

## THIRD DIVISION

[ G.R. NO. 155555, August 16, 2005 ]

**ISABEL P. PORTUGAL AND JOSE DOUGLAS PORTUGAL JR.,  
PETITIONERS, VS. LEONILA PORTUGAL-BELTRAN, RESPONDENT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

Petitioners Isabel P. Portugal and her son, Jose Douglas Portugal Jr., assail the September 24, 2002<sup>[1]</sup> Decision of the Court of Appeals affirming that of the Regional Trial Court (RTC) of Caloocan City, Branch 124<sup>[2]</sup> which dismissed, after trial, their complaint for **annulment of title** for failure to state a cause of action and lack of jurisdiction.

From the records of the case are gathered the following material allegations - claims of the parties which they sought to prove by testimonial and documentary evidence during the trial of the case:

On November 25, 1942, Jose Q. Portugal (Portugal) married Paz Lazo.<sup>[3]</sup>

On May 22, 1948, Portugal married petitioner Isabel de la Puerta.<sup>[4]</sup>

On September 13, 1949, petitioner Isabel gave birth to a boy whom she named Jose Douglas Portugal Jr., her herein co-petitioner.<sup>[5]</sup>

On April 11, 1950, Paz gave birth to a girl, Aleli,<sup>[6]</sup> later baptized as Leonila Perpetua Aleli Portugal, herein respondent.<sup>[7]</sup>

On May 16, 1968, Portugal and his four (4) siblings executed a Deed of Extra-Judicial Partition and Waiver of Rights<sup>[8]</sup> over the estate of their father, Mariano Portugal, who died intestate on November 2, 1964.<sup>[9]</sup> In the deed, Portugal's siblings waived their rights, interests, and participation over a 155 sq. m. parcel of land located in Caloocan in his favor.<sup>[10]</sup>

On January 2, 1970, the Registry of Deeds for Caloocan City issued Transfer Certificate of Title (TCT) No. 34292 covering the Caloocan parcel of land in the name of "Jose Q. Portugal, **married to Paz C. Lazo.**"<sup>[11]</sup>

On February 18, 1984, Paz died.

On April 21, 1985, Portugal died intestate.

On February 15, 1988, respondent executed an "Affidavit of Adjudication by Sole

Heir of Estate of Deceased Person"<sup>[12]</sup> adjudicating to herself the Caloocan parcel of land. TCT No. 34292/T-172<sup>[13]</sup> in Portugal's name was subsequently cancelled and in its stead TCT No. 159813<sup>[14]</sup> was issued by the Registry of Deeds for Caloocan City on March 9, 1988 in the name of respondent, "Leonila Portugal-Beltran, married to Merardo M. Beltran, Jr."

Later getting wind of the death in 1985 of Portugal and still later of the 1988 transfer by respondent of the title to the Caloocan property in her name, petitioners filed before the RTC of Caloocan City on July 23, 1996 a complaint<sup>[15]</sup> against respondent for annulment of the Affidavit of Adjudication executed by her and the transfer certificate of title issued in her name.

In their complaint, petitioners alleged that respondent is not related whatsoever to the deceased Portugal, hence, not entitled to inherit the Caloocan parcel of land and that she perjured herself when she made false representations in her Affidavit of Adjudication.

Petitioners accordingly prayed that respondent's Affidavit of Adjudication and the TCT in her name be declared void and that the Registry of Deeds for Caloocan be ordered to cancel the TCT in respondent's name and to issue in its stead a new one in their (petitioners') name, and that actual, moral and exemplary damages and attorney's fees and litigation expenses be awarded to them.

