THIRD DIVISION

G.R. No. 254695 — NELFA DELFIN TRINIDAD, JON WILFRED D. TRINIDAD AND TIMOTHY MARK D. TRINIDAD, Petitioners, **v. SALVADOR G. TRINIDAD, WENCESLAO ROY G. TRINIDAD, ANNA MARIA NATIVIDAD G. TRINIDAD-KUMP, GREGORIO G. TRINIDAD AND PATRICIA MARIA G. TRINIDAD,** Respondents.

Promulgated:

December 6, 2023

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CONCURRING OPINION

CAGUIOA, *J.*:

The Petition[1] here mainly challenges the Court of Appeals' (CA) Decision[2] dated September 17, 2020 and Resolution[3] dated November 27, 2020 in CA-G.R. CV No. 113463 which affirmed the dismissal of Branch 111, Regional Trial Court, Pasay City (RTC) of the petition for probate of the Notarial Last Will and Testament (Will) of Wenceslao B. Trinidad (Wenceslao) on the ground that Wenceslao's children by his first marriage were preterited.

The *ponencia* partly grants the Petition, modifies the CA's Decision and Resolution, and remands the case to the RTC for further proceedings.

I agree with the *ponencia*.

Respondents Salvador G. Trinidad (Salvador), Wenceslao Roy G. Trinidad (Roy), Anna Maria Natividad G. Trinidad-Kump (Anna), Gregorio G. Trinidad (Gregorio), and Patricia Maria G. Trinidad (Patricia) (collectively, respondents) have been completely omitted from inheriting from their father resulting in preterition.

Brief review of the facts

On March 4, 2016, Wenceslao passed away leaving behind his second wife Nelfa Delfin Trinidad (Nelfa) and their two sons, Jon Wilfred D. Trinidad (Jon) and Timothy Mark D. Trinidad (Timothy) (collectively, petitioners) as well as Salvador, Roy, Anna, Gregorio, and Patricia, who are the children of his first marriage. Prior to his death, Wenceslao executed a Will dated August

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1 *Rollo*, pp. 17–39.

2 *Id.* at 40–63. Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Zenaida T. Galapate-Laguilles and Walter S. Ong.

3 *Id.* at 64–65.

24, 2014, where he identified his real and personal properties and disposed of them as follows:

> 1) I am the owner of the following properties:
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> A. A parcel of land, measuring One Thousand Two Hundred Six (1,206) square meters and the improvements therein, and covered by Transfer Certificate of Title No. 146219 of the Registry of Deeds for Pasay City, which I shall hereby refer to as our FAMILY HOME;
> B. A condominium unit located at 415B Jacana, Pico de Loro Cove Condominium, Barangay Papaya, Nasugbu, Batangas, which I shall hereby refer to as the PICO DE LORO CONDOMINIUM UNIT;
> C. A membership share at Pico de Loro Beach and Country Club, which I shall hereby refer to as the PICO DE LORO MEMBERSHIP SHARE;
> D. A one-half (conjugal) share of a parcel of land, measuring Two Hundred (200) Square Meters, and the improvements therein, located at Malibay, Pasay City, and covered by Transfer Certificate of Title No. 003-2012000268 of the Registry of Deeds for Pasay City, which I shall hereby refer to as the MALIBAY PROPERTY; and,
> E. A one-half (conjugal) share of a parcel of land, measuring Five Hundred Seventy One (571) square meters, and the improvements therein, located at the Teachers Bliss Compound, Pasay City, and covered by Transfer Certificate of [T]itle No. 003-2012000146 of the Registry of Deeds for Pasay City, which I shall hereby refer to as the TEACHERS BLISS PROPERTY.
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> 2) That upon my demise, it is my wish and desire to bequeath, grant and devise my properties above-mentioned, as follows:
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> A. To my wife, NELFA DELFIN TRINIDAD, and our two children, JON WILFRED TRINIDAD and TIMOTHY MARK TRINIDAD, our FAMILY HOME, the MALIBAY PROPERTY and the TEACHERS BLISS PROPERTY, in equal shares.
> B. To my wife, NELFA DELFIN TRINIDAD, the PICO DE LORO MEMBERSHIP SHARE; and
> A. To my wife, NELFA DELFIN TRINIDAD, and to ALL MY CHILDREN, namely, ROY WENCESLAO TRINIDAD, ANNA TRINIDAD KUMP, GREGORIO TRINIDAD, PATRICIA TRINIDAD, SALVADOR TRINIDAD, JON WILFRED TRINIDAD and TIMOTHY MARK TRINIDAD, the PICO DE LORO CONDOMINIUM UNIT, in equal shares.
> B. Funds in my bank account upon my death shall first be used to settle estate taxes and legal fees that may be needed for the probate of this will; any remaining balance of which shall be given to my wife.[4]

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[4] *Id.* at 66–67.

