived continuously for around the last 30 years now. Dra. Maninang and her husband Pamping have been kind to me. x x x I have found peace and happiness with them even during the time when my sisters were still alive and especially now when I am now being troubled by my nephew Bernardo and niece Salvacion. I am not incompetent as Nonoy would like me to appear. I know what is right and wrong. I can decide for myself. I do not consider Nonoy as my adopted son. He has made me do things against my will."

"x x x"

On June 9, 1977, petitioner Soledad Maninang filed a Petition for probate of the Will of the decedent with the Court of First Instance-Branch IV, Quezon City (Sp. Proc. No. Q-23304, hereinafter referred to as the Testate Case).

On July 25, 1977, herein respondent Bernardo Aseneta, who, as the adopted son, claims to be the sole heir of decedent Clemencia Aseneta, instituted intestate proceedings with the Court of First Instance-Branch XI, Pasig, Rizal (Sp. Proc. No. 8569, called hereinafter the Intestate Case, for brevity).

On December 23, 1977, the Testate and Intestate Cases were ordered consolidated before Branch XI, presided by re-spondent Judge.

Respondent Bernardo then filed a Motion to Dismiss the Testate Case on the ground that the holographic will was null and void because he, as the only compulsory heir, was preterited and, therefore, intestacy should ensue. In support of said Motion to Dismiss, respondent Bernardo cited the cases of *Neri vs. Akutin* (72 Phil. 322); *Nuguid*

vs. Nuguid (17 SCRA 449), and Ramos vs. Baldovino (2 CA Rep. 2nd, 878).[1]

In her Opposition to said Motion to Dismiss, petitioner Soledad averred that it is still the rule that in a case for probate of a Will, the Court's area of inquiry is limited to an examination of and resolution on the extrinsic validity of the will; and that re-spondent Bernardo was effectively disinherited by the decedent.[2]

On September 8, 1980, the lower Court ordered the dismissal of the Testate Case in this wise:

"For reasons stated in the motion to dismiss filed by petitioner Bernardo S. Aseneta which the Court finds meritorious, the petition for probate of will filed by Soledad L. Maninang and which was docketed as Sp. Proc. No. Q-23304 is DISMISSED, without pronouncement as to costs."

On December 19, 1980, the lower Court denied reconsideration for lack of merit and in the same Order appointed Bernardo as the administrator of the intestate estate of the deceased Clemencia Aseneta "considering that he is a forced heir of said deceased while oppositor Soledad Maninang is not, and considering further that Bernardo Aseneta has not been shown to be unfit to perform the duties of the trust."

Petitioners Maninang resorted to a Certiorari Petition before respondent Court of Appeals alleging that the lower Court exceeded its jurisdiction in issuing the Orders of dismissal of the Testate Case (September 8, 1980) and denial of reconsi-deration (December 19, 1980).

On April 28, 1981, respondent Court[3]denied Certiorari and ruled that the trial Judge's Order of dismissal was final in nature as it finally disposed of the Testate Case and, therefore, appeal was the proper remedy, which petitioners failed to avail of. Continuing, it said that even granting that the lower Court committed errors in issuing the questioned Orders, those are errors of judgment reviewable only by appeal and not by Certiorari.

Thus, this Petition before us.

We find that the Court a quo acted in excess of its juris-diction when it dismissed the Testate Case. Generally, the probate of a Will is mandatory.

"No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court."[4]

The law enjoins the probate of the Will and public policy requires it, because unless the Will is probated and notice thereof given to the whole world, the right of a person to dispose of his property by Will may be rendered nugatory.[5]

Normally, the probate of a Will does not look into its intrinsic validity.

"x x x The authentication of a will decides no other question than such as touch upon the capacity of the testator and the compliance with those requisites or solemnities which the law prescribes for the validity of wills. It does not determine nor even by implication prejudge the validity or efficiency (sic) of the provisions, these may be impugned as being vicious or null, notwithstanding its authentication. The questions relating to these points remain entirely unaffected, and may be raised even after the will has been authenticated x x x"[6]

"Opposition to the intrinsic validity or legality of the provisions of the will cannot be entertained in Probate proceeding because its only purpose is merely to determine if the will has been executed in accordance with the requirements of the law."[7]

Respondent Bernardo, however, relies on the pronounce-ment in Nuguid vs. Nuguid[8], reading:

"In a proceeding for the probate of a will, the Court's area of inquiry is limited to an examination of, and resolution on, 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 that issue. (Underscoring supplied)

Our ruling in *Balanay vs. Hon. Martinez*[9] had a similar thrust:

"The trial court acted correctly in passing upon the will's intrinsic validity even before its formal validity had been established. The probate of a will might become an idle ceremony if on its face it appears to be intrinsically void. 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."

