

SALUD TEODORO VDA. DE PEREZ, PETITIONER, VS. HON. ZOTICO A. TOLETE IN HIS CAPACITY AS PRESIDING JUDGE, BRANCH 18, RTC, BULACAN, RESPONDENT.

G.R. No. 76714. June 02, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court to set aside the Order dated November 19, 1986 of the Regional Trial Court, Branch 18, Bulacan presided by respondent Judge Zotico A. Tolete, in Special Proceedings No. 1793-M.

We grant the petition.

II

Dr. Jose F. Cunanan and his wife, Dr. Evelyn Perez--Cunanan, who became American citizens, established a successful medical practice in New York, U.S.A. The Cunanans lived at No. 2896 Citation Drive, Pompey, Syracuse, New York, with their children, Jocelyn, 18; Jacqueline, 16; and Josephine, 14.

On August 23, 1979, Dr. Cunanan executed a last will and testament, bequeathing to his wife "all the remainder" of his real and personal property at the time of his death "wheresoever situated" (Rollo, p. 35). In the event he would survive his wife, he bequeathed all his property to his children and grandchildren with Dr. Rafael G. Cunanan, Jr. as trustee. He appointed his wife as executrix of his last will and testament and Dr. Rafael G. Cunanan, Jr. as substitute executor. Article VIII of his will states:

"If my wife, EVELYN PEREZ-CUNANAN, and I shall die under such circumstances that there is not sufficient evidence to determine the order of our deaths, then it shall be presumed that I predeceased her, and my estate shall be administered and distributed, in all respects, in accordance with such presumption" (Rollo, p. 41).

Four days later, on August 27, Dr. Evelyn P. Cunanan executed her own last will and testament containing the same provisions as that of the will of her husband. Article VIII of her will states:

"If my husband, JOSE F. CUNANAN, and I shall die under such circumstances that there is not sufficient evidence to determine the order of our deaths, then it shall be presumed that he predeceased me, and my estate shall be administered and distributed in all respects, in accordance with such presumption" (Rollo, p. 31).

On January 9, 1982, Dr. Cunanan and his entire family perished when they were trapped by fire that gutted their home. Thereafter, Dr. Rafael G. Cunanan, Jr. as trustee and substitute executor of the two wills, filed separate proceedings for the probate thereof with the Surrogate Court of the County of Onondaga, New York. On April 7, these two wills were admitted to probate and letters testamentary were issued in his favor.

On February 21, 1983, Salud Teodoro Perez, the mother of Dr. Evelyn P. Cunanan, and petitioner herein, filed

with the Regional Trial Court, Malolos, Bulacan a petition for the reprobate of the two wills ancillary to the probate proceedings in New York. She also asked that she be appointed the special administratrix of the estate of the deceased couple consisting primarily of a farm land in San Miguel, Bulacan.

On March 9, the Regional Trial Court, Branch 16, Malolos, Bulacan, presided by Judge Gualberto J. de la Llana, issued an order, directing the issuance of letters of special administration in favor of petitioner upon her filing of a P10,000.00 bond. The following day, petitioner posted the bond and took her oath as special administratrix.

As her first act of administration, petitioner filed a motion, praying that the Philippine Life Insurance Company be directed to deliver the proceeds in the amount of P50,000.00 of the life insurance policy taken by Dr. Jose F. Cunanan with Dr. Evelyn Perez-Cunanan and their daughter Jocelyn as beneficiaries. The trial court granted the motion.

Counsel for the Philippine American Life Insurance Company then filed a manifestation, stating that said company had delivered to petitioner the amount of P49,765.85, representing the proceeds of the life insurance policy of Dr. Jose F. Cunanan.

In a motion dated May 19, 1983, petitioner asked that Dr. Rafael Cunanan, Sr. be ordered to deliver to her a Philippine Trust Company passbook with P25,594.00 in savings deposit, and the Family Savings Bank time deposit certificates in the total amount of P12,412.52.

