

**ELIAS S. MENDOZA AND EUSTIQUIA S. MENDOZA, PETITIONERS, VS.
HON. INTERMEDIATE APPELLATE COURT, BUENAVENTURA GABUYA
AND SEVERA FERNANDEZ, RESPONDENTS.**

G.R. No. 63132. July 30, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

Petitioners-spouses Elias and Eustiquia Mendoza seek a review of the decision dated September 8, 1982 of the Court of Appeals in CA-G.R. Nos. 58815-58816-17-R entitled "Elias Mendoza, et al., Plaintiffs-Appellants, versus Buenaventura Gabuya, et al., Defendants-Appellees" as well as the re-resolution of January 3, 1983, denying their motion for reconsideration.

The antecedents are as follows:

Sometime in November and December of 1969, three [3] complaints were filed before the then Court of First Instance of Cebu; viz: 1] Civil Case No. R-11485 instituted by herein petitioners-spouses Mendoza against private respondents-spouses Buenaventura Gabuya and Severa Fernandez for partition of Lot No. 3597 of the Cadastral Survey of Cebu, located at Pardo, Cebu City, with an area of 2,992 square meters, more or less, and covered by Transfer Certificate of Title No. 43910 issued in the names of "Buenaventura Gabuya, married to Severa Fernandez x x x and Elias S. Mendoza, married to Eustiquia S. Mendoza x x x with one-half [1/2] share each"[1] and damages; 2] Civil Case No. R-11486 commenced by spouses Modesta Gabuya and Dominador Delima, likewise against private respondents-spouses Buenaventura Gabuya and Severa Fernandez for partition of Lot No. 3506 of the Cadastral Survey of Cebu, located at Pardo, Cebu, with an area of 2,799 square meters, more or less, and covered by Transfer Certificate of Title No. 43909 issued in the names of Buenaventura Gabuya, married to Severa Fernandez and Modesta Gabuya, married to Dominador Delima, and damages; and, 3] Civil Case No. R-1152 filed by private respondents-spouses Buenaventura Gabuya and Severa Fernandez against the spouses Modesta Gabuya and Dominador Delima and petitioners-spouses Mendoza for the annulment of: a) the extra-judicial settlement of the estate of the late Evaristo Gabuya, dated March 12, 1969 covering Lot Nos. 3506 and 3597, Cebu Cadastre; b) the sale of one-half [1/2] portion of Lot No. 3597 dated December 31, 1968 in favor of spouses Mendoza; and, c) Transfer Certificates of Title Nos. 43909 and 43910, covering Lot Nos. 3506 and 3597, respectively; and damages.

Because they involved the same parties and properties, the cases were heard and tried jointly.

Thereafter, on September 12, 1972, the trial court rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, based on all the foregoing considerations, judgment is hereby rendered in favor of the plaintiff Buenaventura Gabuya in the third case and against defendant?spouses Modesta Gabuya and Dominador Delima and Atty. Elias S. Mendoza and Eustiquia S. Mendoza:

"1] Declaring null and void and without force and effect:

- a) The Deed of Extra-Judicial Settlement of the estate of Evaristo Gabuya insofar as the shares of defendant Modesta Gabuya in Lot Nos. 3506 and 3597 are concerned;
- b) The Deed of Absolute Sale Modesta Gabuya executed on December 31, 1968 in favor of her co-defendants-spouses Atty. Elias S. Mendoza and Eustiquia S. Mendoza, covering Lot No. 3597 without prejudice to the rights of the latter spouses-vendors to demand from Modesta Gabuya reimbursement of any amounts they have paid on account of the sale;
- c) Transfer Certificates of Title Nos. 43909 and 43910 insofar as the respective recorded one-half [1/2] undivided shares of the spouses Modesta Gabuya married to Dominador Delima and Atty. Elias S. Mendoza married to Eustiquia S. Mendoza in each of Lot Nos. 3506 and 3597 with plaintiff Buenaventura Gabuya married to Severa Fernandez are concerned;

"2. Condemning the two defendants-spouses to pay jointly and severally to the plaintiff the amount of P500.00 as moral damages, P750.00 as attorney's fees; and,

"3. To pay the costs.

"The Register of Deeds of Cebu is hereby directed to cancel the recorded one-half [1/2] share each of the defendants-spouses Modesta Gabuya married to Dominador Delima and Atty. Elias S. Mendoza married to Eustiquia S. Mendoza in Lot Nos. 3506 and 3597 covered by Transfer Certificates of Title Nos. 43909 and 43910, respectively."[2]

Dissatisfied with said decision, the spouses Mendoza and the spouses Delima appealed to the Court of Appeals, which, however, affirmed in toto the decision of the trial court. Their motion for reconsideration likewise proved un-availing.

Thus, on February 14, 1983, within the extended period granted, the spouses Mendoza filed the petition at bar. After private respondents had filed their comment thereon, and petitioners, their Reply to said comment, the Court, on September 19, 1983, gave due course to the petition.[3] In due time, the parties submitted their respective memoranda.

