

SOFIA J. NEPOMUCENO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, RUFINA GOMEZ, OSCAR JUGO AND CARMELITA JUGO, RESPONDENTS.

G.R. No. 62952. October 09, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari to set aside that portion of the decision of the respondent Court of Appeals (now Intermediate Appellate Court) dated June 3, 1982, as amended by the resolution dated August 10, 1982, declaring as null and void the devise in favor of the petitioner and the resolution dated December 28, 1982 denying petitioner's motion for reconsideration.

Martin Jugo died on July 16, 1974 in Malabon, Rizal. He left a last Will and Testament duly signed by him at the end of the Will on page three and on the left margin of pages 1, 2 and 4 thereof in the presence of Celestina Alejandro, Myrna C. Cortez, and Leandro Leaño, who in turn, affixed their signatures below the attestation clause and on the left margin of pages 1, 2 and 4 of the Will in the presence of the testator and of each other and the Notary Public. The Will was acknowledged before the Notary Public Romeo Escareal by the testator and his three attesting witnesses.

In the said Will, the testator named and appointed herein petitioner Sofia J. Nepomuceno as his sole and only executor of his estate. It is clearly stated in the Will that the testator was legally married to a certain Rufina Gomez by whom he had two legitimate children, Oscar and Carmelita, but since 1952, he had been estranged from his lawfully wedded wife and had been living with petitioner as husband and wife. In fact, on December 5, 1952, the testator Martin Jugo and the petitioner herein, Sofia J. Nepomuceno were married in Victoria, Tarlac before the Justice of the Peace. The testator devised to his forced heirs, namely, his legal wife Rufina Gomez and his children Oscar and Carmelita his entire estate and the free portion thereof to herein petitioner. The Will reads in part:

"Art. III. That I have the following legal heirs, namely: my aforementioned legal wife, Rufina Gomez, and our son, Oscar, and daughter Carmelita, both surnamed Jugo, whom I declare and admit to be legally and properly entitled to inherit from me; that while have been estranged from my above-named wife for so many years, I cannot deny that I was legally married to her or that we have been separated up to the present for reasons and justifications known fully well by them;

"Art. IV. That since 1952, I have been living, as man and wife, with one Sofia J. Nepomuceno, whom I declare and avow to be entitled to my love and affection, for all the things which she has done for me, now and in the past; that while Sofia J. Nepomuceno has with my full knowledge and consent, did comport and represent myself as her own husband, in truth and in fact, as well as in the eyes of the law, I could not bind her to me in the holy bonds of matrimony because of my aforementioned previous marriage;"

On August 21, 1974, the petitioner filed a petition for the probate of the last Will and Testament of the deceased

Martin Jugo in the Court of First Instance of Rizal, Branch XXXIV, Caloocan City and asked for the issuance to her of letters testamentary.

On May 13, 1975, the legal wife of the testator, Rufina Gomez and her children filed an opposition alleging inter alia that the execution of the Will was procured by undue and improper influence on the part of the petitioner; that at the time of the execution of the Will, the testator was already very sick and that petitioner having admitted her living in concubinage with the testator, she is wanting in integrity and thus letters testamentary should not be issued to her.

On January 6, 1976, the lower court denied the probate of the Will on the ground that as the testator admitted in his Will to cohabiting with the petitioner from December 1952 until his death on July 16, 1974, the Will's admission to probate will be an idle exercise because on the face of the Will, the invalidity of its intrinsic provisions is evident.

The petitioner appealed to the respondent-appellate court.

On June 2, 1982, the respondent court set aside the decision of the Court of First Instance of Rizal denying the probate of the Will. The respondent court declared the Will to be valid except that the devise in favor of the petitioner is null and void pursuant to Article 739 in relation with Article 1028 of the Civil Code of the Philippines. The dispositive portion of the decision reads:

"WHEREFORE, the decision a quo is hereby set aside, the will in question declared valid except the devise in favor of the appellant which is declared null and void. The properties so devised are instead passed on in intestacy to the appellant in equal shares, without pronouncement as to costs."

On June 15, 1982, oppositors Rufina Gomez and her children filed a "Motion for Correction of Clerical Error" praying that the word "appellant" in the last sentence of the dispositive portion of the decision be changed to "appellees" so as to read: "The properties so devised are instead passed on intestacy to the appellees in equal shares, without pronouncement as to costs." The motion was granted by the respondent court on August 10, 1982.

