

CELEDONIA SOLIVIO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND CONCORDIA JAVELLANA VILLANUEVA, RESPONDENTS.

G.R. No. 83484. February 12, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review of the decision dated January 26, 1988 of the Court of Appeals in CA-GR CV No. 09010 (Concordia Villanueva v. Celedonia Solivio) affirming the decision of the trial court in Civil Case No. 13207 for partition, reconveyance of ownership and possession and damages, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered for the plaintiff and against defendant:

"a) Ordering that the estate of the late Esteban Javellana, Jr. be divided into two (2) shares: one-half for the plaintiff and one-half for defendant. From both shares shall be equally deducted the expenses for the burial, mausoleum and related expenditures. Against the share of defendants shall be charged the expenses for scholarship, awards, donations and the 'Salustia Solivio Vda. de Javellana Memorial Foundation;'

"b) Directing the defendant to submit an inventory of the entire estate property, including but not limited to, specific items already mentioned in this decision and to render an accounting of the property of the estate, within thirty (30) days from receipt of this judgment; one-half (1/2) of this produce shall belong to plaintiff;

"c) Ordering defendant to pay plaintiff P5,000.00 as expenses of litigation; P10,000.00 for and as attorney's fees plus costs."

"SO ORDERED. " (pp. 42-43, Rollo)

This case involves the estate of the late novelist, Esteban Javellana, Jr., author of the first post-war Filipino novel "Without Seeing the Dawn," who died a bachelor, without descendants, ascendants, brothers, sisters, nephews or nieces. His only surviving relatives are: (1) his maternal aunt, petitioner Celedonia Solivio, the spinster half-sister of his mother, Salustia Solivio; and (2) the private respondent, Concordia Javellana-Villanueva, sister of his deceased father, Esteban Javellana, Sr.

He was a posthumous child. His father died barely ten (10) months after his marriage in December, 1916 to Salustia Solivio and four months before Esteban, Jr. was born.

Salustia and her sister, Celedonia (daughter of Engracio Solivio and his second wife Josefa Fernandez), a teacher in the Iloilo Provincial High School, brought up Esteban, Jr.

Salustia brought to her marriage paraphernal properties (various parcels of land in Calinog, Iloilo covered by 24 titles) which she had inherited from her mother, Gregoria Celo, Engracio Solivio's first wife (p. 325, Record), but no conjugal property was acquired during her short-lived marriage to Esteban, Sr.

On October 11, 1959, Salustia died, leaving all her properties to her only child, Esteban, Jr., including a house and lot in La Paz, Iloilo City, where she, her son, and her sister lived. In due time, the titles of all these properties were transferred in the name of Esteban, Jr.

During his lifetime, Esteban, Jr. had, more than once, expressed to his aunt Celedonia and some close friends his plan to place his estate in a foundation to honor his mother and to help poor but deserving students obtain a college education. Unfortunately, he died of a heart attack on February 26, 1977 without having set up the foundation.

Two weeks after his funeral, Concordia and Celedonia talked about what to do with Esteban's properties. Celedonia told Concordia about Esteban's desire to place his estate in a foundation to be named after his mother, from whom his properties came, for the purpose of helping indigent students in their schooling. Concordia agreed to carry out the plan of the deceased. This fact was admitted by her in her "Motion to Reopen and/or Reconsider the Order dated April 3, 1978" which she filed on July 27, 1978 in Special Proceeding No. 2540, where she stated:

"4. That petitioner knew all along the narrated facts in the immediately preceding paragraph [that herein movant is also the relative of the deceased within the third degree, she being the younger sister of the late Esteban Javellana, father of the decedent herein], because prior to the filing of the petition they (petitioner Celedonia Solivio and movant Concordia Javellana) have agreed to make the estate of the decedent a foundation, besides they have closely known each other due to their filiation to the decedent and they have been visiting each other's house which are not far away for (sic) each other." (p. 234, Record; italics supplied.)