A few months after Wenceslao's death, Nelfa filed a petition for probate of his Will before the RTC. However, respondents filed an Opposition claiming that they will receive nothing from their father since the Pico de Loro Condominium Unit bequeathed to them in the Will was actually owned by their uncle. Considering that they were preterited, the Will should be declared void and the petition for its probate be dismissed.

The RTC conducted a hearing to determine ownership of the Pico de Loro Condominium Unit considering that respondents raised preterition. During the evidentiary hearing, Nelfa tried to prove that Wenceslao was the owner of the condominium unit and that respondents were not preterited considering that they already received advances on their legitime from Wenceslao in the amount of PHP 10,000,000.00 each as well as real properties during his lifetime.[5]

Ultimately, the RTC dismissed the petition for probate in view of respondents' preterition. The RTC found that the Pico de Loro Condominium Unit was owned and registered in the name of Monique T. Toda (Monique), a niece of Wenceslao and the daughter of his brother Gregorio "Sonny" B. Trinidad, Jr. (Sonny). Nelfa was not able to prove her allegation that Monique was merely holding the condominium unit in trust for the late Wenceslao. Moreover, respondents presented the sales manager of the Pico de Loro project who assisted Sonny in the purchase of the unit for Monique.[6] Meanwhile, to prove that respondents received advances on their legitime, Nelfa presented a handwritten list with respondent's names and the corresponding amount of money they each received. However, Nelfa admitted that the said list was merely prepared by Wenceslao's secretary and given to her.[7] This could hardly constitute evidence of her claim. Nelfa could not substantiate her claim that respondents had already received various real properties from their father. Thus, the RTC concluded that respondents were preterited.[8]

The CA affirmed the RTC's finding. Hence, the present Rule 45 Petition before the Court which the *ponencia* partly grants.

As I stated at the outset, I concur in the disposition of the case. Respondents were preterited from inheriting from their father, Wenceslao. Moreover, the provision in Wenceslao's Will disposing of the Pico de Loro Condominium Unit is void under Article 930 of the Civil Code. However, considering that the Will contained other devises and legacies in favor of Nelfa, Jon, and Timothy, these remain valid insofar as they do not impair the legitime of respondents. Thus, a remand of the case to the RTC for further proceedings is in order.

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5 *Id.* at 49, CA Decision.
6 *Id.* at 55–56.
7 *Id.* at 46.
8 *Id.* at 53.

Respondents have been completely omitted from inheriting from their father resulting in preterition.

During the deliberations for this case, I submitted that it must be established that respondents **did not receive any inheritance from their father not just by Will, but also through *donation inter vivos* or intestate succession.**

> **Art. 854.** The preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious.

Preterition is the **complete and total omission** of a compulsory heir from the testator's inheritance without the heir's express disinheritance, *viz.*:

> Araceli could not also claim preterition by virtue of the Confirmation Affidavit on the assumption that the disputed two lots pertained to Perfecto's inheritance, he had only three legal heirs and he left Araceli with no share in the two lots. Article 854 of the Civil Code partly provides: "[t]he preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious."
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> As explained by Justice Eduardo P. Caguioa:
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> x x x Preterition consists in the omission in the testator's will of a compulsory heir in the direct line or anyone of them either because they are not mentioned therein or although mentioned they are neither instituted as heir nor expressly disinherited. The act of totally depriving a compulsory heir of his legitime can take place either expressly or tacitly. The express deprivation of the legitime constitutes disinheritance. The tacit deprivation of the same is called preterition. x x x
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> x x x *In order that there be preterition, it is essential that the heir must be totally omitted. This is clear from the wording of this article in conjunction with Article 906.* x x x
>
> . . . .
>
> *Summarizing, therefore, total omission means that the omitted compulsory heir receives nothing under the will, whether as heir, legatee or devisee, has received nothing by way of donation inter vivos or propter [nuptias], and will receive nothing by way of intestate succession.*
>
> Although Araceli was a compulsory heir in the direct descending line, she could not have been preterited. Firstly, Perfecto left no will. As contemplated in Article 854, the presence of a will is necessary. Secondly, before his death, Perfecto had properties in Limon, Rizal which was almost 50 hectares, part of which was developed for residential and agricultural purposes, and in Odiongan. Araceli could not have been totally excluded in

