

SECOND DIVISION

[G.R. No. 187273, February 15, 2017]

ROMEO F. ARA AND WILLIAM A. GARCIA, PETITIONERS, V. DRA. FELY S. PIZARRO AND HENRY ROSSI, RESPONDENTS.

DECISION

LEONEN, J.:

For a claim of filiation to succeed, it must be made within the period allowed, and supported by the evidence required under the Family Code.

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, asking that the Court of Appeals Decision^[1] dated August 1, 2008 and Resolution^[2] dated March 16, 2009, in CA-G.R. CV No. 00729 entitled "*Romeo F. Ara, Ramon A. Garcia, William A. Garcia, and Henry A. Rossi v. Dra. Fely S. Pizarro,*" which modified the Decision^[3] of the Regional Trial Court in Special Civil Action No. 337-03 entitled "*Romeo F. Ara, Ramon A. Garcia, William A. Garcia and Henry A. Rossi vs. Dra. Fely S. Pizarro*" for Judicial Partition, be set aside.

Romeo F. Ara and William A. Garcia (petitioners), and Dra. Fely S. Pizarro and Henry A. Rossi (respondents) all claimed to be children of the late Josefa A. Ara (Josefa), who died on November 18, 2002.^[4]

Petitioners assert that Fely S. Pizarro (Pizarro) was born to Josefa and her then husband, Vicente Salgado (Salgado), who died during World War II.^[5] At some point toward the end of the war, Josefa met and lived with an American soldier by the name of Darwin Gray (Gray).^[6] Romeo F. Ara (Ara) was born from this relationship. Josefa later met a certain Alfredo Garcia (Alfredo), and, from this relationship, gave birth to sons Ramon Garcia (Ramon) and William A. Garcia (Garcia).^[7] Josefa and Alfredo married on January 24, 1952.^[8] After Alfredo passed away, Josefa met an Italian missionary named Frank Rossi, who allegedly fathered Henry Rossi (Rossi).^[9]

Respondent Pizarro claims that, to her knowledge, she is the only child of Josefa.^[10] Further, petitioner Garcia is recorded as a son of a certain Carmen Bucarin and Pedro Garcia, as evidenced by a Certificate of Live Birth dated July 19, 1950;^[11] and petitioner Ara is recorded as a son of spouses Jose Ara and Maria Flores, evidenced by his Certificate of Live Birth.^[12]

Petitioners, together with Ramon and herein respondent Rossi (collectively, plaintiffs *a quo*), verbally sought partition of the properties left by the deceased Josefa, which were in the possession of respondent Pizarro.^[13] The properties are enumerated as follows:

1. Lot and other improvements located at Poblacion, Valencia City, Bukidnon with an area of One Thousand Two Hundred Sixty Eight (1,268) sq. m. in the name of Josefa Salgado covered by Katibayan ng Original na Titulo No. T-30333;
2. Tamaraw FX; and
3. RCBC Bank Passbook in the amount of One Hundred Eight Thousand Pesos (Php 108,000.00) bank deposit.^[14]

Respondent Pizarro refused to partition these properties. Thus, plaintiffs *a quo* referred the dispute to the Barangay Lupon for conciliation and amicable settlement.^[15]

The parties were unable to reach an amicable settlement.^[16] Thus, the Office of the Barangay Captain issued a Certification to File Action dated April 3, 2003.^[17]

Plaintiffs *a quo* filed a Complaint dated April 9, 2003^[18] for judicial partition of properties left by the deceased Josefa, before the Regional Trial Court of Malaybalay City, Branch 9 (Trial Court). In her Answer, respondent Pizarro averred that, to her knowledge, she was the only legitimate and only child of Josefa.^[19] She denied that any of the plaintiffs *a quo* were her siblings, for lack of knowledge or information to form a belief on that matter.^[20] Further, the late Josefa left other properties mostly in the possession of plaintiffs *a quo*, which were omitted in the properties to be partitioned by the trial court in Special Civil Action No. 337-03, enumerated in her counterclaim (Additional Properties).^[21]

Respondent Pizarro filed her Pre-Trial Brief dated July 28, 2003, which contained a proposed stipulation that the Additional Properties also form part of the estate of Josefa.^[22] Amenable to this proposal, plaintiffs *a quo* moved that the Additional Properties be included in the partition, in a Motion to Include in the Partition the Proposed Stipulation dated August 31, 2003.^[23]

At the pre-trial, Ara, Garcia, and Ramon claimed a property of respondent Rossi as part of the estate of Josefa. This property was not alleged nor claimed in the original complaint. This compelled respondent Rossi to engage the services of separate counsel, as the claim of his property constituted a conflict of interest among the plaintiffs *a quo*.^[24]

In a Pre-trial Order issued by the Trial Court on October 1, 2003, the following facts were admitted:

4. All the above mentioned fathers of the children in this case, Mr. Vicente Salgado, Mr. Darwin Grey [sic] and Henry Rosi (sic), are all deceased. Josefa Ara Salgado is also deceased having died on November 18, 2002.
5. The properties mentioned in Paragraph 9 of the counter-claim mentioned in the Answer filed by the defendant thru counsel are also admitted by both counsels to be part of the properties subject of this partition case.
6. The Katibayan Ng Orihinal na Titulo attached thereto as ANNEXES "C"- "C-1", are all admitted as the subject properties.
7. Some properties involved maybe covered by the land reform program of the government and the parties have agreed that only the remainder thereof or

the proceeds of compensation shall be partitioned among them. All these properties shall be properly determined during the inventory to be finally submitted to the Court for approval.