Pursuant to their agreement that Celedonia would take care of the proceedings leading to the formation of the foundation, Celedonia in good faith and upon the advice of her counsel, filed on March 8, 1977 Spl. Proceeding No. 2540 for her appointment as special administratrix of the estate of Esteban Javellana, Jr. (Exh. 2). Later, she filed an amended petition (Exh. 5) praying that letters of administration be issued to her; that she be declared sole heir of the deceased; and that after payment of all claims and rendition of inventory and accounting, the estate be adjudicated to her (p. 115, Rollo).

After due publication and hearing of her petition, as well as her amended petition, she was declared sole heir of the estate of Esteban Javellana, Jr. She explained that this was done for three reasons: (1) because the properties of the estate had come from her sister, Salustia Solivio; (2) that she is the decedent's nearest relative on his mother's side; and (3) with her as sole heir, the disposition of the properties of the estate to fund the foundation would be facilitated.

On April 3, 1978, the court (Branch II, CFI, now Branch 23, RTC) declared her the sole heir of Esteban, Jr. Thereafter, she sold properties of the estate to pay the taxes and other obligations of the deceased and proceeded to set up the "SALUSTIA SOLIVIO VDA. DE JAVELLANA FOUNDATION" which she caused to be registered in the Securities and Exchange Commission on July 17, 1981 under Reg. No. 0100027 (p. 98, Rollo).

Four months later, or on August 7, 1978, Concordia Javellana-Villanueva filed a motion for reconsideration of the court's order declaring Celedonia as "sole heir" of Esteban, Jr., because she too was an heir of the deceased. On October 27, 1978, her motion was denied by the court for tardiness (pp. 80-81, Record). Instead of appealing the denial, Concordia filed on January 7, 1980 (or one year and two months later), Civil Case No. 13207 in the Regional Trial Court of Iloilo, Branch 26, entitled "Concordia Javellana-Villanueva v. Celedonia Solivio" for partition, recovery of possession, ownership and damages.

On September 3, 1984, the said trial court rendered judgment in Civil Case No. 13207, in favor of Concordia Javellana-Villanueva.

On Concordia's motion, the trial court ordered the execution of its judgment pending appeal and required Celedonia to submit an inventory and accounting of the estate. In her motions for reconsideration of those orders, Celedonia averred that the properties of the deceased had already been transferred to, and were in the possession of, the "Salustia Solivio Vda. de Javellana Foundation." The trial court denied her motions for reconsideration.

In the meantime, Celedonia perfected an appeal to the Court of Appeals (CA-GR CV No. 09010). On January 26, 1988, the Court of Appeals, Eleventh Division, rendered judgment affirming the decision of the trial court in toto. Hence, this petition for review wherein she raised the following legal issues:

1. whether Branch 26 of the RTC of Iloilo had jurisdiction to entertain Civil Case No. 13207 for partition and recovery of Concordia Villanueva's share of the estate of Esteban Javellana, Jr. even while the probate proceedings (Spl. Proc. No. 2540) were still pending in Branch 23 of the same court;
2. whether Concordia Villanueva was prevented from intervening in Spl. Proc. No. 2540 through extrinsic fraud;
3. whether the decedent's properties were subject to reserva troncal in favor of Celedonia, his relative within the third degree on his mother's side from whom he had inherited them; and
4. whether Concordia may recover her share of the estate after she had agreed to place the same in the "Salustia Solivio Vda. de Javellana Foundation," and notwithstanding the fact that conformably with said agreement, the Foundation has been formed and properties of the estate have already been transferred to it.

I. The question of jurisdiction —

After a careful review of the records, we find merit in the petitioner's contention that the Regional Trial Court, Branch 26, lacked jurisdiction to entertain Concordia Villanueva's action for partition and recovery of her share of the estate of Esteban Javellana, Jr. while the probate proceedings (Spl. Proc. No. 2540) for the settlement of said estate are still pending in Branch 23 of the same court, there being as yet no orders for the submission and approval of the administratrix's inventory and accounting, distributing the residue of the estate to the heir, and terminating the proceedings (p. 31, Record).

It is the order of distribution directing the delivery of the residue of the estate to the persons entitled thereto that brings to a close the intestate proceedings, puts an end to the administration and thus far relieves the administrator from his duties (*Santiesteban v. Santiesteban*, 68 Phil. 367, *Philippine Commercial and Industrial Bank v. Escolin, et al.*, L-27860, March 29, 1974, 56 SCRA 266).