> the inheritance of Perfecto even if she was not allegedly given any share in the disputed two lots.[9] (Emphasis supplied, citations omitted)

As aptly discussed by the *ponencia*, respondents herein were preterited from inheriting from their father. During the evidentiary hearing conducted by the RTC to determine preterition, Nelfa failed to prove that respondents already received substantial sums of money and real properties from their father during his lifetime, as the handwritten list purportedly prepared by Wenceslao's secretary attesting that they each received the amount of PHP 10,000,000.00 from their father as advances on their legitime was not given probative value.[10] Notably, Wenceslao's secretary was not presented during the hearing to attest to the authenticity of the document. It was likewise not shown that respondents acknowledged receipt of the said amounts. Thus, the handwritten list can hardly constitute as proof that respondents received advances on their legitime. As well, Nelfa had no proof on the purported various properties that respondents received from Wenceslao.

The devise of the Pico de Loro property is void under Article 930.

I note that there is a scarcity in case law on the provisions of Articles 930 and 931 of the Civil Code, thus, I take the present case as an opportunity to expound on these provisions.

As discussed in the *ponencia*, Wenceslao was not the owner of the Pico de Loro Condominium Unit; therefore, the devise in his Will pertaining thereto is void by clear mandate of Article 930, *viz.*:

> **Art. 930.** The legacy or devise of a thing belonging to another person is void, if the testator erroneously believed that the thing pertained to him. But if the thing bequeathed, though not belonging to the testator when he made the will, afterwards becomes his, by whatever title, the disposition shall take effect. (862a)

Article 930 makes reference to a device or legacy of a thing which belongs to another person at the time the will was made.[11] As Justice Edgardo L. Paras explained in his book, Article 930 presumes that the testator was ignorant of his non-ownership of the thing bequeathed, *viz.*:

> Had the testator known of his non-ownership, the likelihood is that he would not have given the devise or legacy. *(6 Manresa 665)*
>
> If the gift really does not belong to the testator, the law presumes that the testator was ignorant of his non-ownership. Thus, as long as the gift does not belong to the testator, we can presume the gift to be void. *(See 6 Manresa 665).*[12]

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9 *Mayuga v. Atienza*, 823 Phil. 389, 408–409 (2018) [Per J. Caguioa, Second Division].

10 *Rollo*, pp. 45–46, CA Decision.

11 3 ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 396 (1979).

12 3 EDGARDO L. PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED: WILLS AND Succession 412 (18th ed., 2016).

Thus, if the testator erroneously believed that he was the owner of a thing, but in truth, the same belonged to another, then the devise or legacy pertaining thereto is void.[13]

If, however, the testator was aware that the thing belonged to another at the time of the execution of the will, there are two instances wherein such devise or legacy may be considered valid. As explained by Justice Desiderio P. Jurado, these are: (1) where the testator, subsequent to the execution of the will, acquires the thing from the owner thereof by whatever title; and (2) under Article 931, when the testator orders the thing to be acquired for the legatee or devisee.[14] Article 931 provides:

> **Art. 931.** If the testator orders that a thing belonging to another be acquired in order that it be given to a legatee or devisee, the heir upon whom the obligation is imposed or the estate must acquire it and give the same to the legatee or devisee; but if the owner of the thing refuses to alienate the same, or demands an excessive price therefor, the heir or the estate shall only be obliged to give the just value of the thing. (861a)

Knowledge of non-ownership is clear in Article 931 as the testator states in the will that it is his or her intention that the thing be acquired by his or her heir or estate so that it may be given to the legatee or devisee.

Applying the foregoing provisions to the present case, Wenceslao identified the Pico de Loro Condominium Unit as one the properties he owned and thereafter devised it to his wife Nelfa and all of his children in equal shares. It is clear from the wording of Wenceslao's Will that he had erroneously believed that he was the owner of the Pico de Loro Condominium Unit; thus, the devise thereof in his Will is void under Article 930.

All told, respondents did not receive any inheritance from Wenceslao's Will. They likewise did not receive anything from their father through *donation inter vivos* or intestate succession. Thus respondents have been clearly preterited.

The Will contained other devises and legacies which remain valid so long as the legitimes of respondents are not impaired.

