

WENCESLAO D. MONSERRATE, IGNACIO D. MONSERRATE, JOSE D. MONSERRATE AND HEIRS OF MARIA MONSERRATE VDA. DE CAILES, PETITIONERS, VS. HON. COURT OF APPEALS, ERVIN O. POMPA AND HON. ...

G.R. No. 78339. September 29, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking the annulment of the January 29, 1987 decision of the Court of Appeals* in CA-G.R. SP No. 02686 "Wenceslao D. Monserrate, et al. vs. Ervin O. Pompa, et al.": and the April 23, 1987 resolution of the same Court denying herein petitioners' motion for reconsideration.

The facts of this case, as found by the Court of Appeals, are as follows:

"On September 7, 1981, a verified petition for the adoption of Ervin O. Pompa who, at the time was alleged to be married to Dorothea Albovia, 32 years of age, and a resident of Nagcarlan, Laguna, was filed with the then Court of First Instance of Laguna and docketed with said Court as Special Proceedings No. SC-377, the petitioner pur-ports to be Nieves Suiza, 77 years old, widow, and a resident also of Nagcarlan, Laguna and bears the written consent of the spouse of the person to be adopted.

The petition alleged among others:

"x x x x x x x x

"5. That the Adopted's real mother, AURELIA OSUNA, now deceased, was the daughter of MELECIO OSUNA's brother whom they also cared for and reared until her marriage to SILVESTRE POMPA, also deceased, who in turn was the first cousin of herein petitioner.

"6. That the petitioner has taken care at said Adopted from the time the latter became an orphan when he was still a minor and up to the present time, treating and rearing the same as her own true son and giving the attention and love of a mother ever since then:

"7. That the petitioner does not fall under the disqualification of adoption as provided for by law and that the same will serve the best interests and well being of both the Adopter and the Adopted;

"8. That the probable value of the Adopted's property and estate is more or less P15,000.00;

"9. That petitioner in order to obviate or to forestall possible difficulties in the matter of succession to her estate and that of her late spouse believes that adopt-ion is the best solution to such difficulties;

"On September 14, 1971, Judge Maximo A. Maceren, as presiding Judge of the Court, issued an order setting the petition for hearing on October 28, 1971, at 9:00 o'clock in the morning, and the publication thereof in the Bayanihan, a newspaper of general circulation in the province, once a week for three successive weeks, pursuant to section 4, Rule 39, of the Rules of Court.

"The order setting the case for hearing was accordingly published on the September 23, 30 and October 7, 1971 issues of the Bayanihan (Exhs. B, B-3) and there being no opposition, the Deputy Clerk of Court was appointed Commissioner to receive the evidence of the petitioner and thereafter to submit the same for the consideration of the Court (Exh. 4).

"The records show that on October 29, 1971, Artemio Diawan, as Commissioner, submitted his REPORT TO COURT consisting of the evidence presented by the petitioner in the above-entitled case, both testimonial and documentary, which may be gleaned from the minutes and the transcript of stenographic notes taken by stenographer, Mr. Marcial Mendoza, during the reception of the evidence on October 28, 1971 for its consideration. (Records, p. 14)

"The minutes likewise attached to the records of the court show that the stenographer in attendance was Mr. Marcial Mendoza and that the evidence for the petitioner consists of -

"Witnesses:

1. Nieves Suiza - 78 years old - widow - housekeeper - Nagcarlan, Laguna.
2. Ervin O. Pompa - 32 yrs. old - married - proprietor - Nagcarlan, Laguna.
3. Dorothea B. Albovias - 32 years old - married - employee of the Central Bank - Nagcarlan Laguna.

"Exhibits:

"x x x x x x x x

(Exh. 4-B)

'Attached to the records of the case are handwritten notes of the proceedings (Records, pp. 20-21) and stenographic notes consisting of five yellow pages (Records, pp. 22-26).

"On November 12, 1971, Judge Maceren issued the following order:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered declaring that henceforth the person of Ervin O. Pompa is for all legal intents and purposes the son of the herein petitioner Nieves Suiza in accordance with law.

"Let a copy of this order be immediately furnished the Local Civil Registrar of Nagcarlan, Laguna for record purposes." (Records, p. 19; Order, p. 2)

"On July 31, 1982, Nieves Suiza died intestate without any issue (Exh. C).

"On February 14, 1984, plaintiffs commenced the present action with this Court claiming that the adoption proceedings, as well as the order of adoption, were null and void and of no legal force and effect x x x.

"The complaint was amended on order of this Court to implead the Presiding Judge of the Regional Trial Court which superseded the defunct CFI as party defendant.

Respondent Court of Appeals, in a decision promulgated on January 29, 1987 (Rollo, pp. 6-15), dismissed the complaint. The decretal portion of the said decision, reads:

"WHEREFORE, judgment is hereby rendered dismissing plaintiffs' complaint with costs against the plaintiffs.

