

LUCILDA DAEL, EVERGISTO DAEL, DOMINGO DAEL, JR., CONRADO DAEL, FEDERICO DURANA, JR., FREDISVINDA DURANA, FLEURDELIZADA DURANA, FABIAN DURANA, AND FE PATRICIO DURANA, PETITIONERS...

G.R. No. 68873. March 31, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

The reversal of the decision of the then Intermediate Appellate Court promulgated on February 29, 1984 in AC-G.R. CV No. 69711,[1] which affirmed in toto the decision, dated December 3, 1980, of the quondam Court of First Instance of Quezon, Branch II, in Special Proceeding No. 4374 thereof,[2] as well as the former's resolution of September 14, 1984 denying the motion for reconsideration of the oppositors-appellants therein, are the twin objective of the present appeal by certiorari.

The assailed decision of the court a quo sets out the relevant background facts and the dramatis personae in this controversy, thus:

"It is not disputed that Victorina Durana died intestate on August 1, 1977 in Manila; she was the wife of the deceased Cesario Cabutihan who died earlier on June 9, 1972; Cesario Cabutihan was first married to Bienvenida Durana in February, 1942; the latter died on May 2, 1957; it was less than a year thereafter or particularly on April 6, 1958 that Cesario Cabutihan married Victorina Durana, sister of his first wife, Bienvenida Durana.

"The first marriage of Cesario Cabutihan produced the following legitimate children: Nonilon, Carmencita, Romulo, Lermo and Bienvenido all surnamed Cabutihan and who are the intervenors in this case although Carmencita Cabutihan instituted this case as petitioner; the second marriage of Cesario Cabutihan with Victorina Durana did not produce any issue; however, the latter's heirs are the children of her two sisters and a brother namely: Bienvenida Durana, Soledad Durana and Federico Durana Sr.; the latter is the father of the oppositors, Federico, Jr., Flordeliza (sic), Fredizvinda, Fabian and Fe Patricio, all surnamed Durana; while Soledad Durana is the mother of the other oppositors, Evaristo, Domingo Jr., Lucilda and Conrado, all surnamed Dael; the other heirs of Victorina Durana are the petitioner herself and the intervenors who are all the children of Bienvenida Durana.

"It is claimed by all the oppositors that they are entitled to 2/3 portion of the estate of Victorina Durana considering that their predecessors-in-interest are the brother and sister of Victorina Durana; while the remaining 1/3 portion should devolve to the petitioner and the intervenors who represent their mother Bienvenida Durana and the other sister of Victorina Durana.

"There is, therefore, no dispute concerning the relationship of the petitioner, oppositors and the intervenors to the decedent Victorina Durana; there is neither any question concerning the right of all the parties in this case to inherit from the deceased Victorina Durana;"[3]

Likewise established is the fact that during the second marriage of Cesario and Victorina, they were engaged in a copra business and a public transportation business, with Victorina managing the former. After the demise of Cesario, Victorina and the private respondents entered into an extra-judicial settlement of his estate on December 30, 1973. Part of the properties adjudicated to Victorina include the copra business above-mentioned, as well as some of the vehicles used in the transportation business.[4] Subsequently, however, the vehicles were transferred to the private respondents by virtue of a "deed of sale" dated July 24, 1978.[5]

This case was commenced in the aforementioned Court of First Instance of Quezon by Carmencita Cabutihan, one of the private respondents herein, who filed a petition for the settlement of the intestate estate of Victorina Durana, wherein she also prayed for her appointment as administratrix.[6] Petitioners herein filed an opposition, asking that the letters of administration be issued instead to herein petitioner Lucilda Dael.[7] The other private respondents, on their motion, intervened in the case.[8]

On December 22, 1977, Honesto Cabutihan, Democrito Cabutihan and David Cabutihan filed their claim against the estate for the payment of the harvest of their property which had been entrusted to Victorina Durana for purposes of her copra business but which obligation she failed to pay due to her untimely death.[9] Said claim, in the amount of P70,350.82, was approved by the probate court on December 2, 1980.[10]

Meanwhile, the court below appointed Amado Zoleta as special administrator of the estate of the late Victorina Durana on May 24, 1978.[11] Said special administrator, upon order of the probate court, submitted an inventory of the properties of the estate on August 30, 1978, consisting of twenty (20) parcels of land valued at P69,340.00, cash in bank amounting to P140,079.41, cattle and livestock valued at P7,200.00, furniture valued at P5,120.00, fixtures in the amount of P1,300.00, equipment worth P11,863.00, and other miscellaneous items valued at P3,038.00. The total value of the properties included in this inventory is P237,940.41.[12]