On May 31, Atty. Federico Alday filed a notice of appearance as counsel for the heirs of Dr. Jose F. Cunanan, namely, Dr. Rafael Cunanan, Sr., Priscilla Cunanan Bautista, Lydia Cunanan Ignacio, Felipe F. Cunanan and Loreto Cunanan Concepcion (Cunanan heirs). He also manifested that before receiving petitioner's motion of May 19, 1983, his clients were unaware of the filing of the testate estate case and therefore, "in the interest of simple fair play," they should be notified of the proceedings (Records, p. 110). He prayed for deferment of the hearing on the motion of May 19, 1983.

Petitioner then filed a counter manifestation dated June 13, 1983, asserting: (1) that the "Cunanan collaterals are neither heirs nor creditors of the late Dr. Jose F. Cunanan" and therefore, they had "no legal or proprietary interests to protect" and "no right to intervene"; (2) that the wills of Dr. Jose F. Cunanan and Dr. Evelyn Perez-Cunanan, being American citizens, were executed in accordance with the solemnities and formalities of New York laws, and produced "effects in this jurisdiction in accordance with Art. 16 in relation to Art. 816 of the Civil Code"; (3) that under Article VIII of the two wills, it was presumed that the husband predeceased the wife; and (4) that "the Cunanan collaterals are neither distributees, legatees or beneficiaries, much less, heirs as heirship is only by institution" under a will or by operation of the law of New York (Records, pp. 112-113).

On June 23, the probate court granted petitioner's motion of May 19, 1983. However, on July 21, the Cunanan heirs filed a motion to nullify the proceedings and to set aside the appointment of, or to disqualify, petitioner as special administratrix of the estates of Dr. Jose F. Cunanan and Dr. Evelyn Perez-Cunanan. The motion stated: (1) that being the "brothers and sisters and the legal and surviving heirs" of Dr. Jose F. Cunanan, they had been "deliberately excluded" in the petition for the probate of the separate wills of the Cunanan spouses thereby misleading the Bulacan court to believe that petitioner was the sole heir of the spouses; that such "misrepresentation" deprived them of their right to "due process in violation of Section 4, Rule 76 of the Revised Rules of Court; (2) that Dr. Rafael G. Cunanan, Jr., the executor of the estate of the Cunanan spouses, was likewise not notified of the hearings in the Bulacan court; (3) that the "misrepresentation and concealment committed by" petitioner rendered her unfit to be a special administratrix; (4) that Dr. Rafael G. Cunanan, Jr. had, by virtue of a verified power of attorney, authorized his father, Dr. Rafael Cunanan, Sr., to be his attorney-in-fact; and (5) that Dr. Rafael Cunanan, Sr. is qualified to be a regular administrator "as practically all of the subject

estate in the Philippines belongs to their brother, Dr. Jose F. Cunanan" (Records, pp. 118-122). Hence, they prayed: (1) that the proceedings in the case be declared null and void; (2) that the appointment of petitioner as special administratrix be set aside; and (3) that Dr. Rafael Cunanan, Sr. be appointed the regular administrator of the estate of the deceased spouses.

Thereafter, the Cunanan heirs filed a motion requiring petitioner to submit an inventory or accounting of all monies received by her in trust for the estate.

In her opposition, petitioner asserted: (1) that she was the "sole and only heir" of her daughter, Dr. Evelyn Perez-Cunanan to the exclusion of the "Cunanan collaterals"; hence they were complete strangers to the proceedings and were not entitled to notice; (2) that she could not have "concealed" the name and address of Dr. Rafael G. Cunanan, Jr. because his name was prominently mentioned not only in the two wills but also in the decrees of the American surrogate court; (3) that the rule applicable to the case is Rule 77, not Rule 76, because it involved the allowance of wills proved outside of the Philippines and that nowhere in Section 2 of Rule 77 is there a mention of notice being given to the executor who, by the same provision, should himself file the necessary ancillary proceedings in this country; (4) that even if the Bulacan estate came from the "capital" of Dr. Jose F. Cunanan, he had willed all his worldly goods to his wife and nothing to his brothers and sisters; and (5) that Dr. Rafael G. Cunanan, Jr. had unlawfully disbursed \$215,000.00 to the Cunanan heirs, misappropriated \$15,000.00 for himself and irregularly assigned assets of the estates to his American lawyer (Records, pp. 151-160).

In their reply, the Cunanan heirs stressed that on November 24, 1982, petitioner and the Cunanan heirs had entered into an agreement in the United States "to settle and divide equally the estates," and that under Section 2 of Rule 77 the "court shall fix a time and place for the hearing and cause notice thereof to be given as in case of an original will presented for allowance" (Records, pp. 184-185).

Petitioner asked that Dr. Rafael G. Cunanan, Jr. be cited for contempt of court for failure to comply with the Order of June 23, 1983 and for appropriating money of the estate for his own benefit. She also alleged that she had impugned the agreement of November 24, 1982 before the Surrogate Court of Onondaga, New York which rendered a decision on April 13, 1983, finding that "all assets are payable to Dr. Evelyn P. Cunanan's executor to be then distributed pursuant to EPTL4-1.1 subd [a] par [4]" (Rollo, p. 52).

On their part, the Cunanan heirs replied that petitioner was estopped from claiming that they were heirs by the agreement to divide equally the estates. They asserted that by virtue of Section 2 of Rule 77 of the Rules of Court, the provision of Sections 3, 4 and 5 of Rule 76 on the requirement of notice to all heirs, executors, devisees and legatees must be complied with. They reiterated their prayer: (1) that the proceedings in the case be nullified; (2) that petitioner be disqualified as special administratrix; (3) that she be ordered to submit an inventory of all goods, chattels and monies which she had received and to surrender the same to the court; and (4) that Dr. Rafael Cunanan, Sr. be appointed the regular administrator.

Petitioner filed a rejoinder, stating that in violation of the April 13, 1983 decision of the American court Dr. Rafael G. Cunanan, Jr. made "unauthorized disbursements from the estates as early as July 7, 1982" (Records, p. 231). Thereafter, petitioner moved for the suspension of the proceedings as she had "to attend to the settlement proceedings" of the estate of the Cunanan spouses in New York (Records, p. 242). The Cunanans heirs opposed this motion and filed a manifestation, stating that petitioner had received \$215,000.00 "from the Surrogate's Court as part of legacy" based on the aforesaid agreement of November 24, 1982 (Records, p. 248).

On February 21, 1984, Judge de la Llana issued an order, disallowing the reprobate of the two wills, recalling the appointment of petitioner as special administratrix, requiring the submission of petitioner of an inventory of the property received by her as special administratrix and declaring all pending incidents moot and academic. Judge

de la Llana reasoned out that petitioner failed to prove the law of New York on procedure and allowance of wills and the court had no way of telling whether the wills were executed in accordance with the law of New York. In the absence of such evidence, the presumption is that the law of succession of the foreign country is the same as the law of the Philippines. However, he noted, that there were only two witnesses to the wills of the Cunanan spouses and the Philippine law requires three witnesses and that the wills were not signed on each and every page, a requirement of the Philippine law.

On August 27, 1985, petitioner filed a motion for reconsideration of the Order dated February 21, 1984, where she had sufficiently proven the applicable laws of New York governing the execution of last wills and testaments.

On the same day, Judge de la Llana issued another order, denying the motion of petitioner for the suspension of the proceedings but gave her 15 days upon arrival in the country within which to act on the other order issued that same day. Contending that the second portion of the second order left its finality to the discretion of counsel for petitioner, the Cunanans filed a motion for the reconsideration of the objectionable portion of the said order so that it would conform with the pertinent provisions of the Judiciary Reorganization Act of 1980 and the Interim Rules of Court.

On April 30, 1985, the respondent Judge of Branch 18 of the Regional Trial Court, Malolos, to which the reprobate case was reassigned, issued an order stating that "(W)hen the last will and testament xxx was denied probate," the case was terminated and therefore all orders theretofore issued should be given finality. The same Order amended the February 21, 1984 Order by requiring petitioner to turn over to the estate the inventoried property. It considered the proceedings for all intents and purposes, closed (Records, p. 302).

On August 12, petitioner filed a motion to resume proceedings on account of the final settlement and termination of the probate cases in New York. Three days later, petitioner filed a motion praying for the reconsideration of the Order of April 30, 1985 on the strength of the February 21, 1984 Order granting her a period of 15 days upon arrival in the country within which to act on the denial of probate of the wills of the Cunanan spouses. On August 19, respondent Judge granted the motion and reconsidered the Order of April 30, 1985.

On August 29, counsel for petitioner, who happens to be her daughter, Natividad, filed a motion praying that since petitioner was ailing in Fort Lee, New Jersey, U.S.A. and therefore incapacitated to act as special administratrix, she (the counsel) should be named substitute special administratrix. She also filed a motion for the reconsideration of the Order of February 21, 1984, denying probate to the wills of the Cunanan spouses, alleging that respondent Judge "failed to appreciate the significant probative value of the exhibits x x x which all refer to the offer and admission to probate of the last wills of the Cunanan spouses including all procedures undertaken and decrees issued in connection with the said probate" (Records, pp. 313-323).

Thereafter, the Cunanans heirs filed a motion for reconsideration of the Order of August 19, 1985, alleging lack of notice to their counsel.

On March 31, 1986, respondent Judge to which the case was reassigned denied the motion for reconsideration holding that the documents submitted by petitioner proved "that the wills of the testator domiciled abroad were properly executed, genuine and sufficient to possess real and personal property; that letters testamentary were issued; and that proceedings were held on a foreign tribunal and proofs taken by a competent judge who inquired into all the facts and circumstances and being satisfied with his findings issued a decree admitting to probate the wills in question." However, respondent Judge said that the documents did not establish the law of New York on the procedure and allowance of wills (Records, p. 381).

On April 9, 1986, petitioner filed a motion to allow her to present further evidence on the foreign law. After the

hearing of the motion on April 25, 1986, respondent Judge issued an order wherein he conceded that insufficiency of evidence to prove the foreign law was not a fatal defect and was curable by adducing additional evidence. He granted petitioner 45 days to submit the evidence to that effect.

However, without waiting for petitioner to adduce the additional evidence, respondent Judge ruled in his order dated June 20, 1986 that he found "no compelling reason to disturb its ruling of March 31, 1986" but allowed petitioner to "file anew the appropriate probate proceedings for each of the testator" (Records, p. 391).

The Order dated June 20, 1986 prompted petitioner to file a second motion for reconsideration stating that she was "ready to submit further evidence on the law obtaining in the State of New York" and praying that she be granted "the opportunity to present evidence on what the law of the State of New York has on the probate and allowance of wills" (Records, p. 393).

On July 18, respondent Judge denied the motion holding that to allow the probate of two wills in a single proceeding "would be a departure from the typical and established mode of probate where one petition takes care of one will." He pointed out that even in New York "where the wills in question were first submitted for probate, they were dealt with in separate proceedings" (Records, p. 395).

On August 13, 1986, petitioner filed a motion for the reconsideration of the Order of July 18, 1986, citing Section 3, Rule 2 of the Rules of Court, which provides that no party may institute more than one suit for a single cause of action. She pointed out that separate proceedings for the wills of the spouses which contain basically the same provisions as they even named each other as a beneficiary in their respective wills, would go against "the grain of inexpensive, just and speedy determination of the proceedings" (Records, pp. 405-407).

On September 11, 1986, petitioner filed a supplement to the motion for reconsideration, citing *Benigno v. De La Peña*, 57 Phil. 305 (1932) (Records, p. 411), but respondent Judge found that this pleading had been filed out of time and that the adverse party had not been furnished with a copy thereof. In her compliance, petitioner stated that she had furnished a copy of the motion to the counsel of the Cunanan heirs and reiterated her motion for a "final ruling on her supplemental motion" (Records, p. 421).

On November 19, respondent Judge issued an order, denying the motion for reconsideration filed by petitioner on the grounds that "the probate of separate wills of two or more different persons even if they are husband and wife cannot be undertaken in a single petition" (Records, pp. 376-378).

Hence, petitioner instituted the instant petition, arguing that the evidence offered at the hearing of April 11, 1983 sufficiently proved the laws of the State of New York on the allowance of wills, and that the separate wills of the Cunanan spouses need not be probated in separate proceedings.

II

Petitioner contends that the following pieces of evidence she had submitted before respondent Judge are sufficient to warrant the allowance of the wills:

- (a) two certificates of authentication of the respective wills of Evelyn and Jose by the Consulate General of the Philippines (Exhs. "F" and "G");
- (b) two certifications from the Secretary of State of New York and Custodian of the Great Seal on the facts that Judge Bernard L. Reagan is the Surrogate of the County of Onondaga which is a court of record, that his signature and seal of office are genuine, and that the Surrogate is duly authorized to grant copy of the respective wills of Evelyn and Jose (Exhs. "F-1" and "G-1");
- (c) two certificates of Judge Reagan and Chief Clerk Donald E. Moore stating that they have in their records

- and files the said wills which were recorded on April 7, 1982 (Exhs. "F-2" and "G-2");
- (d) the respective wills of Evelyn and Jose (Exhs. "F-3", "F-6" and Exh. "G-3" - "G-6");
- (e) certificates of Judge Reagan and the Chief Clerk certifying to the genuineness and authenticity of the exemplified copies of the two wills (Exhs. "F-7" and "F-7");
- (f) two certificates of authentication from the Consulate General of the Philippines in New York (Exh. "H" and "F").
- (g) certifications from the Secretary of State that Judge Reagan is duly authorized to grant exemplified copies of the decree of probate, letters testamentary and all proceedings had and proofs duly taken (Exhs. "H-1" and "I-1");
- (h) certificates of Judge Reagan and the Chief Clerk that letters testamentary were issued to Rafael G. Cunanan (Exhs. "H-2" and "I-2");
- (i) certification to the effect that it was during the term of Judge Reagan that a decree admitting the wills to probate had been issued and appointing Rafael G. Cunanan as alternate executor (Exhs. "H-3" and "I-10");
- (j) the decrees on probate of the two wills specifying that proceedings were held and proofs duly taken (Exhs. "H-4" and "I-5");
- (k) decrees on probate of the two wills stating that they were properly executed, genuine and valid and that the said instruments were admitted to probate and established as wills valid to pass real and personal property (Exhs. "H-5" and "I-5"); and
- (l) certificates of Judge Reagan and the Chief Clerk on the genuineness and authenticity of each other's signatures in the exemplified copies of the decrees of probate, letters testamentary and proceedings held in their court (Exhs. "H-6" and "I-6") (Rollo, pp. 13-16).

Petitioner adds that the wills had been admitted to probate in the Surrogate Court's Decision of April 13, 1983 and that the proceedings were terminated on November 29, 1984.

The respective wills of the Cunanan spouses, who were American citizens, will only be effective in this country upon compliance with the following provision of the Civil Code of the Philippines:

"Art. 816. The will of an alien who is abroad produces effect in the Philippines if made with the formalities prescribed by the law of the place in which he resides, or according to the formalities observed in his country, or in conformity with those which this Code prescribes."

Thus, proof that both wills conform with the formalities prescribed by New York laws or by Philippine laws is imperative.

