TWELFTH DIVISION

[CA - G.R. CV NO. 78924, August 02, 2006]

ELIZABETH T. SANGALANG, PETITIONER-APPELLANT, VS. MA. SOCORRO SANGALANG, OPPOSITOR-APPELLEE.

D E C I S I O N

MENDOZA, J.:

"The fact that public policy favors the probate of a will does not necessarily mean that every will presented for probate should be allowed."[1]

At bar is an appeal challenging the March 27, 2003 Order[2] of the Regional Trial Court, Branch 208, Mandaluyong City, (RTC) dismissing Sp. Proc. No. MC O2-1941, a petition for Probate of Will filed by Elizabeth T. Sangalang (*petitioner-appellant*).

The factual and procedural antecedents:

Decedent Gilberto K. Sangalang died on March 25, 2000. Petitioner alleged that decedent left a holographic will; that the original of which was in the possession of decedent's daughter, Ma. Socorro A. Sangalang (*oppositor-appellee*), who was designated in the will as the executor thereof; that oppositor-appellee refused to have the same presented before the court of proper jurisdiction for probate; that the deceased left certain provisions in the will that, if not probated, cannot pass ownership to the heirs; that oppositor-appellee immediately took control of the properties of the testate estate; that the probable value of the estate is not less that two (2) million pesos; and that the instant petition is filed under Section 1, Rule 76 of the New Rules of Court, petitioner being a creditor interested in the estate, without prejudice to her legacy under the will, if probated.[3]

Petitioner-appellant also filed an Ex-parte Motion to Litigate as Pauper.[4] In an Order, dated October 4, 2002,[5] the motion was granted. Thus, petitioner-appellant was allowed to litigate as a pauper.

On October 15, 2002, the RTC issued an Order setting the hearing of the petition on November 25, 2002.[6] The copy of this Order was directed to be published at the expense of petitioner-appellant in a newspaper of general circulation pursuant to Presidential Decree (PD) 1079, once a week for three (3) consecutive weeks.

On November 12, 2002, oppositor-appellee filed a Motion for Reconsideration[7] averring that the order of publication is premature; that the supposed holographic will must be produced or presented; that she has no knowledge as to the allegation of petitioner-appellant that she is the named executor in the said will; and that she has not seen the purported holographic will.

Oppositor-appellee also filed her Opposition (Ad Cautelam),[8] preliminarily stating that she is the only child and heir of the decedent and that petitioner-appellant is still legally married to one Amador T. Pongos (*copy of the supposed Marriage Contract was attached thereto*). As such, petitioner-appellant, being merely the common-law wife of her deceased father, has no right to use the surname "Sangalang." Specifically, oppositor-appellee disputed the probate of the supposed holographic will on the following grounds:

> "(a) The alleged holographic will of oppositor's late father does not even appear to be his own handwriting;
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> (b) Assuming, without admitting, that the supposed will was written by her late father, it was not duly executed as required by law, for not being entirely written, dated and signed by the deceased in all the pages thereof;
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> (c) ***Ad arguendo*** that the late father of oppositor executed a holographic will, which is not so, the execution of the supposed holographic will was the result of undue and improper pressure and influence because its provisions are contrary to law and solely intended for the benefit of the deceased's common-law-wife. Furthermore, the conditions/provisions of the alleged will unduly prejudiced the hereditary rights or interests of herein oppositor, aggravated by the fact that the deceased appeared to have forgotten the proper bounds of his bounty as he provided a void legacy which could not even be affordable by the estate. As a matter of fact, at the time the supposed will was allegedly executed, the deceased was sickly and not in full control of his mental faculties;
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> (d) This Honorable Court has not acquired jurisdiction over the case due to non-payment of the proper docket fees;
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> (e) Petitioner, who was the common law wife of the deceased, has no legal personality to institute the instant proceedings;
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> (f) Petitioner's alleged legacy is void;
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> (g) The financial status of petitioner does not fall under the category of a pauper litigant and thus she defrauded the government of the docket fees. For this reason, the probate proceedings must be dismissed;
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> (h) The estate of the deceased has no monetary obligation or otherwise to the petitioner;"[9]

On November 18, 2002, the oppositor-appellee filed a Motion to Dismiss asserting the following grounds:

> "I. THE INSTANT PROBATE PROCEEDINGS IS DISMISSIBLE FOR NON-PAYMENT OF DOCKET FEES. PETITIONER IS NOT A PAUPER LITIGANT;
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> II. THE LEGACY TO ELIZABETH TIOSECO PONGOS, A.K.A. *ELIZABETH T. SANGALANG* IS VOID PURSUANT TO ART. 1028 OF THE NEW CIVIL CODE;

III. ELIZABETH TIOSECO PONGOS HAS NO LEGAL PERSONALITY TO SEEK PROBATE OF THE ALLEGED HOLOGRAPHIC WILL OF THE DECEASED;IV. ELIZABETH TIOSECO PONGOS IS NOT A CREDITOR OF THE ESTATE OF THE DECEASED."[10]

On January 3, 2003, petitioner-appellant filed an "Opposition to the Motion to Dismiss, Motion for Reconsideration and Reply to the Opposition *Ad Cautelam*."[11] Oppositor-appellee, thereafter, filed his Reply[12] thereto. Attached to the oppositor-appellee's Reply was the Order of the RTC of Mandaluyong City, *Branch 212*, *dismissing Sp. Proc. Case No. MC 02-1796 for Probate of Will filed by petitioner-appellant on the ground that the legacy of petitioner-appellant under the subject will is void*.[13]

On March 27, 2003, the RTC issued the assailed Order, resolving the twin motions filed by oppositor-appellee, to wit: (*1*) the Opposition Ad Cautelam dated November 7, 2002; and (*2*) Motion to Dismiss, dated November 14, 2002. Pertinent portions of the said Order read:

"All the arguments advanced by the Petitioner and the Oppositor, being intertwined, shall be discussed jointly.

Indeed, it is a settled rule that the only issued to be resolved in a probate proceedings are: (1) whether or not the testator had animus testandi; (2) whether or not vices of consent attended the execution of the will; and (3) whether or not the formalities of the will had been complied with. As such, the court's area of inquiry is limited to an examination and resolution of the extrinsic validity of the will. A probate decree finally and definitely settles all questions concerning capacity of the testator and the proper execution and witnessing of his last will and testament, irrespective of whether its provisions are valid and enforceable or otherwise (Fernandez v. Dimagiba, 21 SCRA 428).

The rule, however, is not inflexible. In *Balanay, Jr. v. Martinez* (64 SCRA 452), the Court passed upon the validity of the intrinsic provisions of the will even before establishing its formal validity. In *Nugid v. Nugid* (17 SCRA 449), the High Court ruled that where practical considerations demand that the intrinsic validity of the will be passed upon, even before it is probated, the court should meet the issue, viz:

'We pause, no, reflect. If the case were to be remanded for probate of the will, nothing will be gained. On the contrary, this litigation will be protracted. And for aught that appears in the record, in the event of probate or if the court rejects the will, probability exists that the case will come up once again before us on the same issue of the intrinsic validity or nullity of the will. Result: waste of time, effort, expense, plus added anxiety. These are the practical considerations that induce us to a belief that we might as well meet head-on the issue of the validity of the provisions of the will in question. (Section 2, Rule 1, Rules of Court. Case, et al. v. Jugo, et al., 77 Phil. 517,

522). After all, there exists a justifiable controversy crying for solution.'

In the case at bar, this Court finds admitting the will for probate an exercise in futility. Decedent allegedly left 'a yearly amount corresponding to one-third of the proceeds of any and all (ineligible) income from sale of agricultural product after deduction of (ineligible) and legitimate expenses to his '**present wife**.' It is verifiable from the record that petitioner herself admitted having cohabited with decedent while still married to another man, thus:

> '4. Herein petitioner is a Filipino, of legal age, **separated from her husband, and had lived together with the testator as a common law wife since May of 1993**, residing at 145, Pinatubo St., Mandaluyong City.'
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> (Petition, SP No. MCOO-1362, Annex 'A', Motion to Dismiss)

The petitioner is barred from repudiating these admissions absent evidence of palpable mistake in making such admissions (Section 4, Rule 129 of the Revised Rules of Evidence).Article 1028 of the Civil Code provides:

'The prohibitions mentioned in Article 739, concerning donations inter vivos shall apply to testamentary provisions.'

On the other hand, Article 739 reads:

> *'The following donations shall be void:*
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> *(1) Those made between persons who were guilty of adultery or concubinage at the time of the donation;*
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> *(2) Those made between persons found guilty of the same criminal offense, in consideration thereof:*
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> *(3) Those made to a public officer or his wife, descendants and ascendants, by reason of his office.*
>
> *In the case referred to in No. 1, the action for declaration of nullity may be brought by the spouse of the donor or donee; and the guilt of the donor and donee may be proved by preponderance of evidence in the same action.'*

There is no question about the fact of petitioner's prior existing marriage when the decedent allegedly executed his will. There is also no dispute that the petitioner and decedent lived together as husband and wife for almost seven (7) years until his death. This blatant admission made by the petitioner invalidates the disposition of the properties made by the person with whom she had been living in adultery.

The Court takes judicial notice of the fact that petitioner's second petition for probate was dismissed by Branch 212, also on the ground of intrinsic