On January 16, 1979, a "Supplementary Inventory" was filed by the special administrator covering other real properties of the estate of Victorina, consisting of the undivided shares in the inheritance of Cesario Cabutihan from his parents, Bartolome Cabutihan and Natividad Daelo. The total value of the properties listed in the supplementary inventory is P4,700.82.[13] It may be mentioned that the properties that were adjudicated to Victorina in the extrajudicial settlement of the estate of Cesario were included in the inventory submitted by the special administrator.[14]

Private respondents moved for the disapproval of said inventories claiming that the properties listed therein were either acquired during the first marriage of Cesario Cabutihan or were merely the products or fruits of the properties of said first union or otherwise acquired through the funds thereof. [15]

In due course, the trial court rendered a decision holding that Victorina Durana had no paraphernal properties brought or contributed to her marriage with Cesario Cabutihan; that the copra business was formed in 1949 during the first marriage; that Victorina used the same facilities, credit and capital in managing the business; and that the main source of income not only of Cesario Cabutihan and also of Victorina during their respective lifetimes was the copra business.[16]

On such factual findings, the lower court came up with the following conclusions:

"Not having any personal property which she brought to her marriage with Cesario Cabutihan and the copra business not being her own or of her conjugal partnership with her husband, the conclusion is inescapable; that all the properties listed in the inventories in her name or jointly with Cesario Cabutihan do not belong to her exclusively; these properties in Exhibits 'A-SPA' and 'B-SPA' are either the assets of Bienvenida Durana as her paraphernal property or as the conjugal partnership assets of spouses Cesario Cabutihan (sic) or the latter's capital inasmuch as the properties in the name of Victorina Durana or those jointly with her husband were

acquired or purchased out of the fruits or produce of the properties of Bienvenida Durana and/or Cesario Cabutihan or out of the income of the copra business of the first marriage which was merely managed and administered by Victorina Durana after the owners' deaths.

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"To determine, therefore, the extent of the estate of Victoria Durana from the list of properties, real and personal, enumerated in the Inventories (Exhibits 'A-SPA' and 'B-SPA') which erroneously include even Estate of the First Marriage, the conjugal estate of Cesario Cabutihan and Bienvenida Durana must be settled or liquidated first; one-half of the conjugal estate shall be inherited by Cesario Cabutihan and his five (5) children, namely: Nonilon, Carmencita, Romulo, Lermo and Bienvenido, all surnamed CABUTIHAN, share and share alike; the inheritance of Cesario Cabutihan in the Estate of Bienvenida Durana in addition to the other one (1/2) half which is his share in the conjugal partnership with his wife Bienvenida shall constitute Cesario's estate which shall be inherited by his heirs, namely: Victorina Durana, his second wife, and his legitimate children by his first wife, namely: Nonilon, Carmencita, Romulo, Lermo and Bienvenido, all surnamed CABUTIHAN, share and share alike.

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"Hence, the extent of the Estate of Victorina Durana shall consist only of her share in the inheritance of the Estate of Cesario Cabutihan.

"Unless any of the properties listed in Exhibits 'A-SPA' and 'B-SPA' exclusively belong to Bienvenida Durana, all of said properties shall be presumed to be the conjugal (sic) and/or the fruits and income of said partnership or of the copra business of said partnership; therefore, the properties in said inventories shall be computed, divided and partitioned as follows: five (5/12) twelve over the one (1/2) half thereof to be adjudicated to Nonilon, Carmencita, Romulo, Lermo and Bienvenido, all surnamed CABUTIHAN as their shares in the inheritance of their mother; the one (1/6) sixth portion out of the one (1/2) half of said properties shall pertain to Cesario Cabutihan as his share in the inheritance of his first wife; this share and the remaining one (1/2) half of the properties in the Inventories which comprise his estate shall be inherited by his second wife Victorina Durana with (whom he had no child) and his five children by his first marriage, Nonilon, Carmencita, Romulo, Lermo and Bienvenido, all surnamed CABUTIHAN, at the proportion of one (1/6) sixth each of the said properties over the seven (7/12) twelfth thereof; therefore, one (1/6) sixth out of the said seven (7/12) twelfth of the said properties (Estate of Cesario) shall be the extent of the Estate of Victorina Durana which she inherited from her husband; this (1/6 of 7/12) portion shall be inherited by Durana's heirs; one (1/3) third thereof to be adjudicated to petitioner and the Intervenors and the remaining two (2/3) thirds thereof to the Oppositors." [17]