On July 10, 1985, Atty. Paterno S. Compra entered his appearance as counsel for spouses Modesta Gabuya and Dominador Delima, and on July 19, 1985, filed a Notice of Death, informing this Court that respondent Buenaventura Gabuya died on October 21, 1981 and that Severa Fernandez likewise died on October 14, 1983, allegedly leaving no legal heirs except Modesta Gabuya.[4]

Acting on said Notice of Death, the Court resolved on September 18, 1985, "to Direct [1] the legal representatives of the deceased respondents Buenaventura Gabuya and Severa Fernandez to appear and to be substituted for the latter, within a period of thirty [30] days from notice; and [2] the petitioners to amend their petition within ten [10] days from receipt of the notice of appearance and substitution by the legal representatives of the aforesaid respondents, so as to conform with the latest development in the case."[5]

It appears that sometime between September 18, 1985 and November 27, 1985, Venancio Gabuya, a sixth degree collateral relative of Buenaventura Gabuya, filed a motion dated October 31, 1985 to substitute the latter in the case at bar. While the motion itself does not appear in the rollo, the same was granted by the Court in its resolution of November 27, 1985.

Meanwhile, on November 20, 1985, the petitioners filed an Amended Petition, naming the spouses Modesta Gabuya and Dominador Delima as co-petitioners therein. Said "petitioners" Modesta Gabuya and Dominador

Delima prayed in the Amended Petition that Modesta Gabuya be declared the sole legal heir of Buena-ventura Gabuya. Said spouses Delima likewise filed a motion for reconsideration of the re-solution of November 27, 1985, which granted Venerando Gabuya's motion for substitution. However, since the resolution of the motion for reconsideration would entail going into the merits of the case, its resolution was held in abeyance.

The sole issue presented by the peti-tion is couched by petitioners, thus:

"Whether or not under the Civil Code of Spain, a natural child without any judicial decree of deed of acknowledgment in his favor by his natural parent may succeed said natural parent under certain circumstances."[6]

The factual backdrop of this legal query, as found by the trial court and sus-tained by the appellate court, is as follows:

"That Buenaventura, Nicolasa and Teresa, all surnamed Gabuya, are the legitimate children of the spouses Evaristo Gabuya and Susana Sabandija, who died intestate many years ago, the first in 1926 and the second in 1912; that both Nicolasa and Teresa died single, the first in 1943 and the second in 1964; that Modesta Gabuya is the illegitimate daughter of Nicolasa [Exhs. G & 7-B-Gabuya]; that Lot No. 3506 and 3597 of the Cebu Cadastre were some of the original properties left by the late Evaristo Gabuya both located at Pardo, Cebu City, formerly covered by Original Certificate [sic] of Title Nos. 6353 and 6597 in the name of Evaristo Gabuya and containing 2,799 square meters and 2,992 square meters, respectively; that sometime in February, 1969, Modesta Gabuya accompanied by Atty. Elias S. Mendoza went to the house of Buenaventura Gabuya who wanted to see the titles of these two parcels of land and Buenaventura was instructed by Modesta to look for them so that they be reconstituted; that some days later the two, Modesta Gabuya and Elias S. Mendoza visited him again at his house and Modesta took the titles but this time Buenaventura went with them to the Cebu Capitol Budding; that Buenaventura and Modesta signed a document and acknowledged before Atty. Salvador B. Mendoza but the latter did not read to the signatories the content's of the document; that this document dated March 12, 1969 turned out to be an Extra--judicial settlement of the Estate of Evaristo Gabuya [Exhs. A and 1-B-Gabuya] whereby Buenaven-tura and Modesta appear to have divided and partitioned between themselves pro indiviso and share and share alike [1/2 each] Lot Nos. 3506 and 3597; that this Extra-judicial settlement of the Estate of Evaristo Gabuya was duly published [Exh. B] in the Morning Times and registered with the Register of Deeds [Exhs. B-1 & B-2] and the document itself was also similarly registered [Exhs. A-1 and A-2]; that on December 31, 1968, prior to the execution of the Extra-judicial Settlement document, a Deed of Absolute Sale [Exhs 2-B-Gabuya] was executed by Modesta Gabuya in favor of the spouses Atty. and Mrs. Elias S. Mendoza covering her alleged one-half [1/2] undivided share in Lot No. 3597 for a consideration of P10,000.00; that pursuant to the Deed of Extra-judicial Settlement [Exhs. A & 1-B-Gabuya], and the Deed of Absolute Sale [Exh. 2-B-Gabuya], Original Certificates of Title Nos. 6353 and 6597 in the name of the late Evaristo Gabuya, father of Buenaventura Gabuya, were cancelled and in lieu thereof were issued Transfer Certificates of Title Nos. 43909 and 43910 [Exh. C]. The first in the names of spouses Buenaventura Gabuya married to Severa Fernandez, and Modesta Gabuya married to Dominador Delima; and the second, in the names of Buenaventura Gabuya married to Severa Fernandez and Atty. Elias S. Mendoza married to Eustiquia S. Mendoza; that Atty. Elias S. Mendoza and Modesta Gabuya have respectively asked from Buenaventura Gabuya the partition of the lots which they are co-owners of the undivided one-half [1/2] portions; and that Buenaventura refused to do so claiming that Modesta Gabuya is not entitled to inherit from the estate of his late father Evaristo Gabuya."[7]

Under the Civil Code of Spain, the law in force at the time of the death in 1943 of Nicolasa Gabuya, the mother of Modesta, full successional rights were granted only to legi-timate and legitimated children [Arts. 114 and 122, respectively]. Acknowledged natural children were given limited successional rights in that they were entitled to inherit only from the acknowledging parent [Art. 134], while ille-gitimate children who did not possess the status of natural children had no successional rights whatsoever [Art. 139]. The latter were only entitled to support.