Nevertheless, the annulment of the institution of heirs due to preterition does not always result in the ineffectiveness of the whole will.[15] While respondents did not receive any inheritance from Wenceslao either by will, donation *inter vivos* or intestate succession, as proved during the evidentiary hearing conducted by the RTC, Article 854 also expressly provides that **the devises and legacies in the will shall remain valid insofar as they are not**

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13 *Id.*

14 DESIDERIO P. JURADO, COMMENTS AND JURISPRUDENCE ON SUCCESSION 349 (9th ed., 2009).

15 *Administration of the Estate of Neri v. Akutin*, 74 Phil 185, 191 (1943) [Per J. Moran, First Division].

inofficious. This means that the devises and legacies of the testator must be respected, *viz.*:

> To recapitulate, therefore, the correct rule on the effect of preterition: Preterition abrogates the institution of heir but respects legacies and devises insofar as these do not impair the legitimes. Thus, if the will contains only institutions of heirs and there is preterition, total intestacy will result; *if there are legacies or devises and there is preterition, the legacies or devises will stand, to the extent of the free portion (merely to be reduced, not set aside, if the legitimes are impaired) but the institutions of heirs, if any, will be swept away.*[16] (Emphasis supplied)

The question remains then as to what the phrase "shall be valid insofar as they are not inofficious" implies as applied to the present case? The devises and legacies in Wenceslao's Will are in favor of petitioners, who are also his compulsory heirs. Specifically, Wenceslao devised the Family Home, one-half conjugal shares of the Malibay Property and the Teachers Bliss Property to Nelfa, Timothy, and Jon. He also left as a legacy to Nelfa his Pico de Loro membership shares and all remaining money in his bank account.

Based on Article 914 of the Civil Code, the testator may devise and bequeath the free portion of the estate as he or she may deem fit. Meanwhile, Article 888 reserves one-half of the hereditary estate of the father or mother to the legitime of the legitimate children and descendants and allows the free disposal of the remaining half, subject only to the rights of the illegitimate children and of the surviving spouse.[17] As to the legitime of Nelfa as the surviving spouse of Wenceslao, Article 892 of the Code provides that she is entitled to a portion equal to the legitime of each of the legitimate children or descendants which shall be taken from the portion that may be freely disposed of by the testator.[18] Given the foregoing provisions, Wenceslao could only devise/bequeath the remaining free portion of his estate to petitioners.

In summary, Wenceslao's Will may still be given force and effect to the extent that the devises and legacies in favor of petitioners do not impair the legitimes of respondents. Any reduction should be made in accordance with the provisions of the Civil Code. Particularly, for real property, Articles 912 and 913 provide:

> **Art. 912.** If the devise subject to reduction should consist of real property, which cannot be conveniently divided, it shall go to the devisee if the reduction does not absorb one-half of its value; and in a contrary case,

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16 RUBEN F. BALANE, JOTTINGS AND JURISPRUDENCE IN CIVIL LAW (SUCCESSION) 286 (2016).

17 **Art. 888.** The legitime of legitimate children and descendants consists of one-half of the hereditary estate of the father and of the mother.

The latter may freely dispose of the remaining half, subject to the rights of illegitimate children and of the surviving spouse as hereinafter provided. (808a)

18 **Art. 892.** If only one legitimate child or descendant of the deceased survives, the widow or widower shall be entitled to one-fourth of the hereditary estate. In case of a legal separation, the surviving spouse may inherit if it was the deceased who had given cause for the same.

If there are two or more legitimate children or descendants, the surviving spouse shall be entitled to a portion equal to the legitime of each of the legitimate children or descendants.

In both cases, the legitime of the surviving spouse shall be taken from the portion that can be freely disposed of by the testator. (834a)

> to the compulsory heirs; but the former and the latter shall reimburse each other in cash for what respectively belongs to them.
>
> The devisee who is entitled to a legitime may retain the entire property, provided its value does not exceed that of the disposable portion and of the share pertaining to him as legitime. (821)
>
> **Art. 913.** If the heirs or devisees do not choose to avail themselves of the right granted by the preceding article, any heir or devisee who did not have such right may exercise it; should the latter not make use of it, the property shall be sold at public auction at the instance of any one of the interested parties. (822)

It likewise appears that the nature of the property referred to as the Family Home in the Will has not yet been determined. It is not clear whether the same is part of the conjugal properties of Wenceslao and Nelfa or if it is the exclusive property of Wenceslao. The determination of the nature of this property will affect the legitimes of the parties as well as the reduction to be made of the devise. Thus, these remaining issues necessitate a remand of the case to the trial court.

Based on these premises, I vote to **PARTIALLY GRANT** the Petition and **REMAND** the same to the trial court for further proceedings.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice