

FILOMENA PECSON, AS ADMINISTRATRIX OF THE LAST WILL AND TESTAMENT OF FLORENCIO PECSON ET AL., PLAINTIFFS AND APPELLANTS, VS. ROSARIO MEDIAVILLO, DEFENDANT AND APPELLEE.

G.R. No. 7890. September 29, 1914

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that some time prior to the 17th day of September, 1910, the last will and testament of Florencio Pecson was presented to the Court of First Instance of the Province of Albay for probate, Mr. Tomas Lorayes, an attorney at law, opposed the legalization of the will on the ground that it had not been authorized nor signed by the deceased, in accordance with the provisions of the Code of Civil Procedure. After hearing the respective parties, the Honorable Percy M. Moir, judge, found that the will had been signed and executed in accordance with the provisions of law, and denied the opposition on the 17th day of September, 1910.

On the 18th day of September, 1910, the said Tomas Lorayes, representing Basiliso Mediavillo and Rosario Mediavillo, presented a motion in the words following:

"1. That Rosario Mediavillo is and Joaquin Mediavillo was a legitimate child of the deceased Teresa Pecson, who also was a daughter of the testator, Florencio Pecson, and therefore the first mentioned is and the second was a grandchild of the latter.

"2. That the said granddaughter, Rosario Mediavillo y Pecson, was disinherited by her grandfather, the testator Florencio Pecson, according to clause 3 of the will, because she failed to show him due respect and on a certain occasion raised her hand against him.

"3. That the interested party did not commit such an act, and if perhaps she did, it was due to the derangement of her mental faculties which occurred a long time ago and from which she now suffers in periodical attacks.

"By reason of all the foregoing and because the disinheriting clause 3 of the will is unfounded, the undersigned prays the court to annul the said clause and to make the testator's grandchildren, Rosario and Joaquin Mediavillo (the latter died without succession, but is represented now by his father, Basiliso Mediavillo), participants in the estate left by their grandfather; and, finally, that the court grant such other relief as it may deem just and equitable."

After a consideration of the question presented by said motion, the lower court, on the 22d day of September, 1911, rendered the following decision:

"This case has come up today for a hearing on the declaration of heirs of the deceased Florencio Pecson, who died in Daraga, about the year 1910.

"From the evidence it appears that the deceased had eight children by his wife Nicolasa Manjares, likewise deceased, which children are those named Emerenciano, Teresa, Filomena, Asuncion, Rufino, Zoila, Emiliano,

and Perfecto, all surnamed Pecson. It also appears that Rufino Pecson absented himself from these Islands twenty-five years ago, going to Australia, and that nothing has been heard of him for the past twenty years. The said Rufino Pecson left no children in the Philippines and was unmarried when he emigrated. As nothing has been heard of him for twenty years, it is presumed that he died and it is held that the part of this estate to which he was entitled must be divided among the other heirs.

"It also appears from the evidence that Teresa Pecson married Basiliso Mediavillo', by whom she had two children, Joaquin and Rosario Mediavillo. Teresa also died, leaving these two children and her husband, Basiliso Mediavillo. Her son Joaquin died, unmarried and childless, before the death of the testator, Florencio Pecson. Rosario is the only living daughter of Teresa and the latter's husband, Basiliso Mediavillo, is also living. The evidence shows that this girl Rosario became insane in 1895, when she went to Nueva Caceres to study in college, and it has been proved that it was previous to this date that she disobeyed her grandfather and raised her hand against him, and, as the testator states in the third paragraph of his will, he disinherited her. This court understands that this Rosario, who was then 14 years of age, and who shortly afterwards became insane, was not responsible for her acts and should not have been disinherited by her grandfather.

"The court therefore decrees that this part of the will is contrary to law and sets it aside as being of no force or value whatever. The court further holds that Rosario Mediavillo, the daughter of Teresa Pecson, is the heiress of the one-half of the share of this estate pertaining to the said Teresa, and that her father, as the heir of his son Joaquin, also. Teresa's son, is the heir of the other one-half of the said share pertaining to Teresa—that is, of the one-seventh of this estate that pertains to the latter. Moreover, the court decrees that, besides the two heirs just above mentioned, Emerciano, Filomena, Asuncion, Zoila, Emiliano, and Perfecto, surnamed Pecson, and the children of Teresa, are also heirs of the estate of Florencio Pecson."