The probate court thereby disapproved both inventories and annulled the extrajudicial settlement and deed of sale (Exhibit 1-Dael and Exhibit 3-Dael) mentioned earlier. The latter two were annulled for being simulated or fictitious and for involving conjugal properties of the first marriage, including properties of Bienvenida, to which Victorina is not an heir. [18]

As a consequence, petitioners appealed to the former Intermediate Appellate Court on December 8, 1980. [19] On the same day, respondent Carmencita Cabutihan filed a "motion for authority to withdraw funds" from the estate, in the amount of P90,000.00 to be partitioned among the heirs in accordance with the proportion provided for in the aforesaid decision of the probate court. [20] On December 11, 1980, this motion was granted, [21] despite opposition thereto. [22]

Thereafter, on December 12, 1980, petitioners herein filed a motion asking the lower court to order the return of the amount of P70,350.82 allegedly paid to the claimants Democrito, Honesto and David Cabutihan, submitting as proof a receipt allegedly signed on December 30, 1980 by Democrito Cabutihan in behalf of all said claimants

and assisted by their counsel, Euclides A. Abcede.

On February 9, 1984, respondent court promulgated its decision which, as already stated, affirmed the decision of the lower court, hence this petition assigning four errors which We will resolve seriatim.

1. Petitioners submit that both the respondent and lower courts erred in concluding that the copra business, as well as the properties listed in the inventories as acquired during the second marriage, are assets of the conjugal partnership of the first marriage between Cesario and Bienvenida. They argued that to so hold would, in effect, maintain the theory that the marital community of proprietary interest continued to exist even after the Cesario-Bienvenida conjugal partnership had been dissolved by the death of Bienvenida.

It may be conceded that the factual findings of the trial court were based on substantial documentary and testimonial evidence and are entitled to the corresponding weight and respect.

Such established facts notwithstanding, We are not as equally disposed to yield assent to the conclusions drawn by both the court a quo and the respondent court which would so simplistically adjudicate and consider the properties involved as belonging in their entirety to the first marriage.

When Bienvenida Durana died on May 2, 1957, the first conjugal partnership was automatically dissolved.[23] That conjugal partnership was then converted into an implied ordinary co-ownership.[24] It was also at this point in time that the inheritance was transmitted to the heirs of Bienvenida.[25] Thus, her heirs, Cesario, Nonilon, Carmencita, Romulo, Lermo and Bienvenido acquired respective and definite rights over one-half (1/2) of the conjugal partnership property which pertained to Bienvenida. Consequently, whatever fruits or income may thereafter be derived from the properties, including the copra business, would no longer be conjugal but would belong in part to the heirs in proportion to their respective shares. The fruits and income of the other half of the property of the conjugal partnership would exclusively belong to Cesario.

The marriage of Cesario and Victorina on April 6, 1952 also produced the corresponding legal consequences. From that moment on, the fruits or income of the separate properties of the spouses would be conjugal, including those acquired through their industry.[26] Hence, the fruits and income of Cesario's share in the inheritance from Bienvenida and of his conjugal share in the property of the first conjugal partnership would form part of the conjugal partnership properties of the second marriage. The fruits and income derived or acquired through these last-mentioned properties would likewise be conjugal in nature.

It would have been ideal had there been a liquidation of the conjugal partnership properties of the first marriage between Cesario and Bienvenida. Unfortunately, We cannot determine from the records the amount of such properties at the time of Bienvenida's demise. There is a dearth of proof on this matter. What appears evident, however, is that, considering the continuity in the operation of the two businesses during the marital coverture between Cesario and Victorina which spanned a period of fourteen (14) years, and the fact that after Cesario's death Victorina still actively engaged in the same business until her own death five (5) years later, the properties enumerated in the aforesaid inventories submitted to the probate court could not all have been properties of the first marriage.