On August 23, 1982, the petitioner filed a motion for reconsideration. This was denied by the respondent court in a resolution dated December 28, 1982.

The main issue raised by the petitioner is whether or not the respondent court acted in excess of its jurisdiction when after declaring the last Will and Testament of the deceased Martin Jugo validly drawn, it went on to pass upon the intrinsic validity of the testamentary provision in favor of herein petitioner.

The petitioner submits that the validity of the testamentary provision in her favor cannot be passed upon and decided in the probate proceedings but in some other proceedings because the only purpose of the probate of a Will is to establish conclusively as against everyone that a Will was executed with the formalities required by law and that the testator has the mental capacity to execute the same. The petitioner further contends that even if the provisions of paragraph 1 of Article 739 of the Civil Code of the Philippines were applicable, the declaration of its nullity could only be made by the proper court in a separate action brought by the legal wife for the specific purpose of obtaining a declaration of the nullity of the testamentary provision in the Will in favor of the person with whom the testator was allegedly guilty of adultery or concubinage.

The respondents on the other hand contend that the fact that the last Will and Testament itself expressly admits indubitably on its face the meretricious relationship between the testator and the petitioner and the fact that petitioner herself initiated the presentation of evidence on her alleged ignorance of the true civil status of the testator, which led private respondents to present contrary evidence, merits the application of the doctrine enunciated in *Nuguid v. Felix Nuguid, et al.* (17 SCRA 449) and *Felix Balanay, Jr. v. Hon. Antonio Martinez, et*

al (G.R. No. L-39247, June 27, 1975). Respondents also submit that the admission of the testator of the illicit relationship between him and the petitioner put in issue the legality of the devise.

We agree with the respondents.

The respondent court acted within its jurisdiction when after declaring the Will to be validly drawn, it went on to pass upon the intrinsic validity of the Will and declared the devise in favor of the petitioner null and void.

The general rule is that in probate proceedings, the court's area of inquiry is limited to an examination and resolution of the extrinsic validity of the Will. The rule is expressed thus:

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"x x x It is elementary that a probate decree finally and definitively settles all questions concerning capacity of the testator and the proper execution and witnessing of his last Will and testament, irrespective of whether its provisions are valid and enforceable or otherwise." (Fernandez v. Dimagiba, 21 SCRA 428)

"The petition below being for the probate of a Will, the court's area of inquiry is limited to the extrinsic validity thereof. The testator's testamentary capacity and the compliance with the formal requisites or solemnities prescribed by law are the only questions presented for the resolution of the court. Any inquiry into the intrinsic validity or efficacy of the provisions of the will or the legality of any devise or legacy is premature.

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"True or not, the alleged sale is no ground for the dismissal of the petition for probate. Probate is one thing; the validity of the testamentary provisions is another. The first decides the execution of the document and the testamentary capacity of the testator; the second relates to descent and distribution." (Sumilang v. Ramagosa, 21 SCRA 1369)

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"To establish conclusively as against everyone, and once for all, the facts that a will was executed with the formalities required by law and that the testator was in a condition to make a will, is the only purpose of the proceedings under the new code for the probate of a will. (Sec. 625). The judgment in such proceedings determines and can determine nothing more. In them the court has no power to pass upon the validity of any provisions made in the will. It can not decide, for example, that a certain legacy is void and another one valid. x x x" (Castañeda v. Alemany, 3 Phil. 426)

The rule, however, is not inflexible and absolute. Given exceptional circumstances, the probate court is not powerless to do what the situation constrains it to do and pass upon certain provisions of the Will.

In Nuguid v. Nuguid (17 SCRA 449) cited by the trial court, the testator instituted the petitioner as universal heir and completely preterited her surviving forced heirs. A will of this nature, no matter how valid it may appear extrinsically, would be null and void. Separate or later proceedings to determine the intrinsic validity of the testamentary provisions would be superfluous.

Even before establishing the formal validity of the will, the Court in Balanay, Jr. v. Martinez (64 SCRA 452) passed upon the validity of its intrinsic provisions.

