

THIRD DIVISION

[G.R. No. 140975, December 08, 2000]

**OFELIA HERNANDO BAGUNU, PETITIONER, VS. PASTORA
PIEDAD, RESPONDENT.**

D E C I S I O N

VITUG, J.:

On 28 August 1995, herein petitioner Ofelia Hernando Bagunu moved to intervene in Special Proceedings No. 3652, entitled "In the Matter of the Intestate Proceedings of the Estate of Augusto H. Piedad," pending before the Regional Trial Court ("RTC"), Branch 117, of Pasay City. Asserting entitlement to a share of the estate of the late Augusto H. Piedad, petitioner assailed the finality of the order of the trial court awarding the entire estate to respondent Pastora Piedad contending that the proceedings were tainted with procedural infirmities, including an incomplete publication of the notice of hearing, lack of personal notice to the heirs and creditors, and irregularity in the disbursements of allowances and withdrawals by the administrator of the estate. The trial court denied the motion, prompting petitioner to raise her case to the Court of Appeals. Respondent sought the dismissal of the appeal on the thesis that the issues brought up on appeal only involved pure questions of law. Finding merit in that argument, the appellate court dismissed the appeal, citing Section 2(c) of Rule 41 of the 1997 Revised Rules on Civil Procedure which would require all appeals involving nothing else but questions of law to be raised before the Supreme Court by petition for review on *certiorari* in accordance with Rule 45 thereof and consistently with Circular 2-90 of the Court.

In a well-written resolution, the Court of Appeals belabored the distinctions between questions of law and questions of fact, thus:

"There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts. There is question of fact when the query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevance of specific surrounding circumstances, and their relation to each other and to the whole and the probabilities of the situation."^[1]

Justice Eugenio S. Labitoria, speaking for the appellate court, ratiocinated that whether or not the RTC erred in denying the intervention considering (1) that the intervenor-appellant had a *prima facie* interest over the case, (2) that the jurisdiction over the person of the proper parties was not acquired in view of the deficient publication or notice of hearing, and (3) that the proceedings had yet to be closed and terminated, were issues which did not qualify as "questions of fact" as to

place the appeal within the jurisdiction of the appellate court; thus:

"The issues are evidently pure questions of law because their resolution are based on facts not in dispute. Admitted are the facts that intervenor-appellant is a collateral relative within the fifth degree of Augusto H. Piedad; that she is the daughter of the first cousin of Augusto H. Piedad; that as such, intervenor-appellant seek to inherit from the estate of Augusto H. Piedad; that the notice of hearing was published for three consecutive weeks in a newspaper of general circulation; that there was no order of closure of proceedings that has been issued by the intestate court; and that the intestate court has already issued an order for the transfer of the remaining estate of Augusto H. Piedad to petitioner-appellee.

"These facts are undisputed.

"In this case, there is no doubt nor difference that arise as to the truth or falsehood on alleged facts. The question as to whether intervenor-appellant as a collateral relative within the fifth civil degree, has legal interest in the intestate proceeding which would justify her intervention; the question as to whether the publication of notice of hearing made in this case is defective which would amount to lack of jurisdiction over the persons of the parties and the question as to whether the proceedings has already been terminated when the intestate court issued the order of transfer of the estate of Augusto H. Piedad to petitioner-appellee, in spite the absence of an order of closure of the intestate court, all call for the application and interpretation of the proper law. There is doubt as to what law is applicable on a certain undisputed state of facts.

"The resolution of the issues raised does not require the review of the evidence, nor the credibility of witnesses presented, nor the existence and relevance of specific surrounding circumstances. Resolution on the issues may be had even without going to examination of facts on record."

[2]

Still unsatisfied, petitioner contested the resolution of the appellate court in the instant petition for review on *certiorari*.

The Court finds no reversible error in the ruling of the appellate court. But let us set aside the alleged procedural decrepitude and take on the basic substantive issue. Specifically, can petitioner, a collateral relative of the fifth civil degree, inherit alongside respondent, a collateral relative of the third civil degree? Elsewise stated, does the rule of proximity in intestate succession find application among collateral relatives?

Augusto H. Piedad died without any direct descendants or ascendants. Respondent is the maternal aunt of the decedent, a third-degree relative of the decedent, while petitioner is the daughter of a first cousin of the deceased, or a fifth-degree relative of the decedent.