Inevitably, the problem is how to apportion the properties involved between the two conjugal partnerships. On this score, guidance should be sought from the provisions of the Civil Code to the effect that whenever the liquidation of the partnership of two or more marriages contracted by the same person should be carried out at the same time and there is no evidence to show the capital or the conjugal property belonging to each of the partnerships to be liquidated, the total mass of the partnership property shall be divided between the different partnerships in proportion to the duration of each and to the property belonging to the respective spouses.[27]

The first marriage existed for approximately fifteen (15) years (1942 to 1957), while the second marriage lasted for about fourteen (14) years (1958 to 1972). Applying the aforesaid rule, the first conjugal partnership will be prorated a share of fifteen twenty-ninths (15/29) of the properties included in the inventory submitted on August 30, 1978, while the second conjugal partnership will get fourteen twenty-ninths (14/29) thereof. Not to be included, however, are the real properties listed in the supplementary inventory filed on January 16, 1979, because they definitely belong to the estate of Cesario as the latter's inheritance from his parents, Bartolome Cabutihan and Natividad Daelo.

One-half (1/2) of the properties that pertain to the first conjugal partnership belong to Cesario as his conjugal share therein, while the other half shall be considered as inherited by him and his five children as the heirs of Bienvenida.

The properties pertaining to the second partnership shall also be equally divided, one-half (1/2) to belong to Cesario and the other to Victorina as their respective shares in their conjugal partnership properties. The share of Cesario should then be divided among his heirs, namely, Victorina and his five (5) children.

To recapitulate, the estate of Victorina for distribution to her heirs shall consist of her one-half (1/2) share in the conjugal properties of the aforesaid second marriage and her one-sixth (1/6) share in the estate of Cesario as an heir.

2. Petitioners also question the approval of the claims of Democrito, Honesto and David Cabutihan. Petitioners' effete opposition is anchored on their allegation that said claim "was approved primarily on the basis of the testimony of claimant Democrito Cabutihan" which, according to them, is inadmissible under the Dead Man's Statute or the survivorship disqualification rule.[28] While petitioners' arguments may have a juris tantum plausibility if considered alone, We see no reason to dwell on this issue. It would be pointless since, as correctly observed by the trial court, "even assuming the applicability of the dead man's rule concerning the testimony of Democrito Cabutihan, the testimony of Urbano Prado and Tirso Linosa are more than sufficient to establish the claim and to bolster the documentary evidence in support thereof as indicated on Exhibits 'B', 'B-1', to 'B-82-Claim', 'C' and 'C-1' inclusive".[29]

3. Also challenged by petitioners is the order of the court below, dated December 11, 1980, allowing the withdrawal of funds for distribution to the heirs as advance inheritance. Said order is, however, within the contemplation and authority of Rule 109, Section 2 whereof provides that "(n)otwithstanding a pending controversy or appeal in proceedings to settle the estate of a decedent, the court may, in its discretion and upon such terms as it may deem proper and just, permit that such part of the estate as may not be affected by the controversy or appeal be distributed among the heirs or legatees, upon compliance with the conditions set forth in Rule 90 of these rules". Said Rule 90, on the other hand, provides in part that "(n)o distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs".

It is true that "partial distribution of the decedent's estate pending the final termination of the testate or intestate proceedings should as much as possible be discouraged by the courts and, unless in extreme cases, such form of advances of inheritance should not be countenanced. The reason for this strict rule is obvious - courts should guard with utmost zeal and jealousy the estate of the decedent to the end that the creditors thereof be adequately protected and all the rightful heirs assured of their shares in the inheritance."[30]

Nevertheless, after duly considering the foregoing rules, We sustain the validity of the questioned order. The respondent court correctly held that "(i)f oppositors would stand to share more in the inheritance than what was

fixed for them in the appealed judgment, We believe the estate has sufficient assets to ensure an equitable distribution of the inheritance in accordance with law and final judgment in the proceedings." [31] Also, it does not appear that there are unpaid obligations, as contemplated in Rule 90, for which provisions should have been made or a bond required. It is clear that the provisions of the Rules of Court, as well as the jurisprudence thereon, were followed in this particular incident.

4. With respect to the propriety of the alleged payment of the claims of the Cabutihan brothers before the decision in this case became final and executory, We are not in a position to rule on such issue because this Court is not a trier of facts. Such issue requires the prior resolution of basic factual questions, that is, whether or not such payment had actually been made to the claimants and the circumstances under which the same was effected.

