EN BANC

G.R. No. 241036 ***(Lucila David and the Heirs of Rene F. Aguas namely: Princess Luren D. Aguas, Danica Lane D. Aguas, Sean Michael D. Aguas and Samantha D. Aguas v. Cherry S. Calilung)***

Promulgated:

January 26, 2021

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SEPARATE OPINION

LAZARO-JAVIER, *J.*:

I concur in the result. I agree for the most part in the reasons given by the learned Justice Edgardo L. Delos Santos. It is my respectful submission though that the *ponencia's* pronouncement that "Aguas heirs can collaterally attack the validity of Rene and Cherry's marriage in the proceedings for the settlement of the estate of Rene," does not bear the weight of *ratio decidendi.*

I find this portion of the *ponencia* to be a legal advice and an *obiter dictum*. To be sure, each of us is not prohibited from inserting *obiter* in our respective *ponencia* – indeed at times *obiter* is important for stylistic effect and overall impact of which I am guilty at times or even many a time. As well, the Court is unfettered to extend gratuitously legal advice that we deem to be guidance to the bench and bar. Besides, it is often necessary to point out the obvious because the obvious often gets lost midstream of a communicative act.

Nonetheless, I would like to impress upon the parties here this caution. In saying that the "Aguas heirs can collaterally attack the validity of Rene and Cherry's marriage in the proceedings for the settlement of the estate of Rene," what we mean is that procedurally this is allowed but it does not mean the challenge will succeed with certainty. I am constrained to add this caution because what is not said may actually say a lot either subtextually or metatextually.

Further, petitioners' basis for claiming the nullity of the marriage of Rene Aguas and Cherry Calilung is Article 53 of the *Family Code* which states:

> ARTICLE 53. Either of the former spouses may marry again after complying with the requirements of the immediately preceding Article; otherwise, the subsequent marriage shall be null and void.

Out of abundance of caution, may I stress that this provision may not be as free-standing as it reads. It must be correlated with Articles 43, 44 and

50 of the *Family Code* and our ruling in ***Diño v. Diño***.[1] I am not going to aver anything more since the issue might become a live one when or if it happens.

Additionally, may I refer to ***Rodriguez v. Rodriguez***[2] to enlighten further on petitioners' options at the trial court going forward.

The *ponencia* held that Lucila David is a stranger to the estate of her former spouse since their marriage had been declared void ab initio. The *ponencia* explained:

> With regard to Lucila, it is interesting to note that Enrico and the Rationale of the Rules only mentioned compulsory or intestate heirs as the ones who could collaterally assail the validity of a marriage in a proceeding for the settlement of the estate of the deceased spouse filed in the regular courts in order protect their successional rights. This would mean then that said remedy or recourse under the law is not available to Lucila since she is not an heir of Rene, her marriage with the deceased having been declared null and void from the very beginning on ground of psychological incapacity in the 2005 Nullity Decision. Lucila is, therefore, considered as a stranger in the estate proceedings with no right to succeed as heir of Rene, thus, she has no standing to participate in the Settlement Proceeding.
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> Concomitantly, Lucila's claim cannot be filed in the Settlement Proceeding. It is well settled that a probate or intestate court cannot adjudicate or determine title to properties claimed to be a part of the estate and which are claimed to belong to outside parties. This is clearly elucidated in the case of Agtarap v. Agtarap (Agtarap)....

The *ponencia* stated the general rule.

However, as it appears that Lucila and her co-petitioners have no adverse interests at least for now, there is no legal obstacle for all of them to submit the settlement of Lucila's proprietary interests to the intestate court. Of course, respondent Cherry Calilung Aguas would be among the parties in the intestate proceedings to respond not only to the status of her marriage with the deceased but also as to her share if any in his estate. In this regard, for the sake of judicial economy and avoiding multiplicity of suits, and in practical terms, of saving the estate from depletion due to legal expenses, it behoves to remind petitioners and respondent that:

> Equally important is the rule that the determination of whether or not a particular matter should be resolved by the Court of First Instance in the exercise of its general jurisdiction or of its limited jurisdiction as a special court (probate, land registration, etc.) is in reality not a jurisdictional question. It is in essence a procedural question involving a mode of practice "which may be waived."
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> Such waiver introduces the exception to the general rule that while the probate court exercises limited jurisdiction, it may settle questions relating to ownership when the claimant and all other parties having legal

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[1] 655 Phil. 175 (2011).
[2] 824 Phil. 1061 (2018).

> interest in the property consent, expressly or impliedly, to the submission of the question to the probate court for adjudgment.
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> Such waiver was evident from the fact that the respondents sought for affirmative relief before the court a quo as they claimed ownership over the funds in the joint account of their father to the exclusion of his co-depositor.
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> In this case, the Court notes that the parties submitted to the jurisdiction of the intestate court in settling the issue of the ownership of the joint account. While respondents filed a Motion to Dismiss, which hypothetically admitted all the allegations in Anita's petition, the same likewise sought affirmative relief from the intestate court. Said affirmative relief is embodied in respondents' claim of ownership over the funds in said joint account to the exclusion of Anita, when in fact said funds in the joint account was neither mentioned nor included in the inventory of the intestate estate of the late Reynaldo. Therefore, respondents impliedly agreed to submit the issue of ownership before the trial court, acting as an intestate court, when they raised an affirmative relief before it. To reiterate, the exercise of the trial court of its limited jurisdiction is not jurisdictional, but procedural; hence, waivable.

For the same reasons, and also for the repose of the deceased, I also endorse to the parties the beauty, clarity and serenity that compromise and alternative dispute resolution would bring.

AMY C. LAZARO-JAVIER
Associate Justice