"Defendant's counterclaim for damages arising from the filing of the present complaint is hereby likewise dismissed for insufficiency of evidence and pursuant to the public policy of prohibiting the imposition of any penalty on the right to litigate there being no evidence that in filing the present case plaintiffs acted in evident bad faith.

"SO ORDERED."

A Motion for Reconsideration was filed (*Ibid.*, pp. 60-82), but the same was denied in a resolution promulgated on April 23, 1987 (*Ibid.*, p. 83). Hence, the instant petition.

Petitioners raised three (3) issues, to wit:

1. WHETHER OR NOT THE DEFUNCT COURT OF FIRST INSTANCE OF LAGUNA HAD ACQUIRED JURISDICTION OVER THE QUESTIONED ADOPTION CASE, NOTWITHSTANDING THAT THE SOLICITOR GENERAL WAS NOT NOTIFIED OR REPRESENTED IN SUCH ADOPTION.
2. WHETHER OR NOT THE CHALLENGED ADOPTION PROCEEDINGS AND ORDER OF ADOPTION ARE VITIATED WITH NULLITY FOR LACK OF STRICT COMPLIANCE WITH STATUTORY REQUIREMENTS AS PRESCRIBED BY LAWS GOVERNING ADOPTION; AND
3. WHETHER OR NOT THE QUESTIONED PROCEEDINGS AND ORDER OF ADOPTION SHOULD BE NULLIFIED BY REASON OF EXTRINSIC FRAUD.

As to the first issue, it is petitioners' contention that the Solicitor General, not having been notified so as to make the State a party thereto, the then Court of First Instance of Laguna did not acquire jurisdiction over the questioned adoption case. To support this contention, they claimed that there is no dispute that the State has an interest in the adoption, particularly in securing the observance of our laws concerning the qualifications and disqualifications of both the adopted and adopter designed to conserve the best interests of society and the State. In addition, quoting the ruling in *Ansaldo vs. Republic* (102 Phil. 1046), they alleged that in the said case, it is explicit that the State must be made a party to an action involving changes in the civil status, nationality or citizenship of a person; and from the standpoint of the effects of adoption, the same involve changes in the personal and civil status of an adopted.

Petitioners' contention is untenable. As aptly ruled by respondent Court of Appeals, no existing law or rule has been pointed out requiring notice to the Solicitor General as a condition precedent or as a jurisdictional pre-requisite for the valid exercise of the court's jurisdiction in an adoption case. Indeed, petitioners can not point any law or rule since a perusal of the provisions of the Civil Code on adoption (Chapter 5, Articles 334-348) and the provisions of the Rules of Court (Rule 99) fail to show such requirement. As to the ruling in the *Ansaldo* case, quoted by petitioners to support their contention, a mere reading of the same will readily show that it is not applicable in the instant case, since it involves the correction of entries in the civil registry.

Anent the second issue, petitioners claim that the statutory requirements, in three instances, were not strictly carried out in the questioned adoption case. It is their contention that pursuant to Republic Act No. 644, the questioned adoption case should have been filed with the Municipal Court of Nagcarlan, Laguna, where the supposed adopter, Nieves Suiza, was then residing; that Section 5 of Rule 99, which requires the presentation of satisfactory proof in open court, was not strictly followed since (1) the reception of proof of compliance with the jurisdictional requirement was delegated to the Deputy Clerk of Court and not done by the presiding judge himself, and (2) the Deputy Clerk of Court likewise received the evidence for the supposed adoption in support of the allegations of the petition for adoption. Moreover, the stenographic notes attached to the records of the case were not transcribed and that the stenographer concerned took said notes outside the premises of the court on January 24, 1983, or eleven (11) years after the date of issuance of the questioned order of adoption, for the purpose of transcribing the same; and that there was the non-compliance with the statutory commands regarding the registration and/or recording of the order of adoption.

These contentions of petitioners are without merit. Republic Act No. 644 gave to the justices of the peace and

judges of municipal courts concurrent jurisdiction on adoption cases with the then Courts of First Instance. In other words, adoption cases could be filed in any of the said courts. Hence, Republic Act No. 644 can not and did not in any way affect the herein questioned petition for adoption which was filed with the then Court of First Instance of Laguna, which unquestionably had territorial jurisdiction over Nagcarlan, Laguna, and had jurisdiction over the nature of the petition (Sec. 1, Rule 99, Rules of Court). As to the alleged delegation to the Deputy Clerk of Court, suffice it to say that this Court, in the case of *Laluan vs. Malpaya* (65 SCRA 495, 499-500 /1975/; cited in the case of *National Housing Authority vs. Court of Appeals*, 121 SCRA 777 /1983/, ruled:

"No provision of law or principle of public policy prohibits a court from authorizing its clerk of court to receive the evidence of a party litigant. After all, the reception of evidence by the clerk of court constitutes but a ministerial task - the taking down of the testimony of the witnesses and the marking of the pieces of documentary evidence, if any, adduced by the party present. This task of receiving evidence precludes, on the part of the clerk of court, the exercise of judicial discretion usually called for when the other party who is present objects to questions propounded and to the admission of the documentary evidence proffered. More importantly, the duty to render judgment on the merits of the case still rests with the judge who is obliged to personally and directly prepare the decision based upon the evidence reported."

As to the allegation that the stenographic notes were not transcribed, etc., the reason given by respondent Court of Appeals in this regard can not be faulted -

"The Certification issued on March 8, 1983 by Deputy Clerk of Court Rosauro M. Magcalas that there was no transcribed stenographic notes of the former stenographer Mr. Marcial Mendoza; taken by him on October 28, 1971 in connection with Special Proceedings Case No. SC-377 which is attached to the record of said case (Exh. E), does not necessarily prove that there is no transcript of stenographic notes. That stenographic notes of the proceeding were taken is firmly borne out by the records of the case and the aforementioned certification. That no transcript was attached to the records is not proof that there is no such transcript. After spending so much for publication, there is no reason for the notes not to be transcribed which will cost only a few pesos given the brevity of the proceedings. In fact it appears from the REPORT TO COURT that the commissioner submitted to the Court 'the transcript of the stenographic notes taken by stenographer Mr. Marcial Mendoza during the reception of the evidence on October 28, 1971 for its consideration.' (Records, p. 14). Since the transcript is prepared subsequent to the proceedings to be transcribed, this must have been handed to the Presiding Judge separately from the records of the case and, for this reason, it was not attached by the Clerk to the records of the case. Any experienced trial judge is familiar with this practice. The failure to subsequently attach the transcript to the records due to oversight is not altogether unlikely, and is not sufficient to vitiate what otherwise is a valid proceeding."

"It is to be presumed that Judge Maximo Maceren received and read the transcript of stenographic notes before he issued the challenged order. There is, in fact, no pretense that the findings of Judge Maceren in his order are not in accordance with the evidence which must have been culled by him from the transcript of stenographic notes."

As to the allegation of non-registration, this has no factual basis. It will be recalled that on November 12, 1971, Judge Maceren issued the following order:

"x x x x x x x x."

"Let a copy of this order be immediately furnished the Local Civil Registrar of Nagcarlan, Laguna for record purposes." (Records, p. 19; Order, p. 2).

and pursuant to the same, as stated by respondent Court of Appeals, the order of adoption was recorded in the Local Civil Registry of Nagcarlan, Laguna, where the adopter and adopted reside and are better known, as early as November 17, 1971.

As to the third issue, petitioners impute grave abuse of discretion on the part of respondent Court of Appeals simply because it did not give weight to petitioners' evidence, particularly their documentary evidence (Exhs. A to A-30) which they claim to have been admitted by private respondent. They submit that the clinical/medical records of the Nieves Suiza (Exhs. A to A-30) and the testimony of Dr. Adolfo Baviera are sufficient to prove that said patient was not physically able to attend the hearing and testify before the Court of First Instance in Sta. Cruz, Laguna on October 28, 1971; and that respondent Court of Appeals failed to consider the fact that private respondent admitted all their proffered documentary exhibits (Exhs. A to A-30).

Petitioners' contention is untenable. It must be stated that even granting that private respondent admitted petitioners' proffered documentary evidence, the Court of Appeals, nevertheless, has the discretionary power to look into related matters of record having some bearing on specific issues raised before it, stressing the paramount aim of promoting the ends of justice (*Miraflor vs. Court of Appeals*, 142 SCRA 18 /1986/; citing the cases of *Hernandez vs. Andal*, 78 Phil. 196, and *Baquiran vs. Court of Appeals*, 2 SCRA 873). Having such power, it considered as infirmities on petitioners' evidence, the defense raised by private respondent that petitioners' documentary evidence, Exhibits "A" to "A-30", were false and falsified because the said medical records are those of one Ursula Nazario and not of Nieves Suiza; that Exhibit "A-3" is cited as an example which shows that the name of Ursula Nazario was erased, and superimposed on it is the name of Nieves Suiza; and that it is pointed out that Case No. 246552 as appearing in Nieves Suiza's admission card, when traced in the admission log books of the Quezon Institute, will give the patient's name as one Ursula Nazario (Exhs. 1 and 1-A), while another admission card with patient Case No. 246552 is also in the name of Ursula Nazario (Exh. 3). With said infirmities, and as aptly stated by the Court of Appeals, petitioners' claim imputes the commission of a criminal offense of falsification committed in the course of judicial proceedings, and as such, requires a strong, clear, and convincing if not indubitable evidence; petitioners' adduced evidence could not be said as strong, clear and convincing to warrant the annulment of what strongly appears to be a valid and regular proceedings.

PREMISES CONSIDERED, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.

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

* Fourth Division, Penned by Associate Justice Oscar M. Herrera and concurred in by Associate Justices Carolina Grino-Aquino and Antonio M. Martinez.

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