The assailed order of Judge Adil in Spl. Proc. No. 2540 declaring Celedonia as the sole heir of the estate of Esteban Javellana, Jr. did not toll the end of the proceedings. As a matter of fact, the last paragraph of the order directed the administratrix to "hurry up the settlement of the estate." The pertinent portions of the order are quoted below:

"2. As regards the second incident [Motion for Declaration of Miss Celedonia Solivio as Sole Heir, dated March 7, 1978], it appears from the record that despite the notices posted and the publication of this proceedings as required by law, no other heirs came out to interpose any opposition to the instant proceeding. It further appears that herein Administratrix is the only claimant-heir to the estate of the late Esteban Javellana who died on February 26, 1977.

"During the hearing of the motion for declaration as heir on March 17, 1978, it was established that the late Esteban Javellana died single, without any known issue, and without any surviving parents. His nearest relative is the herein Administratrix, an elder [sic] sister of his late mother who reared him and with whom he had always been living with [sic] during his lifetime.

"xxx xxx xxx

"2. Miss Celedonia Solivio, Administratrix of this estate, is hereby declared as the sole and legal heir of the late Esteban S. Javellana, who died intestate on February 26, 1977 at La Paz, Iloilo City.

"The Administratrix is hereby instructed to hurry up with the settlement of this estate so that it can be terminated." (pp. 14-16, Record)

In view of the pendency of the probate proceedings in Branch 11 of the Court of First Instance (now RTC, Branch 23), Concordia's motion to set aside the order declaring Caledonia as sole heir of Esteban, and to have herself (Concordia) declared as co-heir and recover her share of the properties of the deceased, was properly filed by her in Spl. Proc. No. 2540. Her remedy when the court denied her motion, was to elevate the denial to the Court of Appeals for review on certiorari. However, instead of availing of that remedy, she filed more than one year later, a separate action for the same purpose in Branch 26 of the court, We hold that the separate action was improperly filed for it is the probate court that has exclusive jurisdiction to make a just and legal distribution of the estate.

"The probate court, in the exercise of its jurisdiction to make distribution, has power to determine the proportion or parts to which each distributee is entitled. x x x The power to determine the legality or illegality of the testamentary provision is inherent in the jurisdiction of the court making a just and legal distribution of the inheritance. x x x To hold that a separate and independent action is necessary to that effect, would be contrary to the general tendency of the jurisprudence of avoiding multiplicity of suits; and is further, expensive, dilatory, and impractical." (Marcelino v. Antonio, 70 Phil. 388)

"A judicial declaration that a certain person is the only heir of the decedent is exclusively within the range of the administratrix proceedings and can not properly be made an independent action." (Litam v. Espiritu, 100 Phil. 364)

"A separate action for the declaration of heirs is not proper." (Pimentel v. Palanca, 5 Phil. 436)

In the interest of orderly procedure and to avoid confusing and conflicting dispositions of a decedent's estate, a court should not interfere with probate proceedings pending in a co-equal court. Thus, did we rule in *Guilas v. Judge of the Court of First Instance of Pampanga*, L-26695, January 31, 1972, 43 SCRA 111, 117, where a daughter filed a separate action to annul a project of partition executed between her and her father in the proceedings for the settlement of the estate of her mother:

"The probate court loses jurisdiction of an estate under administration only after the payment of all the debts and the remaining estate delivered to the heirs entitled to receive the same. The finality of the approval of the project of partition by itself alone does not terminate the probate proceeding (*Timbol v. Cano*, 1 SCRA 1271, 1276, L-15445, April 29, 1961; *Siguiong v. Tecson*, 89 Phil. pp. 28, 30). As long as the order of the distribution of the estate has not been complied with, the probate proceedings cannot be deemed closed and terminated (*Siguiong v. Tecson*, supra); because a judicial partition is not final and conclusive and does not prevent the heirs from bringing an action to obtain his share, provided the prescriptive period therefore has not elapsed (*Mari v. Bonilla*, 83 Phil. 137). The better practice, however, for the heir who has not received his share, is to demand his share through a proper motion in the same probate or administration proceedings, or for reopening of the probate or administrative proceedings if it had already been closed and not through an independent action, which would be tried by another court or Judge which may thus reverse a decision or order of the probate or intestate court already final and executed and re-shuffle properties long ago distributed and disposed of." (*Ramos v. Ortuzar*, 89 Phil. 730, 741-742; *Timbol v. Cano*, supra; *Jingco v. Daluz*, L-5107, April 24, 1953, 92 Phil. 1082; *Roman Catholic v. Agustines*, L-14710, March 29, 1960, 107 Phil. 455, 460-461; italics supplied)

