

**PRINCESITA SANTERO, FEDERICO SANTERO AND WILLIE SANTERO,
PETITIONERS, VS. HON. COURT OF FIRST INSTANCE OF CAVITE,
ANSELMA DIAZ, VICTOR, RODRIGO, ANSELMINA, MIGUEL, ALL
SURNAMED ...**

G.R. Nos. 61700-03. September 14, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a Petition for Certiorari which questions the order of the respondent court granting the Motion for Allowance filed by private respondents. Said order reads as follows:

"Acting on the Motion For Allowance dated June 30, 1982 filed by Victor, Rodrigo, Anselmina and Miguel, all surnamed Santero, thru their guardian, Anselma Diaz, the Opposition thereto dated July 8, 1982 filed by the opposi-tors, the Reply to Opposition dated July 12, 1982 filed by movant Anselma Diaz and the Rejoinder dated July 26, 1982 filed by the oppositors, the Court was constrained to examine the Motion For Allowance filed by the herein movant last year wherein the ground cited was for sup-port which included educational expenses, cloth-ing and medical necessities, which was granted and said minors were given an allowance prayed for in their motion.

"In the Motion For Allowance in question guardian-movant Anselma Diaz only followed the precedent of the Court which granted a similar motion last year to be spent for the school expenses of her wards. In their opposition the oppositors contend that the wards for whom allowance is sought are no longer schooling and have attained majority age so that they are no longer under guardianship. They likewise allege that the administrator does not have sufficient funds to cover the said allowance because whatever funds are in the hands of the administrator, they constitute funds held in trust for the benefit of whoever will be adjudged as owners of the Kawit property from which said administrator derives the only income of the intestate estate of Pablo Santero, et al.

"In the Reply filed by the guardian-movant, she admitted some of her children are of age and not enrolled for the first semester due to lack of funds but will be enrolled as soon as they are given the requested allowances. She cited Article 290 of the Civil Code provid-ing that:

'Support is everything that is indispensable for substance, dwelling, clothing and medical attendance, accord-ing to the social position of the family.

'Support also includes the educa-tion of the person entitled to be sup-ported until he completes his education or training for some trade or vocation, even beyond the age of majority.'

citing also Section 3 of Rule 83 of the Rules of Court which provides:

'Allowance to widow and family. The widow and minor or incapacitated children of a deceased person, during the settlement of the estate, shall receive therefrom, under the direction of the Court, such allowance as provi-ded by law.'

From the foregoing discussion alone, the Court cannot deviate from its duty to give the allowance sought by the wards, the fact that they need further education which should have been provided to them if their deceased father were alive.

"On the allegation that the funds from which the allowance would be derived are trust funds, the Court, time and again had emphasized that the estate of the Santeros is quite big and the amount to be released for allowances is indeed insignificant and which can easily be replaced from its general fund if the so-called trust fund is adjudicated to the opposi-tors.

"WHEREFORE, Victor, Rodrigo, Anselmina and Miguel, all surnamed Santero are hereby granted an allowance of two thousand (P2,000.00) pesos each for tuition fees, clothing materials and subsistence out of any available funds in the hands of the administrator who is ordered to reimburse to them the said amount after this order shall have become final to enable the oppositors to file their appeal by certiorari if they so desire within the reglementary period.

"SO ORDERED.

Bacoor, Cavite, July 28, 1982.

ILDEFONSO M. BLEZA

Executive Judge"

(pp. 35-36, Rollo)

It appears from the records that petitioners Prince-sita Santero-Morales, Federico Santero and Willy Santero are the children begotten by the late Pablo Santero with Felixberta Pacursa while private respondents Victor, Rodrigo, Anselmina and Miguel all surnamed Santero are four of the seven children begotten by the same Pablo Santero with Anselma Diaz. Both sets of children are the natural children of the late Pablo Santero since neither of their mothers, was married to their father Pablo. Pablo Santero in turn, who died on November 30, 1973 was the only legi-timate son of Pascual Santero who died in 1970 and Simona Pamuti Vda. de Santero who died in 1976.

Meanwhile before We could act on the instant petition private respondents filed another Motion for Allowance dated March 25, 1985 with the respondent court to include Juanita, Estelita and Pedrito all surnamed Santero as children of the late Pablo Santero with Anselma Diaz praying that an order be granted directing the administrator Reynaldo C. Evaristo, to deliver the sum of P6,000.00 to each of the seven (7) children of Anselma Diaz as their al-lowance from the estate of Pablo Santero. The respondent Court granted the motion of the private respondents but oppositors (petitioners herein) asked the court to reconsidered said Order.

On September 10, 1985, an Amended Order was issued by respondent Court directing Anselma Diaz to submit her clarification or explanation as to the additional three (3) children of Anselma Diaz included in the motion. In compliance therewith Anselma Diaz filed her "Clarification" stating among others that in her previous motions, only the last four minor children as represented by the mother, Anselma Diaz were included in the motion for support and her first three (3) children who were then of age should have been included since all her children have the right to receive allowance as advance payment of their shares in the inheritance of Pablo Santero under Art. 188, of the New Civil Code.

On October 15, 1985, petitioners herein filed their Motion to Admit Supplemental Petition opposing the inclusion of three (3) more heirs. We denied their "Motion for Extension of Time to file their Supplemental Petition" as per Our Resolution dated October 23, 1985.

On November 11, 1985, another Order was issued by the respondent court directing the administrator of the estate

to get back the allowance of the three additional recipients or children of Anselma Diaz apparently based on the oppositors' (petitioners herein) "Urgent Motion to Direct the Administrator to Withhold Disbursement of Allowance to the Movants."

The issues now being raised in this present Petition are:

1. Whether or not respondent court acted with abuse of discretion amounting to lack of jurisdiction in granting the allowance to the respondents Victor, Rodrigo, Anselmina and Mi-guel - P2,000.00 each despite the fact that all of them are not minors and all are gainfully employed with the exception of Miguel.
2. Whether or not respondent Court acted with abuse of discretion in granting the allowance based on the allegations of the said respondents that the abovenamed wards are still schooling and they are in actual need of money to defray their school expenses for 1982-83 when the truth is that they are no longer schooling.
3. Whether or not respondent Court acted with abuse of discretion in granting the motion for allowance without conducting a hearing thereon, to determine the truth of allegations of the private respondents.

Petitioners argue that private respondents are not entitled to any allowance since they have already attained majority age, two are gainfully employed and one is married as provided for under Sec. 3 Rule 83, of the Rules of Court. Petitioners also allege that there was misrepresentation on the part of the guardian in asking for allowance for tuition fees, books and other school materials and other miscellaneous expenses for school term 1982-83 because these wards have already attained majority age so that they are no longer under guardianship. They further allege that the administrator of the estate of Pablo Santero does not have sufficient funds to cover said allowance because whatever funds are in the hands of the administrator constitute funds held in trust for the benefit of whoever will be adjudged as owners of the Kawit properties from where these funds now held by the administrator are derived.

In this connection, the question of whether the private respondents are entitled to allowance or not concerns only the intestate estate of the late Pablo Santero and not the intestate estates of Pascual Santero and Simona Pamuti, parents of their late legitimate son Pablo Santero. The reason for this is Art. 992 of the New Civil Code which states that "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." The question of whether or not the petitioners and private respondents are entitled to inherit by right of representation from their grandparents more particularly from Simona Pamuti was settled by Us in the related case of "Anselma Diaz, et al vs. Felisa Pamuti-Jardin" (G.R. No. 66574-R) wherein We held that in view of the barrier present in said Art. 992, petitioners and private respondents are excluded from the intestate estate of Simona Pamuti Vda. de Santero.

The present petition obviously lacks merit.

The controlling provision of law is not Rule 83, Sec. 3 of the New Rules of Court but Arts. 290 and 188 of the Civil Code reading as follows:

"Art. 290. Support is everything that is indispensable for sustenance, dwelling, clothing and medical attendance, according to the social position of the family.

Support also includes the education of the person entitled to be supported until he completes his education or training for some profession, trade or vocation, even beyond the age of majority."

"Art. 188. From the common mass of property support shall be given to the surviving spouse and to the children during the liquidation of the inventoried property and until what belongs to them is delivered; but from this shall be deducted that amount received for support which exceeds the fruits or rents pertaining to

them."

The fact that private respondents are of age, gainfully employed, or married is of no moment and should not be regarded as the determining factor of their right to allowance under Art. 188. While the Rules of Court limit allowances to the widow and minor or incapacitated children of the deceased, the New Civil Code gives the surviving spouse and his/her children without distinction. Hence, the private respondents Victor, Rodrigo, Anselmina and Miguel all sur-named Santero are entitled to allowances as advances from their shares in the inheritance from their father Pablo Sante-ro. Since the provision of the Civil Code, a substantive law, gives the surviving spouse and to the children the right to receive support during the liquidation of the estate of the deceased, such right cannot be impaired by Rule 83 Sec. 3 of the Rules of Court which is a procedural rule. Be it noted however that with respect to "spouse," the same must be the "legitimate spouse" (not common-law spouses who are the mothers of the children here).

It is not true that the Motion for Allowance was granted by respondent Court without hearing. The record shows that the "Motion for Allowance" dated June 30, 1982 contains a Notice of Hearing (p. 2, Annex "A") addressed to the lawyers for the petitioners and setting the hearing thereof on July 8, 1982 at 9:00 in the morning. Apparently a copy of said motion was duly received by the lawyer, Atty. Beltran as he filed an opposition thereto on the same date of hearing of the motion. Furthermore even the instant petition admits that the wards, (petitioners and private respondents as represented by their respective guardians) "have been granted allowances for school expenses for about 8 years now." The respondent court in granting the motion for allowance merely "followed the precedent of the court which granted a similar motion last year." (Annex "F") However in previous years (1979-1981) the "wards" (petitioners and private respondents) only received P1,500.00 each depending upon the availability of funds as granted by the court in several orders. (Annex 1 to Annex 4).

WHEREFORE, in the light of the aforementioned circumstances, the instant Petition is hereby DISMISSED and the assailed judgment is AFFIRMED.

SO ORDERED.

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

Padilla, J., no part, related to senior partner of private respondents' counsel.

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