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SECOND DIVISION

[G.R. No. 124099, October 30, 1997]

MANUEL G. REYES, MILA G. REYES, DANILO G. REYES, LYN AGAPE, MARITES AGAPE, ESTABANA GALOLO, AND CELSA AGAPE, PETITIONERS, VS. COURT OF APPEALS AND JULIO VIVARES, RESPONDENTS.

D E C I S I O N

TORRES, JR., J.:

Unless legally flawed, a testator's intention in his last will and testament is its "life and soul" which deserves reverential observance.

The controversy before us deals with such a case.

Petitioners Manuel G. Reyes, Mila G. Reyes, Danilo G. Reyes, Lyn Agape, Marites Agape, Estebana Galolo and Celsa Agape, the oppositors in Special Proceedings No. 112 for the probate of the will of Torcuato J. Reyes, assail in this petition for review the decision of the Court of Appeals[1] dated November 29, 1995, the dispositive portion of which reads:

> "WHEREFORE, premises considered, the judgment appealed from allowing or admitting the will of Torcuato J. Reyes to probate and directing the issuance of Letter Testamentary in favor of petitioner Julio A. Vivares as executor without bond is AFFIRMED but modified in that the declaration that paragraph II of the Torcuato Reyes' last will and testament, including subparagraphs (a) and (b) are null and void for being contrary to law is hereby SET ASIDE, said paragraphs (a) and (b) are declared VALID. Except as above modified, the judgment appealed from is AFFIRMED.
>
> SO ORDERED."[2]

The antecedent facts:

On January 3, 1992, Torcuato J. Reyes executed his last will and testament declaring therein in part, to wit:

> "xxx
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> II. I give and bequeath to my wife Asuncion "Oning" R. Reyes the following properties to wit:

a. All my shares of our personal properties consisting among others of jewelries, coins, antiques, statues, tablewares, furnitures, fixtures and the building;

b. All my shares consisting of one half (1/2) or 50% of all the real estates I own in common with my brother Jose, situated in Municipalities of Mambajao, Mahinog, Guinsiliban, Sagay all in Camiguin; real estates in Lunao, Ginoong, Caamulan, Sugbongcogon, Boloc-Boloc, Kinoguinatan, Balingoan, Sta. Ines, Caesta, Talisayan, all in the province of Misamis Oriental."[3]

The will consisted of two pages and was signed by Torcuato Reyes in the presence of three witnesses: Antonio Veloso, Gloria Borromeo, and Soledad Gaputan. Private respondent Julio A. Vivares was designated the executor and in his default or incapacity, his son Roch Alan S. Vivares.

Reyes died on May 12, 1992 and on May 21, 1992, private respondent filed a petition for probate of the will before the Regional Trial Court of Mambajao, Camiguin. The petitioner was set for hearing and the order was published in the Mindanao Daily Post, a newspaper of general circulation, once a week for three consecutive weeks. Notices were likewise sent to all the persons named in the petition.

On July 21, 1992, the recognized natural children of Torcuato Reyes with Estebana Galolo, namely Manuel, Mila, and Danilo all surnamed Reyes, and the deceased's natural children with Celsa Agape, namely Lyn and Marites Agape, filed an opposition with the following allegations: a) that the last will and testament of Reyes was not executed and attested in accordance with the formalities of law; and b) that Asuncion Reyes Ebarle exerted undue and improper influence upon the testator at the time of the execution of the will. The opposition further averred that Reyes was never married to and could never marry Asuncion Reyes, the woman he claimed to be his wife in the will, because the latter was already married to Lupo Ebarle who was still then alive and their marriage was never annulled. Thus Asuncion can not be a compulsory heir for her open cohabitation with Reyes was violative of public morals.

On July 22, 1992, the trial court issued an ordering declaring that it had acquired jurisdiction over the petition and, therefore, allowed the presentation of evidence. After the presentation of evidence and submission of the respective memoranda, the trial court issued its decision on April 23, 1993.

The trial court declared that the will was executed in accordance with the formalities prescribed by law. It, however, ruled that Asuncion Reyes, based on the testimonies of the witnesses, was never married to the deceased Reyes, and, therefore, their relationship was an adulterous one. Thus:

> "The admission in the will by the testator to the illicit relationship between him and ASUNCION REYES EBARLE who is somebody else's, wife, is further bolstered, strengthened, and confirmed by the direct testimonies of the petitioner himself and his two "attesting" witnesses during the trial.
>
> In both cases, the common denominator is the immoral meretrecious, adulterous and adulterous and illicit relationship existing between the testator and the devisee prior to the death of the testator, which

> constituted the sole and primary consideration for the devise or legacy, thus making the will intrinsically invalid."[4]

The will of Reyes was admitted to probate except for paragraph II (a) and (b) of the will which was declared null and void for being contrary to law and morals. Hence, Julio Vivares filed an appeal before the Court of Appeals with the allegation that the oppositors failed to present any competent evidence that Asuncion Reyes was legally married to another person during the period of her cohabitation with Torcuato Reyes.

On November 29, 1995, the Court of Appeals promulgated the assailed decision which affirmed the trial court's decision admitting the will for probate but the modification that paragraph II including subparagraphs (a) and (b) were declared valid. The appellee court stated:

> "Considering that the oppositors never showed any competent, documentary or otherwise during the trial to show that Asuncion "Oning" Reyes' marriage to the testator was inexistent or void, either because of a pre-existing marriage or adulterous relationship, the trial court gravely erred in striking down paragraph II (a) and (b) of the subject Last Will and Testament, as void for being contrary to law and morals. Said declarations are not sufficient to destroy the presumption of marriage. Nor is it enough to overcome the very declaration of the testator that Asuncion Reyes is his wife."[5]

Dissatisfied with the decision of the Court of Appeals, the oppositors filed this petition for review.

Petitioners contend that the findings and conclusion of the Court of Appeals was contrary to law, public policy and evidence on record. Torcuato Reyes and Asuncion "Oning" Reyes were collateral relatives up to the fourth civil degree. Witness Gloria Borromeo testified that Oning Reyes was her cousin as her mother and the latter's father were sister and brother. They were also nieces of the late Torcuato Reyes. Thus, the purported marriage of the deceased Reyes and Oning Reyes was void ab initio as it was against public policy pursuant to Article 38 (1) of the Family Code. Petitioners further alleged that Oning Reyes was already married to Lupo Ebarle at the time she was cohabiting with the testator hence, she could never contact any valid marriage with the latter. Petitioners argued that the testimonies of the witnesses as well as the personal declaration of the testator, himself, were sufficient to destroy the presumption of marriage. To further support their contention, petitioners attached a copy of the marriage certificate of Asuncion Reyes and Lupo Ebarle.[6]

The petition is devoid of merit.

As a general rule, courts in probate proceedings are limited to pass only upon the extrinsic validity of the will sought to be probated.[7] Thus, the court merely inquires on its due execution, whether or not it complies with the formalities prescribed by law, and the testamentary capacity of the testator. It does not determine nor even by implication prejudge the validity or efficacy of the will's provisions.[8] The intrinsic validity is not considered since the consideration thereof usually comes only after the will has been proved and allowed. There are, however, notable