The *Nuguid* and the *Balanay* cases provide the exception rather than the rule. The intrinsic validity of the Wills in those cases was passed upon even before probate because "practical considerations" so demanded. Moreover, for the parties in the *Nuguid* case, the "meat of the controversy" was the intrinsic validity of the Will; in fact, the parties in that case "shunted aside the question of whether or not the Will should be allowed probate." Not so in the case before us now where the probate of the Will is insisted on by petitioners and a resolution on the extrinsic validity of the Will demanded.

Moreover, in the *Nuguid* case, this Court ruled that the Will was intrinsically invalid as it completely preterited the parents of the testator. In the instant case, a crucial issue that calls for resolution is whether under the terms of the decedent's Will, private respondent had been preterited or disinherited, and if the latter, whether it was a valid disinheritance. Preterition and disinheritance are two diverse concepts.

"x x x Preterition 'consists in the omission in the testator's will of the forced heirs or anyone of them, either because they are not mentioned therein, or, though mentioned, they are neither instituted as heirs nor are expressly disinherited.' (*Neri vs. Akutin*, 72 Phil. 325). Disinheritance, in turn, 'is a testamentary disposition depriving any compulsory heir of his share in the legitime for a cause authorized by law.' (Justice J.B.L. Reyes and R.C. Puno, 'An Outline of Philippine Civil Law', 1956 ed., Vol. III, p. 8, citing cases) Disinheritance is always 'voluntary'; preterition, upon the other hand, is presumed to be 'in-voluntary' (*Sanchez Roman, Estudios de Derecho Civil* 2nd edition, Volumen 2.o, p. 1131)."[10]

The effects of preterition and disinheritance are also totally different.

"x x x The effects flowing from preterition are totally different from those of disinheritance. Preterition under Article 854 of the New Civil Code 'shall annul the institution of heir.' This annulment is in toto, unless in the will there are, in addition, testamentary dispositions in the form of devises or legacies. In ineffective disinheritance under Article 918 of the same Code, such disinheritance shall also 'annul the institution of heirs', but only 'insofar as it may prejudice the person disinherited', which last phrase was omitted in the case of preterition (*III Tolentino, Civil Code of the Philippines*, 1961 Edition, p. 172). Better stated yet, in disinheritance the nullity is limited to that portion of the estate of which the disinherited heirs have been illegally deprived."[11]

By virtue of the dismissal of the Testate Case, the determination of that controversial issue has not been thoroughly considered. We gather from the assailed Order of the trial Court that its conclusion was that respondent Bernardo has been preterited. We are of opinion, however, that from the face of the Will, that conclusion is not indubitable.

As held in the case of *Vda. de Precilla vs. Narciso*[12].

"x x x it is as important a matter of public interest that a purported will is not denied legalization on dubious grounds. Otherwise, the very institution of testamentary succession will be shaken to its foundation. x x x"

Coming now to the procedural aspect, suffice it to state that in view of our finding that respondent Judge had acted in excess of his jurisdiction in dismissing the Testate Case, Certiorari is a proper remedy. An act done by a Probate Court in excess of its jurisdiction may be corrected by Certiorari.[13] And even assuming the existence of the remedy of appeal, we harken to the rule that in the broader interests of justice, a petition for Certiorari may be entertained, particularly where appeal would not afford speedy and adequate relief.

WHEREFORE, the Decision in question is set aside and the Orders of the Court of First Instance-Branch XI, Rizal, dated September 8, 1980 and December 19, 1980, are nullified. Special Proceeding No. Q-23304 is hereby remanded to said Court of First Instance-Branch XI, Rizal, therein to be reinstated and consolidated with Special Proceeding No. 8569 for further proceedings.

No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Plana, Relova, and Gutierrez, Jr., JJ., concur.
Vasquez, J., no part.

[1] pp. 23-33, CA Rollo.

[2] pp. 34-36, *ibid*.

[3] Special Fifth Division composed of Justices B. S. de la Fuente, Oscar R. Victoriano and Onofre A. Villaluz, ponente.

[4] Art. 838, Civil Code.

[5] *Guevarra vs. Guevarra*, 74 Phil. 479 (1943).

[6] *Montañano vs. Suesa*, 14 Phil. 676 (1909).

[7] *Palacios v. Palacios*, 58 O.G. 220.

[8] 17 SCRA 449 (1966).

[9] 64 SCRA 452 (1975).

[10] *Nuguid vs. Nuguid*, *supra*.

[11] *ibid*.

[12] 46 SCRA 538 (1972).

[13] *Llamas vs. Moscoso*, 95 Phil. 599 (1954).

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