

THIRD DIVISION

[G.R. No. 117740, October 30, 1998]

CAROLINA ABAD GONZALES, PETITIONER, VS. COURT OF APPEALS, HONORIA EMPAYNADO, CECILIA H. ABAD, MARIAN H. ABAD AND ROSEMARIE S. ABAD, RESPONDENTS.

DECISION

ROMERO, J.:

Before us is a petition for certiorari to annul the decision of the Court of Appeals dated October 19, 1994, finding private respondents as the heirs of Ricardo de Mesa Abad as well as annulling petitioners' extra-judicial partition of the decedent's estate.

The facts are as follows:

On April 18, 1972, petitioners Carolina Abad Gonzales, Dolores de Mesa Abad and Cesar de Mesa Tioseco sought the settlement of the intestate estate of their brother, Ricardo de Mesa Abad, before the then Court of First Instance of Manila. In their petition, docketed as Special Proceedings No. 86792, petitioners claimed that they were the only heirs of Ricardo de Mesa Abad, as the latter allegedly died a bachelor, leaving no descendants or ascendants, whether legitimate or illegitimate. On May 9, 1972, petitioners amended their petition by alleging that the real properties covered by TCT Nos. 13530, 53671, and 64021, listed therein as belonging to the decedent, were actually only administered by the latter, the true owner being their late mother, Lucila de Mesa. On June 16, 1972, the trial court appointed Cesar de Mesa Tioseco as administrator of the intestate estate of Ricardo de Mesa Abad.

Meanwhile, on May 2, 1972, petitioners executed an extrajudicial settlement of the estate of their late mother Lucila de Mesa, copying therein the technical descriptions of the lots covered by TCT Nos. 13530, 53671, and 64021. By virtue thereof, the Register of Deeds cancelled the above-mentioned TCTs in the name of Ricardo Abad and issued, in lieu thereof, TCT No. 108482 in the name of Dolores de Mesa Abad, TCT No. 108483 in the name of Cesar de Mesa Tioseco and TCT No. 108484 in the name of Carolina Abad Gonzales. The three promptly executed real estate mortgages over the real properties in favor of Mrs. Josefina Viola, the wife of their counsel, Escolastico Viola.

On July 7, 1972, private respondents Honoria Empaynado, Cecilia Abad Empaynado, and Marian Abad Empaynado filed a motion to set aside proceedings and for leave to file opposition in Special Proceedings No. 86792. In their motion, they alleged that Honoria Empaynado had been the common-law wife of Ricardo Abad for twenty-seven years before his death, or from 1943 to 1971, and that during these period, their union had produced two children, Cecilia Abad Empaynado and Marian Abad Empaynado. Private respondents also disclosed the existence of Rosemarie Abad, a

child allegedly fathered by Ricardo Abad with another woman, Dolores Saracho. As the law awards the entire estate to the surviving children to the exclusion of collateral relatives, private respondents charged petitioners with deliberately concealing the existence of said three children in order to deprive the latter of their rights to the estate of Ricardo Abad.

On July 24, 1972, private respondents filed a motion to withdraw their first motion and, in lieu thereof, filed a motion for reconsideration praying that Cecilia Abad be appointed administrator instead of Cesar Tioseco. The trial court denied private respondents' motion to remove Cesar Tioseco as administrator, but allowed them to appear in the proceedings to establish their right as alleged heirs of Ricardo Abad.

Private respondents later discovered that petitioners had managed to cancel TCT Nos. 13530, 53671, and 64021 through the stratagem of extra-judicially partitioning their mother's estate. Accordingly, on October 4, 1973, private respondents filed a motion to annul the extra-judicial partition executed by petitioners, as well as TCT Nos. 108482, 108483, and 108484, the Torrens titles issued in substitution of TCT Nos. 13530, 53671, and 64021 and the real estate mortgages constituted by the latter on said properties.

After due trial, the lower court, on November 2, 1973, rendered the following judgment:

WHEREFORE, judgment is hereby rendered as follows:

(1) Declaring Cecilia E. Abad, Marian E. Abad and Rosemarie S. Abad acknowledged natural children of the deceased Ricardo M. Abad;

(2) Declaring said acknowledged natural children, namely: Cecilia E. Abad, Marian E. Abad, and Rosemarie S. Abad the only surviving legal heirs of the deceased Ricardo M. Abad and as such entitled to succeed to the entire estate of said deceased, subject to the rights of Honoria Empaynado, if any, as co-owner of any of the property of said estate that may have been acquired thru her joint efforts with the deceased during the period they lived together as husband and wife;

(3) Denying the petition of decedent's collateral relatives, namely: Dolores M. Abad, Cesar M. Tioseco and Carolina M. Abad to be declared as heirs and excluding them from participating in the administration and settlement of the estate of Ricardo Abad;

(4) Appointing Honoria Empaynado as the administratrix in this intestacy with a bond of THIRTY THOUSAND (P30,000.00) PESOS; and

(5) Ordering Cesar Tioseco to surrender to the new administratrix all property or properties, monies and such papers that came into his possession by virtue of his appointment as administrator, which appointment is hereby revoked.^[1]

The trial court, likewise, found in favor of private respondents with respect to the latter's motion for annulment of certain documents. On November 19, 1974, it rendered the following judgment:

WHEREFORE, this Court finds oppositors' Motion for Annulment, dated October 4, 1973 to be meritorious and accordingly -