In *Litam, et al., v. Rivera*, 100 Phil. 364, where despite the pendency of the special proceedings for the settlement

of the intestate estate of the deceased Rafael Litam, the plaintiffs-appellants filed a civil action in which they claimed that they were the children by a previous marriage of the deceased to a Chinese woman, hence, entitled to inherit his one-half share of the conjugal properties acquired during his marriage to Marcosa Rivera, the trial court in the civil case declared that the plaintiffs-appellants were not children of the deceased, that the properties in question were paraphernal properties of his wife, Marcosa Rivera, and that the latter was his only heir. On appeal to this Court, we ruled that "such declarations (that Marcosa Rivera was the only heir of the decedent) is improper, in Civil Case No. 2071, it being within the exclusive competence of the court in Special Proceedings No. 1537, in which it is not as yet, in issue, and, will not be, ordinarily, in issue until the presentation of the project of partition." (p. 378).

However, in the Guilas case, *supra*, since the estate proceedings had been closed and terminated for over three years, the action for annulment of the project of partition was allowed to continue. Considering that in the instant case, the estate proceedings are still pending, but nonetheless, Concordia had lost her right to have herself declared as co-heir in said proceedings, We have opted likewise to proceed to discuss the merits of her claim in the interest of justice.

The orders of the Regional Trial Court, Branch 26, in Civil Case No. 13207 setting aside the probate proceedings in Branch 23 (formerly Branch 11) on the ground of extrinsic fraud, and declaring Concordia Villanueva to be a co-heir of Celedonia to the estate of Esteban, Jr., ordering the partition of the estate, and requiring the administratrix, Celedonia, to submit an inventory and accounting of the estate, were improper and officious, to say the least, for these matters lie within the exclusive competence of the probate court.

II. The question of extrinsic fraud —

Was Concordia prevented from intervening in the intestate proceedings by extrinsic fraud employed by Celedonia? It is noteworthy that extrinsic fraud was not alleged in Concordia's original complaint in Civil Case No. 13207. It was only in her amended complaint of March 6, 1980, that extrinsic fraud was alleged for the first time.

"Extrinsic fraud, as a ground for annulment of judgment, is any act or conduct of the prevailing party which prevented a fair submission of the controversy (*Francisco v. David*, 38 O.G. 714). A fraud 'which prevents a party from having a trial or presenting all of his case to the court, or one which operates upon matters pertaining, not to the judgment itself, but to the manner by which such judgment was procured so much so that there was no fair submission of the controversy. For instance, if through fraudulent machination by one [his adversary], a litigant was induced to withdraw his defense or was prevented from presenting an available defense or cause of action in the case wherein the judgment was obtained, such that the aggrieved party was deprived of his day in court through no fault of his own, the equitable relief against such judgment may be availed of.' (*Yatco v. Sumagui*, 44623-R, July 31, 1971)," (cited in *Philippine Law Dictionary*, 1972 Ed. by Moreno; *Varela v. Vilanueva, et al.*, 95 Phil. 248)

"A judgment may be annulled on the ground of extrinsic or collateral fraud, as distinguished from intrinsic fraud, which connotes any fraudulent scheme executed by a prevailing litigant 'outside the trial of a case against the defeated party, or his agents, attorneys or witnesses, whereby said defeated party is prevented from presenting fully and fairly his side of the case. x x x The overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court or from presenting his case. The fraud, therefore, is one that affects and goes into the jurisdiction of the court.'" (*Libudan v. Gil*, L-21163, May 17, 1972, 45 SCRA 17, 27-29; *Sterling Investment Corp. v. Ruiz*, L-30694, October 31, 1969, 30 SCRA 318, 323)

