

DAYA MARIA TOL-NOQUERA, PETITIONER, VS. HON. ADRIANO R. VILLAMOR, PRESIDING JUDGE, BRANCH XVI, REGIONAL TRIAL COURT, 8TH JUDICIAL REGION, NAVAL, LEYTE, AND DIOSDADO TOL, RESPOND...

G.R. No. 84250. July 20, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

Questioned in this action is the dismissal of a petition filed by Daya Maria-Tol Noquera for appointment as administratrix of the property of the absentee Remigio Tol.

In Special Proceedings No. P-056, which was filed in December 1986, Daya Maria-Tol alleged that she was the acknowledged natural child of Remigio Tol, who had been missing since 1984. She claimed that a certain Diosdado Tol had fraudulently secured a free patent over Remigio's property and had obtained title thereto in his name. She was seeking the administration of the absentee's estate in order that she could recover the said property.

The petition was opposed by Diosdado Tol, who argued that Daya Maria Tol was not an acknowledged natural child of the absentee and that the property sought to be administered was covered by an original certificate of title issued in his name.

On March 31, 1987, the trial court dismissed the petition on the ground that it was a collateral attack on a Torrens title. The court also declared in effect that it was useless to appoint an administrator in view of the claim of a third person that he was the owner of the absentee's property.

The petitioner's motion for reconsideration having been denied, she filed a notice of appeal with this Court on June 4, 1984. However, inasmuch as only questions of law were involved, we resolved to require the petitioner to seek review on certiorari under Rule 45 of the Rules of Court within 15 days from notice.

In the petition now before us, it is argued that the original petition in the trial court was not intended as a collateral attack on a Torrens title; hence, Art. 389 of the Civil Code^[1] was not applicable.

The private respondent, on the other hand, contends that since the petitioner claims she is an illegitimate child of Remigio Tol, she is prohibited under Art. 992 of the Civil Code^[2] from inheriting ab intestato from the relatives of her father.

The private respondent likewise questions the necessity of her appointment for the purpose only of having the title annulled. He adds that in view of her allegations of fraud, she should have sued for the annulment of the title within a period of one year, which had already expired. Lastly, the decision of the trial court had already become final and executory because 76 days had already elapsed from the date of receipt of the said decision on May 21, 1987, to the date the petition was filed before this Court on August 5, 1987.

A study of the record reveals that the lower court was rather hasty in dismissing the petition.

As we see it, the petition was not a collateral attack on a Torrens title. The petitioner did say there was a need to appoint an administrator to prevent the property from being usurped, but this did not amount to a collateral attack on the title. The alleged fraudulent issuance of title was mentioned as a justification for her appointment as administrator. But there was nothing in the petition to indicate that the petitioner would attack the title issued to Diosdado in the same proceeding. In fact, the petitioner declared that whatever remedy she might choose would be pursued in another venue, in a proceeding entirely distinct and separate from her petition for appointment as administratrix.

Regarding the Torrens certificate of title to the disputed property which was presented to defeat the petitioner's appointment, we feel that the position of trial court was rather ambivalent. For while relying on such title to justify the dismissal of the petition, it suggested at the same time that it could be attacked as long as this was not done in the proceeding before it.

The private respondent's arguments that the petitioner cannot inherit ab intestato from the legitimate parents of the absentee is immaterial to this case. Her disqualification as an heir to her supposed grandparents does not inhibit her from petitioning for a declaration of absence or to be appointed as an administratrix of the absentee's estate.

The relevant laws on the matter are found in the following provisions of the Civil Code:

Art. 381. When a person disappears from his domicile his whereabouts being unknown, and without leaving an agent to administer his property the judge, at the instance of an interested party, a relative, or a friend, may appoint a person to represent him in all that may be necessary.

This same rule shall be observed when under similar circumstances the power conferred by the absentee has expired.

Art. 382. The appointment referred to in the preceding article having been made, the judge shall take the necessary measures to safeguard the rights and interest of the absentee and shall specify the powers, obligations and remuneration of his representatives, regulating them according to the circumstances, by the rules concerning guardians.

Art. 383. In the appointment of a representative, the spouse present shall be preferred when there is no legal separation.

If the absentee left no spouse, or if the spouse present is a minor, any competent person may be appointed by the court.

Art. 384. Two years having elapsed without any news about the absentee or since the receipt of the last news, and five years in case the absentee has left a person in charge of the administration of his property, his absence may be declared.

Art. 385. The following may ask for the declaration of absence:

- (1) The spouse present;
- (2) The heirs instituted in a will, who may present an authentic copy of the same;
- (3) The relatives who may succeed by the law of intestacy;
- (4) Those who may have over the property of the absentee some right subordinated to the condition of his death.

Art. 386. The judicial declaration of absence shall not take effect until six months after its publication in a newspaper of general circulation.

It is not necessary that a declaration of absence be made in a proceeding separate from and prior to a petition for

administration. This was the ruling in *Reyes v. Alejandro*,^[3] reiterating *Pejer v. Martinez*.^[4] In the latter case, the court declared that the petition to declare the husband an absentee and the petition to place the management of the conjugal properties in the hands of the wife could be combined and adjudicated in the same proceeding.

The purpose of the cited rules is the protection of the interests and property of the absentee, not of the administrator. Thus, the question of whether the administrator may inherit the property to be administered is not controlling. What is material is whether she is one of those allowed by law to seek the declaration of absence of Remigio Tol and whether she is competent to be appointed as administratrix of his estate.

The issue of whether or not the property titled to Diosdado Tol is really owned by him should be resolved in another proceeding. The right of Daya Maria Tol to be appointed administratrix cannot be denied outright by reason alone of such issue.

Even if it be assumed that the title obtained by Diosdado Tol is already infeasible because of the lapse of the one-year period for attacking it on the ground of fraud, there are still other remedies available to one who is unjustly deprived of his property. One of these is a claim for reconveyance, another a complaint for damages.^[5] The petitioner can avail herself of such remedies if she is appointed administratrix of the estate of the absentee.

Finally, we find that the appeal was perfected seasonably. Notice of appeal was filed on June 4, 1987, within the 15-day extension of the period to appeal as granted by this Court in its resolution dated July 8, 1987.

WHEREFORE, the petition is GRANTED. This case is hereby REMANDED to the court of origin for determination of the legal personality of Daya Maria Tol to petition the declaration of Remigio Tol's absence and of her competence to be appointed as administratrix of his estate.

SO ORDERED.

Grino-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] Art. 389. The administration shall cease in any of the following cases:

- (1) When the absentee appears personally or by means of an agent;
- (2) When the death of the absentee is proved and his testate or intestate heirs appear;
- (3) When a third person appears, showing by a proper document that he has acquired the absentee's property by purchase or other title;

In these cases the administrator shall cease in the performance of his office, and the property shall be at the disposal of those who may have a right thereto.

[2] Art. 992. An illegitimate child has no right to inherit ab intestato from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.

[3] 141 SCRA 65.

[4] 88 Phil. 72.

[5] *Quiniano vs. Court of Appeals*, 39 SCRA 221; *Cabanos vs. Register of Deeds of Laguna*, 40 Phil. 620.

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