Invoking "practical considerations", we stated:

"The basic issue is whether the probate court erred in passing upon the intrinsic validity of the will, before ruling on its allowance or formal validity, and in declaring it void.

"We are of the opinion that in view of certain unusual provisions of the will, which are of dubious legality, and because of the motion to withdraw the petition for probate (which the lower court assumed to have been filed with the petitioner's authorization), 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 (*Nuguid v. Nuguid*, 64 O.G. 1527, 17 SCRA 449. Compare with *Sumilang v. Ramagosa*, L-23135, December 26, 1967, 21 SCRA 1369; *Cacho v. Udan*, L-19996, April 30, 1965, 13 SCRA 693)."

There appears to be no more dispute at this time over the extrinsic validity of the Will. Both parties are agreed that the Will of Martin Jugo was executed with all the formalities required by law and that the testator had the mental capacity to execute his Will. The petitioner states that she completely agrees with the respondent court when in resolving the question of whether or not the probate court correctly denied the probate of Martin Jugo's last Will and Testament, it ruled:

"This being so, the will is declared validly drawn." (Page 4, Decision, Annex A of Petition.)

On the other hand the respondents pray for the affirmance of the Court of Appeals' decision in toto.

The only issue, therefore, is the jurisdiction of the respondent court to declare the testamentary provision in favor of the petitioner as null and void.

We sustain the respondent court's jurisdiction. As stated in *Nuguid v. Nuguid*, (*supra*):

"We pause to reflect. If the case were to be remanded for probate of the will, nothing will be gained. On the contrary, this litigation will be protracted. And for aught that appears in the record, in the event of probate or if the court rejects the will, probability exists that the case will come up once again before us on the same issue of the intrinsic validity or nullity of the will. Result: waste of time, effort, expense, plus added anxiety. These are the practical considerations that induce us to a belief that we might as well meet head-on the issue of the validity of the provisions of the will in question. (Section 2, Rule 1, Rules of Court. *Case, et al. v. Jugo, et al.*, 77 Phil. 517, 522). After all, there exists a justiciable controversy crying for solution."

We see no useful purpose that would be served if we remand the nullified provision to the proper court in a separate action for that purpose simply because, in the probate of a will, the court does not ordinarily look into the intrinsic validity of its provisions.

Article 739 of the Civil Code provides:

"The following donations shall be void:

- (1) Those made between persons who were guilty of adultery or concubinage at the time of the donation;
- (2) Those made between persons found guilty of the same criminal offense, in consideration thereof;
- (3) Those made to a public officer or his wife, descendants and ascendants, by reason of his office.

"In the case referred to in No. 1, the action for declaration of nullity may be brought by the spouse of the donor or donee; and the guilt of the donor and donee may be proved by preponderance of evidence in the same action.

Article 1028 of the Civil Code provides:

"The prohibitions mentioned in Article 739, concerning donations inter vivos shall apply to testamentary provisions."

In Article III of the disputed Will, executed on August 15, 1968, or almost six years before the testator's death on July 16, 1974, Martin Jugo stated that respondent Rufina Gomez was his legal wife from whom he had been estranged "for so many years." He also declared that respondents Carmelita Jugo and Oscar Jugo were his legitimate children. In Article IV, he stated that he had been living as man and wife with the petitioner since 1952.

Testator Jugo declared that the petitioner was entitled to his love and affection. He stated that Nepomuceno represented Jugo as her own husband but "in truth and in fact, as well as in the eyes of the law, I could not bind her to me in the holy bonds of matrimony because of my aforementioned previous marriage."

There is no question from the records about the fact of a prior existing marriage when Martin Jugo executed his Will. There is also no dispute that the petitioner and Mr. Jugo lived together in an ostensible marital relationship for 22 years until his death.

It is also a fact that on December 2, 1952, Martin Jugo and Sofia J. Nepomuceno contracted a marriage before the Justice of the Peace of Victoria, Tarlac. The man was then 51 years old while the woman was 48. Nepomuceno now contends that she acted in good faith for 22 years in the belief that she was legally married to the testator.

The records do not sustain a finding of innocence or good faith. As argued by the private respondents:

"First. The last will and testament itself expressly admits indubitably on its face the meretricious relationship between the testator and petitioner, the devisee.