1. Declares that the six (6) parcels of land described in TCT Nos. 13530, 53671 and 64021, all registered in the name of Ricardo Abad, as replaced by TCT No. 108482 in the name of Dolores de Mesa Abad, TCT No. 108483 in the name of Cesar de Mesa Tioseco and TCT No. 108484 in the name of Carolina de Mesa Abad-Gonzales, and the residential house situated at 2432 Opalo Street, San Andres Subdivision, Manila, to be the properties of the late Ricardo Abad;
2. Declares the deed of Extra Judicial Settlement of the Estate of the Deceased Lucila de Mesa, executed on May 2, 1972 (Doc. No. 445, Page No. 86, Book No. VII, Series of 1972 of the notarial book of Faustino S. Cruz) by petitioners and Carolina de Mesa Abad-Gonzales, to be inexistent and void from the beginning;
3. Declares as null and void the cancellation of TCT Nos. 13530, 53671 and 64021 and issuance in lieu thereof, of TCT Nos. 108482, 108483 and 108484;
4. Orders the Register of Deeds of Manila to cancel TCT No. 108482 of Dolores de Mesa Abad; TCT No. 108483 of Cesar de Mesa Tioseco; and TCT No. 108484 of Carolina de Mesa Abad-Gonzales and in lieu thereof, restore and/or issue the corresponding certificate of title in the name of Ricardo Abad;
5. Declares as inexistent and void from the beginning the three (3) real estate mortgages executed on July 7, 1972 executed by (a) petitioner Dolores de Mesa Abad, identified as Doc. No. 145, Page No. 30, Book No. XX, Series of 1972; (b) petitioner Cesar de Mesa Tioseco, identified as Doc. No. 146, Page 31, Book No. XX, Series of 1972; and (c) Carolina de Mesa Abad-Gonzales, identified as Doc. No. 144, Page No. 30, Book No. XX, Series of 1972, all of the notarial book of Ricardo P. Yap of Manila, in favor of Mrs. Josefina C. Viola, and orders the Register of Deeds of Manila to cancel the registration or annotation thereof from the back of the torrens title of Ricardo Abad; and
6. Orders Atty. Escolastico R. Viola and his law associate and wife, Josefina C. Viola, to surrender to the new administratrix, Honoria Empaynado, TCT Nos. 108482, 108483, and 108484 within five (5) days from receipt hereof.

SO ORDERED. ^[2]

Petitioners' motion for reconsideration of the November 2, 1973 decision was denied by the trial court. Their notice of appeal was likewise denied on the ground that the same had been filed out of time. Because of this ruling, petitioners instituted certiorari and mandamus proceedings with the Court of Appeals, docketed there as C.A.-G.R. No. SP-03268-R. On November 2, 1974, the appellate court granted petitioners' petition and ordered the lower court to give due course to the latter's

appeal. The trial court, however, again dismissed petitioners' appeal on the ground that their record on appeal was filed out of time.

Likewise, on January 4, 1975, petitioners filed their notice of appeal of the November 19, 1974 ruling of the trial court. On March 21, 1975, this appeal was similarly denied on the ground that it had been filed out of time.

Due to the dismissal of their two appeals, petitioners again instituted certiorari and mandamus proceedings with the Court of Appeals, docketed therein as C.A.-G.R. No. SP-04352. The appellate court affirmed the dismissal of the two appeals, prompting petitioners to appeal to the Supreme Court. On July 9, 1985, this Court directed the trial court to give due course to petitioners' appeal from the order of November 2, 1973 declaring private respondents heirs of the deceased Ricardo Abad, and the order dated November 19, 1974, annulling certain documents pertaining to the intestate estate of deceased.

The two appeals were accordingly elevated by the trial court to the appellate court. On October 19, 1994, the Court of Appeals rendered judgment as follows:

WHEREFORE, all the foregoing considered, the instant appeal is DENIED for lack of merit. The orders of the court *a quo* in SP No. 86792, to wit:

1. Order dated November 2, 1973, declaring in substance that Cecilia, Marian and Rosemarie, all surnamed Abad as the acknowledged natural children and the only surviving heirs of the deceased Ricardo Abad;
2. Order dated November 19, 1974, declaring in substance that the six (6) parcels of land described in TCT Nos. 13530, 53671 and 64021 are the properties of Ricardo Abad; that the extra-judicial partition of the estate of the deceased Lucila de Mesa executed on May 2, 1972 is inexistent and void from the beginning; the cancellation of the aforementioned TCTs is null and void; the Register of Deeds be ordered to restore and/or issue the corresponding Certificates of Title in the name of Ricardo Abad; and
3. Order dated March 21, 1975 denying the appeal of Dolores de Mesa Abad and Cesar de Mesa Tioseco from the latter Order, for being filed out of time, are all AFFIRMED *in toto*. With costs against petitioner-appellants.

SO ORDERED. ^[3]

Petitioners now seek to annul the foregoing judgment on the following grounds:

I. THE COURT OF APPEALS AND THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT RESPONDENTS CECILIA E. ABAD, MARIAN E. ABAD AND ROSEMARIE S. ABAD ARE THE ACKNOWLEDGED NATURAL CHILDREN OF THE DECEASED RICARDO DE MESA ABAD.

II. PETITIONERS ARE ENTITLED TO THE SUBJECT ESTATE WHETHER THE SAME IS OWNED BY THE DECEASED RICARDO DE MESA ABAD OR BY