From that decision the plaintiff appealed to this court and made the following assignments of error:

"FIRST ERROR.

"The lower court erred in finding' that the part of the will which disinherits Rosario Mediavillo is contrary to law, and in setting it aside as being of no force or value whatever.

"SECOND ERROR.

"The lower court erred by decreeing that Basiliso Mediavillo, the father of Joaquin Mediavillo, is the heir by representation of the one-half of the one-seventh of this estate pertaining to Joaquin Mediavillo."

With reference to the first assignment of error it may be said that from the record it appears that during the lifetime of Florencio Pecson he had been married to Nicolasa Manjares, with whom he had eight children, named Filomena, Asuncion, Zoila, Emerenciano, Emiliano, Perfecto, Rufino and Teresa Pecson; that before the death of Florencio Pecson he executed and delivered the will in question. The will made no provision for the said Rufino Pecson, neither was there any provision in the will for the said Teresa. All of the other children were named as heirs in said will. It appears that Teresa had been married with one Basiliso Mediavillo, and that some time before the making of the will in question she died, leaving her husband and two children, Joaquin Mediavillo and Rosario Mediavillo, as her heirs. It also appears from the record that Joaquin Mediavillo died without heirs, leaving as the only heirs of the said Teresa Pecson, her husband, Basiliso Mediavillo and the said Rosario Mediavillo. The said Joaquin Mediavillo died before his grandfather, Florencio Pecson, and probably before the will in question was made.

Paragraph 3 of the will disinherited Rosario Mediavillo in the following language:

"I declare that one of my daughters, named Teresa, now deceased, left a legitimate daughter named Rosario Mediavillo. I also declare that I disinherit my granddaughter, the said Rosario Mediavillo, because she was

grossly disrespectful to me and because on one occasion, when it was I do not remember, she raised her hand against me. Therefore, it is my will that the said Rosario Mediavillo shall have no share in my property."

The defendant, Rosario Mediavillo, in the motion which she presented and which is copied above, alleges that she was disinherited without cause. Upon a consideration of that question, the lower court found that she had been disinherited without cause and annulled said paragraph 3 of the will. That order of the lower court constitutes the error complained of by the appellant in her first assignment of error.

By reference to said paragraph 3 above quoted, it will be seen that Florencio Pecson disinherited the said Rosario Mediavillo "because she was grossly disrespectful to me and because on one occasion, when it was I do not remember, she raised her hand against me. Therefore it is my will that she, the said Rosario Mediavillo, shall have no share in my property."

The lower court admitted proof upon the question of the responsibility of the said Rosario Mediavillo at the time she offered the offense to her grandfather, Florencio Pecson. After hearing the proof, the lower court reached the following conclusion:

"The evidence shows that this girl Rosario became insane in 1895, when she went to Nueva Caceres to study in college, and it has been proved that it was previous to this date that she disobeyed her grandfather and raised her hand against him, and, as the testator states in the third paragraph of his will, he disinherited her. This court understands that this Rosario, who was then 14 years of age, and who shortly afterwards became insane, was not responsible for her acts and should not have been disinherited by her grandfather."

The first assignment of error presents the question whether or not the courts, when a parent disinherits his children, may inquire into the cause of the disinheritance and decide that there was or was not ground for such disinheritance. The Civil Code (art. 848) provides that disinheritance shall only take place for one of the causes expressly fixed by law. In accordance with the provisions of that article (848) we find that articles 756 and 853 provide the cases or causes for disinheritance; or, in other words, the cases or causes in which the ancestors may by will disinherit their heirs. Article 849 of the Civil Code provides that the disinheritance can only be effected by the testament, in which shall be mentioned the legal grounds or causes for such disinheritance. If it is true that heirs can be disinherited only by will, and for causes mentioned in the Civil Code, it would seem to follow that the courts might properly inquire whether the disinheritance has been made properly and for the causes provided for by law. The right of the courts to inquire into the causes and whether there was sufficient cause for the disinheritance or not, seems to be supported by express provisions of the Civil Code. Article 850 provides that "the proof of the truthfulness of the reason for disinheritance shall be established by the heirs of the testator, should the disinherited person deny it." It would appear then that if the person disinherited should deny the truthfulness of the cause of disinheritance, he might be permitted to support his allegation by proof. The right of the court to inquire whether or not the disinheritance was made for just cause is also sustained by the provisions of article 851, which in part provides that :

"Disinheritance made without statement of the reason, or for a cause the truth of which, if contradicted, should not be proven * * * shall annul the designation of heirship, in so far as it prejudices the person disinherited."