8. All the foregoing properties were acquired after the death of Vicente Salgado and presumably all the exclusive properties of Josefa Ara Salgado.^[25]

After trial, on February 20, 2006, the Trial Court, issued a Decision. The decretal portion states:

WHEREFORE, the Court renders a DECISION as follows:

1. Awarding the Baguio property to Henry Rossi, to be deducted from his share;
2. Awarding the Valencia property covered by OCT No. T- 30333; Tamaraw FX and the RCBC Bank Deposit Passbook to defendant Fely S. Pizarro, to be deducted from her share; and
3. With respect to the other properties that may not be covered by the foregoing, the same are declared under the co-ownership of all the plaintiffs and defendant and in equal shares.

SO ORDERED.^[26]

Respondent Pizarro appealed the Trial Court Decision, claiming it erred in finding petitioners Ara and Garcia to be children of Josefa, and including them in the partition of properties.^[27]

Petitioners Ara and Garcia, as well as respondent Rossi, also filed their own respective appeals to the Trial Court Decision. Respondent Rossi questioned the inclusion of his property in the inventory of properties of the late Josefa.^[28] Petitioners questioned the awarding of particular properties to, and deductions from the respective shares of, respondents Pizarro and Rossi.^[29]

The Court of Appeals,^[30] on August 1, 2008, promulgated its Decision^[31] and held that only respondents Pizarro and Rossi, as well as plaintiff *a quo* Ramon, were the children of the late Josefa, entitled to shares in Josefa's estate:

WHEREFORE, premises considered, the instant Appeals are PARTIALLY GRANTED. The assailed *Decision* dated 20 February 2006, of the court *a quo*, is hereby AFFIRMED with MODIFICATION. The legitimate children of Josefa Ara, namely, Fely Pizarro and Ramon A. Garcia, are each entitled to one (1) share, while Henry Rossi, the illegitimate child of Josefa Ara, is entitled to one-half (1/2) of the share of a legitimate child, of the total properties of the late Josefa Ara sought to be partitioned [.]

. . . .

SO ORDERED.^[32]

In omitting petitioners from the enumeration of Josefa's descendants, the Court of Appeals reversed the finding of the Trial Court. The Court of Appeals found that the

Trial Court erred in allowing petitioners to prove their status as illegitimate sons of Josefa after her death:

In holding that appellants William A. Garcia and Romeo F. Ara are the illegitimate sons of Josefa Ara, the court *a quo* ratiocinated:

Without anymore discussing the validity of their respective birth and baptismal certificates, there is sufficient evidence to hold that all the plaintiffs are indeed the children of the said deceased Josefa Ara for having possessed and enjoyed the status of recognized illegitimate children pursuant to the first paragraph of Article 175 of the Family Code which provides:

"Illegitimate children may establish their filiation in the same way and on the same evidence as legitimate children"

in relation to the second paragraph No. (1) of Article 172 of the same code (sic), which provides:

"In the absence of the foregoing evidence, legitimate filiation shall be proven by:

(1) the open and continuous possession of the status of a legitimate child."

All the plaintiffs and defendant were taken care of and supported by their mother Josefa Ara, including their education, since their respective birth and were all united and lived as one family even up to the death and burial of their said mother, Josefa Ara. Their mother had acknowledged all of them as her children throughout all her life directly, continuously, spontaneously and without concealment.^[33] (Emphasis omitted.)

Petitioners, together with Garcia, and respondent Rossi filed separate Motions for Reconsideration, which were both denied by the Court of Appeals on March 16, 2009.^[34]

Petitioners bring this Petition for Review on Certiorari.^[35]

Respondents Pizarro and Rossi filed their respective Comments on the Petition.^[36] Petitioners filed a Reply to respondents' Comments, as well as a Motion to Submit Parties to DNA Testing,^[37] which this Court denied. Memoranda were submitted by all the parties.

Petitioners argue that the Court of Appeals erroneously applied Article 285 of the Civil Code, which requires that an action for the recognition of natural children be brought during the lifetime of the presumed parents, subject to certain exceptions.^[38] Petitioners assert that during Josefa's lifetime, Josefa acknowledged all of them as her children directly, continuously, spontaneously, and without concealment.^[39]

Petitioners claim that the Court of Appeals did not apply the second paragraph of Article 172 of the Family Code, which states that filiation may be established even

without the record of birth appearing in the civil register, or an admission of filiation in a public or handwritten document.^[40]

Further, petitioners aver that the Court of Appeals erred in its asymmetric application of the rule on establishing filiation. Thus, the Court of Appeals erred in finding that respondent Pizarro was a daughter of Josefa Ara and Vicente Salgado, asserting there was no basis for the same. Petitioners claim that, in her Formal Offer of Exhibits dated May 26, 2005, respondent Pizarro offered as evidence only a Certificate of Marriage of Salgado and Josefa to support her filiation to Josefa.^[41]

On respondent Rossi, petitioners claim that there is no direct evidence to prove his filiation to Josefa, except for his Baptismal Certificate, which was testified to only by respondent Rossi.^[42]

The primordial issue for this Court to resolve is whether petitioners may prove their filiation to Josefa through their open and continuous possession of the status of illegitimate children, found in the second paragraph of Article 172 of the Family Code.

This Petition is denied.

I

On establishing the filiation of illegitimate children, the Family Code provides:

Article 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

Articles 172 and 173 of the Family Code provide:

Article 172. The filiation of legitimate children is established by any of the following:

- (1) The record of birth appearing in the civil register or a final judgment; or
- (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

- (1) The open and continuous possession of the status of a legitimate child; or
- (2) Any other means allowed by the Rules of Court and special laws. (265a, 266a, 267a)