Following respondent's filing of her answer, the trial court issued a Pre-Trial Order chronicling, among other things, the **issues** as follows:

- a. Which of the two (2) marriages contracted by the deceased Jose Q. Portugal Sr., is valid?
- b. Which of the plaintiff . . . Jose Portugal Jr. and defendant Leonila P. Beltran is the legal heir of the deceased Jose Q. Portugal Sr.?
- c. Whether or not TCT No. 159813 was issued in due course and can still be contested by plaintiffs.
- d. Whether or not plaintiffs are entitled to their claims under the complaint.<sup>[16]</sup>  
(Underscoring supplied)

After trial, the trial court, by Decision of January 18, 2001,<sup>[17]</sup> after giving an account of the testimonies of the parties and their witnesses and of their documentary evidence, without resolving the issues defined during pre-trial, dismissed the case for **lack of cause of action** on the ground that petitioners' status and right as putative heirs had not been established before a probate (*sic*) court, and **lack of jurisdiction** over the case, citing *Heirs of Guido and Isabel Yaptinchay v. Del Rosario*.<sup>[18]</sup>

In relying on *Heirs of Guido and Isabel Yaptinchay*, the trial court held:

The Heirs of Yaptinchay case arose from facts not dissimilar to the case at bar.

In the instant case, plaintiffs presented a Marriage Contract, a Certificate of Live Birth, pictures (sic) and testimonial evidence to establish their right as heirs of the decedent. Thus, the preliminary act of having a status and right to the estate of the decedent, was sought to be determined herein. However, **the establishment of a status, a right, or a particular fact is remedied through a special proceeding** (Sec. 3(c), Rule 1, 1997 Rules of Court), not an ordinary civil action whereby a party sues another for the enforcement or protection of a right, or the protection or redress of a wrong (*ibid*, a). The operative term in the former is "to establish", while in the latter, it is "to enforce", a right. Their status and right as putative heirs of the decedent not having been established, as yet, the Complaint failed to state a cause of action.

The court, **not being a probate** (*sic*) **court**, is without jurisdiction to rule on plaintiffs' cause to establish their status and right herein. Plaintiffs do not have the personality to sue (Secs. 1 and 2, Rule 3, in relation to Secs. 1 and 2, Rule 2, *supra*).<sup>[19]</sup> (Italics in the original; emphasis and underscoring supplied).

Petitioners thereupon appealed to the Court of Appeals, questioning the trial court's *ratio decedendi* in dismissing the case as diametrically opposed to this Court's following ruling in *Cariño v. Cariño*,<sup>[20]</sup> viz:

Under Article 40 of the Family Code, the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void. Meaning, where the absolute nullity of a previous marriage is sought to be invoked for purposes of contracting a second marriage, the sole basis acceptable in law, for said projected marriage to be free from legal infirmity, is a final judgment declaring the previous void. (*Domingo v. Court of Appeals*, 226 SCRA 572, 579 [1993]) However, for purposes other than remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to the determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even after the death of the parties thereto, and even in a suit not directly instituted to question the validity of said marriage, so long as it is essential to the determination of the case. (*Niñal, et al. v. Bayadog*, GR No. 13378, March 14, 2000). In such cases, evidence must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a previous marriage an absolute nullity. These need not be limited solely to an earlier final judgment of a court declaring such previous marriage void. (*Domingo v. Court of Appeals*, *supra*) (Emphasis and underscoring supplied).

Conceding that the ruling in *Cariño* was promulgated (in 2001) subsequent to that of *Heirs of Guido and Isabel Yaptinchay* (in 1999), the appellate court found *Cariño* to be inapplicable, however, to the case in this wise:

To be borne in mind is the fact that the main issue in the *Cariño* case was the **validity** of the two marriages contracted by the deceased SPO4 Santiago Cariño, whose death benefits was the bone of contention between the two women both named Susan (*viz.*, Susan Nicdao Cariño and Susan Yee Cariño) both of whom he married. It is not disputed in said case that SPO4 S. Cariño contracted two marriages with said two women during his lifetime, and the only question was: which of these two marriages was validly celebrated? The award of the death benefits of the deceased Cariño was thus, merely an **incident** to the question of which of the two marriages was valid. Upon the other hand, the case at bench is of a different milieu. The main issue here is the **annulment of title to property**. The only undisputed fact in this case is that the deceased Jose Portugal, during his lifetime, owned a parcel of land covered by Transfer Certificate of Title (TCT) No. T-34292. However, here come two contending parties, - herein plaintiffs-appellants and defendant-appellee, - both now insisting to be the legal heir(s) of the decedent. x x x. The status and rights of the parties herein have not, therefore, been definitively established, as yet. x x x. Necessarily and naturally, such questions as to such status or right must be properly ventilated in an appropriate special proceeding, not in an ordinary civil action, whereunder a party sues another for the enforcement or protection of a right, or the protection or redress of a wrong. The institution of an ordinary civil suit for that purpose in the present case is thus impermissible. For it is axiomatic that what the law prohibits or forbids directly, it cannot permit or allow indirectly. To permit, or allow, a declaration of heirship, or the establishment of the legitimacy or illegitimacy of a child to be determined in an ordinary civil action, not in an appropriate special proceeding brought for that purpose, is thus to impinge upon this axiom. x x x<sup>[21]</sup> (Emphasis in the original, underscoring supplied).

