Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NELFA DELFIN TRINIDAD, JON WILFRED D. TRINIDAD and TIMOTHY MARK D. TRINIDAD, *Petitioners,*	**G.R. No. 254695**
- versus -	Present: CAGUIOA, *J.*, *Chairperson*, INTING, GAERLAN, DIMAAMPAO,* *and* SINGH, *JJ.*
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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DECISION

GAERLAN, *J.*:

Challenged in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Nelfa Delfin Trinidad (Nelfa), Jon Wilfred D. Trinidad (Jon) and Timothy Mark D. Trinidad (Timothy; collectively, petitioners) is the September 17, 2020 Decision[2] and the November 27, 2020 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 113463, which affirmed the Amended Order[4] dated May 15, 2018 of the Regional Trial Court (RTC), Branch 111, Pasay City in Special Proceeding Case No. 16-22665-CV, dismissing the petition for probate of the will on the ground of preterition.

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* On official leave.

1 *Rollo*, pp. 17–37.

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 of the Special Fourth Division, Court of Appeals, Manila.

3 *Id.* at 64–65; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Zenaida T. Galapate-Laguilles and Walter S. Ong of the Former Special Fourth Division, Court of Appeals, Manila.

4 *Id.* at 70–86; penned by Presiding Judge Wilhelmina B. Jorge-Wagan.

The Antecedents

Nelfa, the second and the surviving spouse of Wenceslao B. Trinidad (Wenceslao) filed a petition, dated May 5, 2016, for probate of the notarial will of her late husband (petition for probate). Nelfa averred that on August 24, 2014, Wenceslao, while in a state of sound and disposing mind, voluntarily executed a Notarial Last Will and Testament consisting of four (4) pages (Will). He then died on March 4, 2016.[5]

In the Will, Wenceslao named Atty. Ernestina Bernabe Carbajal as executor. He further named the following as compulsory heirs: (1) Nelfa; (2) Jon; (3) Timothy; (4) Salvador Trinidad (Salvador); (5) Roy Wenceslao Trinidad (Roy); (6) Anna Trinidad Kump (Anna); (7) Gregorio Trinidad (Gregorio); and (8) Patricia Trinidad (Patricia). Through the Will, Wenceslao disposed of real and personal properties with an approximate assessed value of PHP 8,745,190.50.[6] One of the provisions of the Will states:

. . . .

> 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.[7]

Jon and Timothy, children of Nelfa and Wenceslao,[8] intervened in the petition for probate.

Salvador, Roy, Anna, Gregorio, and Patricia (collectively, respondents), the children of Wenceslao with his first wife, opposed the petition for probate. They contended that the Pico De Loro Condominium Unit (condominium unit), which was the only property bequeathed by the testator in their favor, does not belong to the testator.[9] Respondents, therefore, will receive nothing from Wenceslao. They, thus, prayed that the petition be dismissed on the ground of preterition.

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5 *Id.* at 41, CA Decision.
6 *Id.*
7 *Id.* at 67.
8 *Id.* at 72, Amended Order.
9 *Id.*

The RTC Ruling

After trial on the merits, the RTC issued an Amended Order[10] dated May 15, 2018 dismissing the petition for probate on the ground of preterition, to wit:

> **WHEREFORE**, the petition for probate is dismissed in view of the oppositors' preterition or omission as compulsory heirs, without prejudice to intestate settlement of Wenceslao Bayona Trinidad's estate.
>
> **SO ORDERED.**[11] (Emphasis in the original)

In dismissing the petition, the RTC ruled that Nelfa failed to prove that the condominium unit was owned by Wenceslao at the time he executed the Will.[12] On the contrary, respondents, as oppositors in the petition for probate, have proven that the condominium unit is registered in the name of Monique T. Toda (Monique).[13] The RTC, thus, concluded that since the condominium unit, the only property bequeathed and disposed of in favor of respondents, does not belong to Wenceslao, the institution or disposition of such property will result in the preterition or omission of the respondents.[14]