"Second. Petitioner herself initiated the presentation of evidence on her alleged ignorance of the true civil status of the testator, which led private respondents to present contrary evidence.

"In short, the parties themselves dueled on the intrinsic validity of the legacy given in the will to petitioner by the deceased testator at the start of the proceedings.

"Whether or not petitioner knew that testator Martin Jugo, the man he had lived with as man and wife, was already married was an important and specific issue brought by the parties before the trial court, and passed upon by the Court of Appeals.

"Instead of limiting herself to proving the extrinsic validity of the will, it was petitioner who opted to present evidence on her alleged good faith in marrying the testator. (Testimony of Petitioner, TSN of August 1, 1982, pp. 56-57 and pp. 62-64).

"Private respondents, naturally, presented evidence that would refute the testimony of petitioner on the point.

"Sebastian Jugo, younger brother of the deceased testator, testified at length on the meretricious relationship of his brother and petitioner. (TSN of August 18, 1975).

"Clearly, the good faith of petitioner was by option of the parties made a decisive issue right at the inception of the case.

"Confronted by the situation, the trial court had to make a ruling on the question.

"When the court a quo held that the testator Martin Jugo and petitioner 'were deemed guilty of adultery or concubinage', it was a finding that petitioner was not the innocent woman she pretended to be."

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"3' If a review of the evidence must be made nonetheless, then private respondents respectfully offer the following analysis:

"FIRST: The secrecy of the marriage of petitioner with the deceased testator in a town in Tarlac where neither she nor the testator ever resided. If there was nothing to hide from, why the concealment? Of course, it maybe argued that the marriage of the deceased with private respondent Rufina Gomez was likewise done in secrecy. But it should be remembered that Rufina Gomez was already in the family way at that time and it would seem that the parents of Martin Jugo were not in favor of the marriage so much so that an action in court was brought concerning the marriage. (Testimony of Sebastian Jugo, TSN of August 18, 1975, pp. 29-30)

"SECOND: Petitioner was a sweetheart of the deceased testator when they were still both single. That would be in 1922 as Martin Jugo married respondent Rufina Gomez on November 29, 1923 (Exh. 3). Petitioner married the testator only on December 5, 1952. There was a space of about 30 years in-between. During those 30 years, could it be believed that she did not even wonder why Martin Jugo did not marry her nor contact her anymore after November, 1923 - facts that should impel her to ask her groom before she married him in secrecy, especially so when she was already about 50 years old at the time of marriage.

"THIRD: The fact that petitioner broke off from Martin Jugo in 1923 is by itself conclusive demonstration that she knew that the man she had openly lived for 22 years as man and wife was a married man with already two children.

"FOURTH:

Having admitted that she knew the children of respondent Rufina Gomez, is it possible that she would not have asked Martin Jugo whether or not they were his illegitimate or legitimate children and by whom? That is un-Filipino.

"FIFTH: Having often gone to Pasig to the residence of the parents of the deceased testator, is it possible that she would not have known that the mother of private respondent Oscar Jugo and Carmelita Jugo was respondent Rufina Gomez, considering that the houses of the parents of Martin Jugo (where he had lived for many years) and that of respondent Rufina Gomez were just a few meters away?

"Such pretensions of petitioner Sofia Nepomuceno are unbelievable. They are, to say the least, inherently improbable, for they are against the experience in common life and the ordinary instincts and promptings of human nature that a woman would not bother at all to ask the man she was going to marry whether or not he was already married to another, knowing that her groom had children. It would be a story that would strain human credulity to the limit if petitioner did not know that Martin Jugo was already a married man in view of the irrefutable fact that it was precisely his marriage to respondent Rufina Gomez that led petitioner to break off with the deceased during their younger years."

Moreover, the prohibition in Article 739 of the Civil Code is against the making of a donation between persons who are living in adultery or concubinage. It is the donation which becomes void. The giver cannot give even assuming that the recipient may receive. The very wordings of the Will invalidate the legacy because the testator admitted he was disposing the properties to a person with whom he had been living in concubinage.

WHEREFORE, the petition is DISMISSED for lack of merit. The decision of the Court of Appeals, now Intermediate Appellate Court, is AFFIRMED. No costs.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, De la Fuente, and Patajo, JJ., concur.

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