The evidence necessary for the reprobate or allowance of wills which have been probated outside of the Philippines are as follows: (1) the due execution of the will in accordance with the foreign laws; (2) the testator has his domicile in the foreign country and not in the Philippines; (3) the will has been admitted to probate in such country; (4) the fact that the foreign tribunal is a probate court, and (5) the laws of a foreign country on procedure and allowance of wills (III Moran Commentaries on the Rules of Court, 1970 ed., pp. 419-429; *Suntay v. Suntay*, 95 Phil. 500 [1954]; *Fluemer v. Hix*, 54 Phil. 610 [1930]). Except for the first and last requirements, the petitioner submitted all the needed evidence.

The necessity of presenting evidence on the foreign laws upon which the probate in the foreign country is based is impelled by the fact that our courts cannot take judicial notice of them (Philippine Commercial and Industrial

Bank v. Escolin, 56 SCRA 266 [1974]).

Petitioner must have perceived this omission as in fact she moved for more time to submit the pertinent procedural and substantive New York laws but which request respondent Judge just glossed over. While the probate of a will is a special proceeding wherein courts should relax the rules on evidence, the goal is to receive the best evidence of which the matter is susceptible before a purported will is probated or denied probate (Vda. de Ramos v. Court of Appeals, 81 SCRA 393 [1978]).

There is merit in petitioner's insistence that the separate wills of the Cunanan spouses should be probated jointly. Respondent Judge's view that the Rules on allowance of wills is couched in singular terms and therefore should be interpreted to mean that there should be separate probate proceedings for the wills of the Cunanan spouses is too literal and simplistic an approach. Such view overlooks the provisions of Section 2, Rule 1 of the Revised Rules of Court, which advise that the rules shall be "liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding."

A literal application of the Rules should be avoided if they would only result in the delay in the administration of justice (Acain v. Intermediate Appellate Court, 155 SCRA 100 [1987]; Roberts v. Leonidas, 129 SCRA 33 [1984]).

What the law expressly prohibits is the making of joint wills either for the testators' reciprocal benefit or for the benefit of a third person (Civil Code of the Philippines, Article 818). In the case at bench, the Cunanan spouses executed separate wills. Since the two wills contain essentially the same provisions and pertain to property which in all probability are conjugal in nature, practical considerations dictate their joint probate. As this Court has held a number of times, it will always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation (Motoomull v. Dela Paz, 187 SCRA 743 [1990]).

This petition cannot be completely resolved without touching on a very glaring fact - petitioner has always considered herself the sole heir of Dr. Evelyn Perez Cunanan and because she does not consider herself an heir of Dr. Jose F. Cunanan, she noticeably failed to notify his heirs of the filing of the proceedings. Thus, even in the instant petition, she only impleaded respondent Judge, forgetting that a judge whose order is being assailed is merely a nominal or formal party (Calderon v. Solicitor General, 215 SCRA 876 [1992]).

The rule that the court having jurisdiction over the reprobate of a will shall "cause notice thereof to be given as in case of an original will presented for allowance" (Revised Rules of Court, Rule 27, Section 2) means that with regard to notices, the will probated abroad should be treated as if it were an "original will" or a will that is presented for probate for the first time. Accordingly, compliance with Sections 3 and 4 of Rule 76, which require publication and notice by mail or personally to the "known heirs, legatees, and devisees of the testator resident in the Philippines" and to the executor, if he is not the petitioner, are required.

The brothers and sisters of Dr. Jose F. Cunanan, contrary to petitioner's claim, are entitled to notices of the time and place for proving the wills. Under Section 4 of Rule 76 of the Revised Rules of Court, the "court shall also cause copies of the notice of the time and place fixed for proving the will to be addressed to the designated or other known heirs, legatees, and devisees of the testator, xxx".

WHEREFORE, the questioned Order is SET ASIDE. Respondent Judge shall allow petitioner reasonable time within which to submit evidence needed for the joint probate of the wills of the Cunanan spouses and see to it that the brothers and sisters of Dr. Jose F. Cunanan are given all notices and copies of all pleadings pertinent to the probate proceedings.

SO ORDERED.

Davide, Jr., (Acting Chairman), Bellosillo, and Kapunan, JJ., concur.
Cruz, J., (Chairman), on leave.

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