Adopted children become heirs of the adopting parents only if the adopt-ing parents had agreed to confer the adopted children such rights in the deed of adoption, or had instituted them as heirs in a will.[8]

Recognition or acknowledgment of a natural child under said Code must be made in a record of birth, a will, a statement before a court of re-cord, or in some other public document.[9] In the case at bar, the only document presented by Modesta Gabuya to prove that she was recognized by her mo-ther was the certificate of birth and baptism signed by Rev. Fr. Filomeno Singson, Assistant Parish Priest of Pardo, Cebu City, stating therein that Modesta Gabuya is an illegitimate daughter of Nicolasa Gabuya.[10] However, Philippine jurisprudence is consistent and uniform in ruling that the canonical certificate of baptism is not sufficient to prove recognition.[11] The rationale for this ruling, enunciated in the case of *Cid v. Burnaman*, 24 SCRA 434, is that while the baptismal certificate in the parish records was a public document before the effectivity of General Order No. 68 and Act 190, this certificate did not constitute a sufficient act of acknowledgment, since the latter must be executed by the child's father or mother, and the parish priest can not acknowledge in their stead.

Neither could the alleged continuous pos-session by Modesta Gabuya of the status of a natural child improve her condition. In *Alabat v. vda. de Alabat*, 21 SCRA 1479, 1481, it was stressed that:

"It is to an elementary and basic principle in our law of succession that the right's of a natural child spring not from the filiation itself but from the child's' acknowledgment by the natural parent, made voluntarily or by court decree. Equally basic and elementary x x x is the fact that possession or enjoyment of the status of natural child is per se not a sufficient operative acknowledgment but only a ground to compel the patent to acknowledge the child."

The case of *Ramos, et al. v. Ramos, et al.*, 61 SCRA 284, heavily relied upon by petitioners, does not apply to the case at bar. Unlike in said case, Modesta Gabuya failed to prove by clear and convincing evidence that she was in continuous possession of the status of a natural child.

That this petition must fail is a fore-gone conclusion. Modesta Gabuya, not having been acknowledged in the manner provided by law by her mother, Nicolasa, was not entitled to succeed the latter. The extrajudicial settlement of the es-tate of Evaristo Gabuya is, therefore, null and void insofar as Modesta Gabuya is concerned per Article 1105 of the New Civil Code which states:

"A partition which includes a person believed to be an heir, but who is not, shall be void only with respect to such person."

Since the ownership of the one-half [1/2] pro indiviso portion of Lot No. 3597 never passed on to Modesta Gabuya, it follows that the sale thereof to petitioners-spouses Elias and Eustiquia Mendoza is likewise null and void.[12]

One last point. During the pendency of this case, the spouses Modesta Gabuya and Dominador Delima joined the spouses Mendoza as petitioners in this case by submitting an amended petition, ostensibly in compliance with Our resolution of September 18, 1985. In said Amended Petition, aforementioned spouses Delima prayed that Modesta Gabuya Delima be declared the sole heir of the deceased private respondent Buenaventura Gabuya, to the exclusion of substitute Venerando Gabuya. It must be remembered, however, that the Delima spouses not having joined petitioners-spouses Mendoza in the instant petition for review, the decision of the Court of Appeals in CA-G.R. Nos. 58815-58816-17-R has become final and executory as to said spouses Delima. With the pronounce-ment of the appellate court that Modesta Gabuya?Delima was not entitled to inherit from her mother, in conjunction with our affirmance thereof, it is clear that her prayer in the amended petition cannot be granted.

WHEREFORE, the instant petition is hereby denied. The decision of the appellate court in CA-G.R. Nos.

58815-58816-17-R, is affirmed in toto. Costs against petitioners.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] p. 19, Rollo

[2] pp. 50-51, Rollo

[3] p. 99, Rollo

[4] p. 125, Rollo

[5] p. 127, Rollo

[6] p. 15, Rollo

[7] pp. 46-48; 54-55, Rollo

[8] Art. 177

[9] Art. 131

[10] Exh. G

[11] Capistrano v. Gavino, 8 Phil. 136; Adriano v. de Jesus, 23 Phil. 351; Pareja v. Pareja, 95 Phil. 167; Canales v. Arrogante, 91 Phil. 6

[12] Arts. 1409 (3) and 1459, New Civil Code

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