It seems clear from the above-quoted provisions, that the courts may inquire into the justice of a disinheritance such as was attempted in the present case, and if they find that the disinheritance was without cause, that part of the testament or will may be pronounced null and void. It remains, however, to be seen whether the evidence adduced during the trial of the present cause was sufficient to show that the disinheritance made in paragraph 3 of the will was made for just cause. It appears from the record that when Rosario Mediavillo was about 14 years of age, she had received some attentions from a young man—that she had received a letter from him—and that her grandfather, Florencio Pecson, took occasion to talk to her about the relations between her and the said young

man; that it was upon that occasion when, it is alleged, the disobedience and disrespect were shown to her grandfather, and that was the cause for her disinheritance by her grandfather. The record shows that very soon after said event she lost the use of her mental powers and that she has never regained them, except for very brief periods, up to the present time. The lower court, taking into consideration her tender years, and the fact that she very soon thereafter lost the use of her mental faculties, reached the conclusion that she was probably not responsible for the disrespect and disobedience shown to her grandfather in the year 1894 or 1895.

After a careful consideration of the record, we are inclined to believe that the same supports the conclusions of the lower court and that he did not commit the error complained of in the first assignment of error.

With reference to, the second assignment of error, it will be remembered that Teresa Pecson, the mother of Rosario Mediavillo, at the time of her death left two children, Rosario and Joaquin, and her husband Basiliso Mediavillo, and that the said Joaquin Mediavillo died without heirs. The lower court gave one-half of the inheritance of the said Teresa Pecson to Rosario Mediavillo and the share that would have gone to Joaquin Mediavillo, to his father Basiliso Mediavillo. In that conclusion of the lower court we think error was committed. The appellant relies upon the provisions of article 925 of the Civil Code, in his contention that the lower court committed an error. Article 925 provides that:

"The right of representation shall always take place in the direct descending line, but never in the ascending. In collateral lines, it shall take place only in favor of the children of brothers or sisters, whether they be of the whole or half blood."

The appellee, in support of the conclusions of the lower court, cites articles 935 and 936 of the Civil Code. Article 935 provides that:

"In the absence of legitimate children and descendants of the deceased, his ascendants shall inherit from him, to the exclusion of collaterals."

Article 936 provides that:

"The father and mother, if living, shall inherit share and share alike. If one of them only survive, he or she shall succeed to the son's entire estate."

It will be remembered that the whole argument of the appellants with reference to the first assignment of error was that Rosario Mediavillo had been disinherited and the court evidently believed that there were no "legitimate children, descendants of the deceased, surviving," and that therefore the father or mother of said legitimate children would inherit as ascendants. Inasmuch, however, as there was a descendant in the direct line, surviving, the inheritance could not ascend, and for that reason the lower court committed an error in declaring that Basiliso Mediavillo was entitled to inherit that share of the estate that would have belonged to Joaquin Mediavillo, had he been living. Therefore, and for all of the foregoing, that part of the judgment of the lower court nullifying and setting aside paragraph 3 of the will is hereby affirmed, and that part of said judgment which decrees to Basiliso Mediavillo one-half of the estate of Florencio Pecson, belonging to Teresa Pecson and which would have been given to Joaquin Mediavillo, had he been surviving, is hereby revoked. And without any finding as to costs, it is hereby ordered that the cause be remanded to the lower court, with direction that judgment be entered in accordance herewith, and that such further proceedings be had as the interested parties may deem necessary, for the purpose of disposing of that part of the inheritance of Teresa Pecson which would have belonged to Joaquin Mediavillo, had he been surviving.

Torres, Carson, and Moreland, JJ., concur.

CONCURRING

ARELLANO, C. J.

I agree with the second part of the decision reversing the judgment appealed from.

DISSENTING

ARAULLO, J.

I do not agree with that part of the decision which affirms the judgment appealed from.

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