The appellate court, by Decision of September 24, 2002,<sup>[22]</sup> thus affirmed the trial court's dismissal of the case.

Hence, the present Petition for Review on Certiorari,<sup>[23]</sup> faulting the appellate court to have erred when

I.

. . . it affirmed the RTC decision dismissing the initiatory complaint as it failed to state a cause of action.

II.

. . . (i) it applied the ruling in *Heirs of Guido [and Isabel] Yappingchay* despite the existence of a later and contrary ruling in *Cariño*, and (ii) when the Honorable CA and the lower court **failed to render judgment based on the evidence presented relative to the **issues raised during pre-trial****, . . .<sup>[24]</sup> (Emphasis and underscoring supplied).

Petitioners thus prayed as follows:

WHEREFORE, it is respectfully prayed of this Honorable Supreme Court that the questioned CA decision be reversed, and a new one entered in accordance with the prayers set forth in the instant complaint based on the above disquisition and evidence adduced by petitioners in the court a quo.

IN THE ALTERNATIVE, should the Honorable Supreme Court find that the pronouncements in *Cariño* apply, a decision be entered remanding to the court *a quo* the determination of the issues of which of the two marriages is valid, and the determination of "heirship" and legitimacy of Jose Jr. and Leonila preparatory to the determination of the annulment of title issued in the name of Leonila.

Other relief and remedy just and equitable in the premises are likewise prayed for.<sup>[25]</sup> (Underscoring supplied).

Petitioners, in the main, argue that the appellate court misapplied *Heirs of Guido and Isabel Yaptinchay* and in effect encouraged multiplicity of suits which is discouraged by this Court as a reading of *Cariño* shows; that *Cariño* allows courts to pass on the determination of heirship and the legitimacy or illegitimacy of a child so long as it is necessary to the determination of the case; and that contrary to the appellate court's ruling, they had established their status as compulsory heirs.

In the main, the issue in the present petition is whether petitioners have to institute a special proceeding to determine their status as heirs before they can pursue the case for annulment of respondent's Affidavit of Adjudication and of the TCT issued in her name.

In the above-cited case of *Heirs of Guido and Isabel Yaptinchay*,<sup>[26]</sup> the therein petitioners executed on March 17, 1994 an extrajudicial settlement of the estate of the deceased Guido and Isabel Yaptinchay, "owners-claimants" of the two lots mentioned therein. They later discovered on August 26, 1994 that a portion, if not all, of the two lots had been titled in the name of the therein respondent Golden Bay Realty and Development Corporation which in turn sold portions thereof to the therein individual respondents. The therein petitioners *Heirs* thus filed a complaint for annulment of titles. The therein respondents moved to dismiss the case for failure of the therein petitioners to, *inter alia*, state a cause of action and prove their status as heirs. The trial court granted the motion to dismiss in this wise:

But the plaintiffs who claimed to be the legal heirs of the said Guido and Isabel Yaptinchay have not shown any proof or even a semblance of it-except the allegations that they are the legal heirs of the aforementioned Yaptinchays-that they have been declared the legal heirs of the deceased couple. Now, the determination of who are the legal heirs of the deceased couple must be made in the proper special proceedings in court, and not in an ordinary suit for reconveyance of property. This must take precedence over the action for reconveyance . . .<sup>[27]</sup> (Italics in the original; underscoring supplied).

On petition for certiorari by the Heirs, this Court, albeit holding that the petition was an improper recourse, found that the trial court did not commit grave abuse of discretion in dismissing the case. Citing *Litam et al. v. Rivera*<sup>[28]</sup> and *Solivio v.*