The charge of extrinsic fraud is, however, unwarranted for the following reasons:

1. Concordia was not unaware of the special proceeding intended to be filed by Celedonia. She admitted in her

complaint that she and Celedonia had agreed that the latter would "initiate the necessary proceeding" and pay the taxes and obligations of the estate. Thus paragraph 6 of her complaint alleged:

"6. x x x for the purpose of facilitating the settlement of the estate of the late Esteban Javellana, Jr. at the lowest possible cost and the least effort, the plaintiff and the defendant agreed that the defendant shall initiate the necessary proceeding, cause the payment of taxes and other obligations, and to do everything else required by law, and thereafter, secure the partition of the estate between her and the plaintiff." [although Celedonia denied that they agreed to partition the estate, for their agreement was to place the estate in a foundation.] (p. 2, Record; emphasis supplied)

Evidently, Concordia was not prevented from intervening in the proceedings. She stayed away by choice. Besides, she knew that the estate came exclusively from Esteban's mother, Salustia Solivio, and she had agreed with Celedonia to place it in a foundation as the deceased had planned to do.

2. The probate proceedings are proceedings in rem. Notice of the time and place of hearing of the petition is required to be published (Sec. 3, Rule 76 in relation to Sec. 3, Rule 79, Rules of Court). Notice of the hearing of Celedonia's original petition was published in the "Visayan Tribune" on April 25, May 2 and 9, 1977 (Exh. 4, p. 197, Record). Similarly, notice of the hearing of her amended petition of May 26, 1977 for the settlement of the estate was, by order of the court, published in "Bagong Kasanag" (New Light) issues of May 27, June 3 and 10, 1977 (pp. 182-305, Record). The publication of the notice of the proceedings was constructive notice to the whole world. Concordia was not deprived of her right to intervene in the proceedings for she had actual, as well as constructive notice of the same. As pointed out by the probate court in its order of October 27, 1978:

"x x x. The move of Concordia Javellana, however, was filed about five months after Celedonia Solivio was declared as the sole heir. x x x.

"Considering that this proceeding is one in rem and had been duly published as required by law, despite which the present movant only came to court now, then she is guilty of laches for sleeping on her alleged right." (p. 22, Record)

The court noted that Concordia's motion did not comply with the requisites of a petition for relief from judgment nor a motion for new trial.

The rule is stated in 49 Corpus Juris Secundum 8030 as follows:

"Where petition was sufficient to invoke statutory jurisdiction of probate court and proceeding was in rem, no subsequent errors or irregularities are available on collateral attack." (Bedwell v. Dean, 132 So. 20)

Celedonia's allegation in her petition that she was the sole heir of Esteban within the third degree on his mother's side was not false. Moreover, it was made in good faith and in the honest belief that because the properties of Esteban had come from his mother, not his father, she, as Esteban's nearest surviving relative on his mother's side, is the rightful heir to them. It would have been self-defeating and inconsistent with her claim of sole heirship if she stated in her petition that Concordia was her co-heir. Her omission to so state did not constitute extrinsic fraud.

"Failure to disclose to the adversary, or to the court, matters which would defeat one's own claim or defense is not such extrinsic fraud as will justify or require vacation of the judgment." (49 C.J.S. 489, citing Young v. Young, 2 SE 2d 622; First National Bank & Trust Co. of King City v. Bowman, 15 SW 2d 842; Price v. Smith, 109 SW 2d 1144, 1149).

It should be remembered that a petition for administration of a decedent's estate may be filed by any "interested person" (Sec. 2, Rule 79, Rules of Court). The filing of Celedonia's petition did not preclude Concordia from

filing her own.

III. On the question of reserva troncal —

We find no merit in the petitioner's argument that the estate of the deceased was subject to reserva troncal and that it pertains to her as his only relative within the third degree on his mother's side. The reserva troncal provision of the Civil Code is found in Article 891 which reads as follows:

"ART. 891. The ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came."