The probate court had not yet ruled on petitioners' "Motion to Order the Return of the Amount Paid for Claim", when the instant petition was filed. Based on the records of this appeal, the last action taken in the lower court was its order that the private respondents comment on said motion, but no response thereto or any subsequent development on this matter is reflected or reported. If the petitioners have sufficient basis to complain on this matter, the same should consequently be pursued and threshed out in the court below.

WHEREFORE, the decision of respondent court, which affirmed and adopted in toto the decision of the court a quo, is MODIFIED and judgment is hereby rendered as follows:

1. So much of the judgments of both lower courts as declare that all the properties listed in the two inventories, marked as Exhibits "A-SPA" and "B-SPA" in Special Proceeding No. 4374 of the court of origin, are conjugal partnership assets of the deceased spouses Cesario Cabutihan and Bienvenida Durana are hereby SET ASIDE;
2. The properties therein enumerated shall be divided in the following manner: (a) Seven-twelfths (7/12) of fifteen-twenty-ninths (15/29), and one-half (1/2) of fourteen twenty-ninths (14/29), of the properties listed in the inventory dated August 30, 1978, as well as all the properties listed in the supplementary inventory dated January 16, 1979, shall constitute the estate of Cesario Cabutihan. This estate shall be divided equally among his six (6) heirs, namely, his second wife, Victorina, and his five (5) children, Nonilon, Carmencita, Romulo, Lermo and Bienvenido, all surnamed Cabutihan; and (b) The remaining five-twelfths (5/12) of fifteen twenty-ninths (15/29) of the properties in said inventory of August 30, 1978 shall belong to the said five (5) children, share and share alike, as their respective participations in their mother's inheritance;
3. The estate of Victorina Durana, which shall be the subject of settlement and distribution in said Special Proceeding No. 4374, shall consist of one-half (1/2) of the other portion constituting fourteen twenty-ninths (14/29) of the properties in the inventory of August 30, 1978, which represents her share in the conjugal properties of the second marriage, and one-sixth (1/6) of the estate of Cesario Cabutihan as fixed herein, and said properties shall be divided among her heirs enumerated and in the proportion allotted by the probate court as quoted at the outset of this decision;
4. The other pronouncements in the dispositive portion of the appealed judgment of the court below and adopted by the respondent court, insofar as they are not inconsistent with the foregoing dispositions; the order of the said lower court, dated December 2, 1980, approving the claims of Honesto, Democrito and David Cabutihan; and its order of December 11, 1980 allowing the withdrawal of funds for distribution among the heirs are AFFIRMED: and
5. All other incidents not otherwise disposed of herein shall be pursued by the parties in and shall be resolved by the court a quo in accordance with the terms of this judgment.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Fourth Civil Cases Division; Sison, P.V., J., ponente, Bidin, A.A., Veloso, M.R. and Jurado, D.P., JJ., concurring.

[2] Penned by Judge Benigno M. Puno.

[3] Record on Appeal, 192-194; Rollo, 98.

[4] Exh. 1-Dael, Original Records, Vol. II, 536.

[5] Exh. 3-Dael, id., id., 539.

[6] Record on Appeal, 1-4.

[7] Ibid., 8-10.

[8] Ibid., 24-26.

[9] Ibid., 38-39.

[10] Ibid., 185-191.

[11] Ibid., 65-67.

[12] Ibid., 88-97.

[13] Ibid., 99-106.

[14] Ibid., 239-240.

[15] Ibid., 250, 107-117.

[16] Ibid., 194, 229, 251-256.

[17] Ibid., 260-263.

[18] Rollo, 76.

[19] Record on Appeal, 268.

[20] Ibid., 269-270.

[21] Ibid., 273-276.

[22] Ibid., 271.

[23] Art. 175(1), Civil Code; Oñas vs. Javillo, et al., 59 Phil. 733 (1934); Nable Jose, et al. vs. Nable Jose, et al., 41 Phil. 713 (1916).

[24] Taningco, et al. vs. Register of Deeds of Laguna, 5 SCRA 381(1962); Prades, et al. vs. Tecson, 49 Phil. 230 (1926); Borja vs. Addison, et al., 44 Phil. 895 (1922).

[25] Art. 777, Civil Code.

[26] Arts. 142, 153, *ibid.*

[27] Art. 189, *ibid.*

[28] Sec. 19(a), Rule 130, Rules of Court.

[29] Record on Appeal, 190-191.

[30] *Gatmaitan vs. Medina*, 109 Phil. 108, 111 (1960).

[31] *Rollo*, 86.

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