The persons involved in reserva troncal are:

"1. The person obliged to reserve is the reservor (reservista) — the ascendant who inherits by operation of law property from his descendants.

"2. The persons for whom the property is reserved are the reservees (reservatarios) — relatives within the third degree counted from the descendant (propositus), and belonging to the line from which the property came.

"3. The propositus — the descendant who received by gratuitous title and died without issue, making his other ascendant inherit by operation of law." (p. 692, Civil Law by Padilla, Vol. II, 1956 Ed.)

Clearly, the property of the deceased, Esteban Javellana Jr., is not reservable property, for Esteban, Jr. was not an ascendant, but the descendant of his mother, Salustia Solivio, from whom he inherited the properties in question. Therefore, he did not hold his inheritance subject to a reservation in favor of his aunt, Celedonia Solivio, who is his relative within the third degree on his mother's side. The reserva troncal applies to properties inherited by an ascendant from a descendant who inherited it from another ascendant or a brother or sister. It does not apply to property inherited by a descendant from his ascendant, the reverse of the situation covered by Article 891.

Since the deceased, Esteban Javellana, Jr., died without descendants, ascendants, illegitimate children, surviving spouse, brothers, sisters, nephews or nieces, what should apply in the distribution of his estate are Articles 1003 and 1009 of the Civil Code which provide:

"ART. 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles.

"ART. 1009. Should there be neither brothers nor sisters, nor children of brothers or sisters, the other collateral relatives shall succeed to the estate.

"The latter shall succeed without distinction of lines or preference among them by reason of relationship by the whole blood."

Therefore, the Court of Appeals correctly held that:

"Both plaintiff-appellee and defendant-appellant being relatives of the decedent within the third degree in the collateral line, each, therefore, shall succeed to the subject estate 'without distinction of line or preference among them by reason of relationship by the whole blood,' and is entitled to one-half (1/2) share and share alike of the estate." (p. 57, Rollo)

IV. The question of Concordia's one-half share —

However, inasmuch as Concordia had agreed to deliver the estate of the deceased to the foundation in honor of his mother, Salustia Solivio Vda. de Javellana (from whom the estate came), an agreement which she ratified and

confirmed in her "Motion to Reopen and/or Reconsider Order dated April 3, 1978" which she filed in Spl. Proceeding No. 2540:

"4. That x x x prior to the filing of the petition they (petitioner Celedonia Solivio and movant Concordia Javellana) have agreed to make the estate of the decedent a foundation, besides they have closely known each other due to their filiation to the decedent and they have been visiting each other's house which are not far away for [sic] each other." (p. 234, Record; italics supplied)

she is bound by that agreement. It is true that by that agreement, she did not waive her inheritance in favor of Celedonia, but she did agree to place all of Esteban's estate in the "Salustia Solivio Vda. de Javellana Foundation" which Esteban, Jr., during his lifetime, planned to set up to honor his mother and to finance the education of indigent but deserving students as well.

Her admission may not be taken lightly as the lower court did. Being a judicial admission, it is conclusive and no evidence need be presented to prove the agreement (*Cunanan v. Amparo*, 80 Phil. 227; *Granada v. Philippine National Bank*, L-20745, Sept. 2, 1966, 18 SCRA 1; *Sta. Ana v. Maliwat*, L-23023, Aug. 31, 1968, 24 SCRA 1018; *People v. Encipido*, G.R. 70091, Dec. 29, 1986, 146 SCRA 478; and *Rodillas v. Sandiganbayan*, G.R. 58652, May 20, 1988, 161 SCRA 347).

The admission was never withdrawn or impugned by Concordia who, significantly, did not, even testify in the case, although she could have done so by deposition if she were supposedly indisposed to attend the trial. Only her husband, Narciso, and son-in-law, Juanito Domin, actively participated in the trial. Her husband confirmed the agreement between his wife and Celedonia, but he endeavored to dilute it by alleging that his wife did not intend to give all, but only one-half, of her share to the foundation (p. 323, Record).

The records show that the "Salustia Solivio Vda. de Javellana Foundation" was established and duly registered in the Securities and Exchange Commission under Reg. No. 0100027 for the following principal purposes:

"1. To provide for the establishment and/or setting up of scholarships for such deserving students as the Board of Trustees of the Foundation may decide of at least one scholar each to study at West Visayas State College, and the University of the Philippines in the Visayas, both located in Iloilo City.

"2. To provide a scholarship for at least one scholar for St. Clements Redemptorists Community for a deserving student who has the religious vocation to become a priest.

"3. To foster, develop, and encourage activities that will promote the advancement and enrichment of the various fields of educational endeavors, especially in literary arts. Scholarships provided for by this foundation may be named after its benevolent benefactors as a token of gratitude for their contributions.

"4. To direct or undertake surveys and studies in the community to determine community needs and be able to alleviate partially or totally said needs.

"5. To maintain and provide the necessary activities for the proper care of the Solivio-Javellana mausoleum at Christ the King Memorial Park, Jaro, Iloilo City, and the Javellana Memorial at the West Visayas State College, as a token of appreciation for the contribution of the estate of the late Esteban S. Javellana which has made this Foundation possible. Also, in perpetuation of his Roman Catholic beliefs and those of his mother, Gregorian masses or their equivalents will be offered every February and October and Requiem masses every February 25th and October 11th, their death anniversaries, as part of this provision.

"6. To receive gifts, legacies, donations, contributions, endowments and financial aids or loans from whatever source, to invest and reinvest the funds, collect the income thereof and pay or apply only the income or such part thereof as shall be determined by the Trustees for such endeavors as may be necessary to carry out the objectives of the Foundation.

"7. To acquire, purchase, own, hold, operate, develop, lease, mortgage, pledge, exchange, sell, transfer, or otherwise, invest, trade, or deal, in any manner permitted by law, in real and personal property of every kind and description or any interest herein.

"8. To do and perform all acts and things necessary, suitable or proper for the accomplishments of any of the purposes herein enumerated or which shall at any time appear conducive to the protection or benefit of the corporation, including the exercise of the powers, authorities and attributes concerned upon the corporation organized under the laws of the Philippines in general, and upon domestic corporation of like nature in particular." (pp. 9-10, Rollo)

As alleged without contradiction in the petition for review:

"The Foundation began to function in June, 1982, and three (3) of its eight Esteban Javellana scholars graduated in 1986, one (1) from UPV graduated Cum Laude and two (2) from WVSU graduated with honors; one was a Cum Laude and the other was a recipient of Lagos Lopez award for teaching for being the most outstanding student teacher.

"The Foundation has four (4) high school scholars in Guiso Barangay High School, the site of which was donated by the Foundation. The School has been selected as the Pilot Barangay High School for Region VI.

"The Foundation has a Special scholar, Fr. Elbert Vasquez, who would be ordained this year. He studied at St. Francis Xavier Major Regional Seminary at Davao City. The Foundation likewise is a member of the Redemptorist Association that gives yearly donations to help poor students who want to become Redemptorist priests or brothers. It gives yearly awards for Creative writing known as the Esteban Javellana Award.

"Further, the Foundation had constructed the Esteban S. Javellana Multipurpose Center at the West Visayas State University for teachers' and students' use, and has likewise contributed to religious, civic and cultural fund-raising drives, amongst others." (p. 10, Rollo)

Having agreed to contribute her share of the decedent's estate to the Foundation, Concordia is obligated to honor her commitment as Celedonia has honored hers.

WHEREFORE, the petition for review is granted. The decision of the trial court and the Court of Appeals are hereby SET ASIDE. Concordia J. Villanueva is declared an heir of the late Esteban Javellana, Jr. entitled to one-half of his estate. However, conformably with the agreement between her and her co-heir, Celedonia Solivio, the entire estate of the deceased should be conveyed to the "Salustia Solivio Vda. de Javellana Foundation," of which both the petitioner and the private respondent shall be trustees, and each shall be entitled to nominate an equal number of trustees to constitute the Board of Trustees of the Foundation which shall administer the same for the purposes set forth in its charter. The petitioner, as administratrix of the estate, shall submit to the probate court an inventory and accounting of the estate of the deceased preparatory to terminating the proceedings therein.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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