Unsatisfied, petitioners moved for reconsideration. On December 27, 2018, however, the RTC denied the motion for lack of merit.[15]

The CA Ruling

On appeal, the CA affirmed the RTC Decision in its September 17, 2020 Decision.[16] The CA ratiocinated that while respondents were expressly named and instituted as heirs in the Will, petitioners failed to prove that the condominium unit, which is the sole property bequeathed to respondents, belonged to Wenceslao.[17] Since the same does not belong to Wenceslao, the testamentary disposition in his Will could not be given effect. Otherwise stated, respondents, who are compulsory heirs in the direct line, would never inherit the condominium unit from their father Wenceslao leading to preterition.[18] The CA disposed of the case in this wise:

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10 *Id.* at 70–86.
11 *Id.* at 86.
12 *Id.* at 82–83.
13 *Id.* at 83.
14 *Id.* at 83–84
15 *Id.* at 87–88.
16 *Id.* at 40–63.
17 *Id.* at 54.
18 *Id.* at 58.

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The Amended Order dated 15 May 2018 and Order dated 27 December 2018 of the Regional Trial Court of Pasay City, Branch 111 in *SP. Case No. 16-22665-CV* are **AFFIRMED**. Costs against appellants.
>
> **SO ORDERED.**[19] (Emphasis in the original)

Petitioners' motion for reconsideration was denied for lack of merit.[20] Hence, the instant Petition for Review on *Certiorari*.

Issue

> WHETHER OR NOT THE [CA] ERRED IN AFFIRMING THE RTC DECISION WHICH DISMISSED THE PETITION FOR PROBATE AND DISALLOWED THE WILL OF [WENCESLAO] ON THE GROUND OF PRETERITION.[21]

The Court's Ruling

The instant petition is partly meritorious.

In the petition, petitioners insist that Nelfa presented clear evidence that she and Wenceslao bought the condominium unit; and that the condominium unit was held in trust by Monique for Wenceslao, who is the real and beneficial owner. Accordingly, petitioners aver that Wenceslao validly willed the condominium unit in favor of respondents, negating preterition.[22]

Respondents were preterited in the Will

At the outset, settled is the rule that in probate proceedings, the court's area of inquiry is limited to an examination and resolution of the extrinsic validity of the will. By extrinsic validity, the testamentary capacity and the compliance with the formal requisites or solemnities prescribed by law are the only questions presented for the resolution of the court.[23] However, this rule is not inflexible and absolute. The probate court may pass upon the intrinsic validity of the will when so warranted by exceptional circumstances. When practical considerations demand that the intrinsic validity of the will be passed upon even before it is probated, the probate court should meet the issue.[24] This

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19 *Id.* at 60.
20 *Id.* at 64–65.
21 *Id.* at 26.
22 *Id.* at 28–35.
23 *Racca v. Echague*, G.R. No. 237133, January 20, 2021 [Per J. Gesmundo, Second Division].
24 *Morales v. Olondriz*, 780 Phil. 317, 324 (2016) [Per J. Brion, Second Division].

is enunciated in the case of *Nuguid v. Nuguid*[25] *(Nuguid)*, to wit:

> The case is for the probate of a will. The court's area of inquiry is limited — to an examination of, and resolution on, the *extrinsic* validity of the will. The due execution thereof, the testatrix's testamentary capacity, and the compliance with the requisites or solemnities by law prescribed, are the questions *solely* to be represented, and to be acted upon, by the court. Said court — at this stage of the proceedings — is not called upon to rule on the *intrinsic* validity or efficacy of the provisions of the will, the legality of any devise or legacy therein.
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> A peculiar situation is here thrust upon us. The parties shunted aside the question of whether or not the will should be allowed probate. For them, the meat of the case is the intrinsic validity of the will. Normally, this comes only after the court has declared that the will been duly authenticated. But petitioner and oppositors, in the court below and here on appeal, travelled on the issue of law, to wit: Is the will intrinsically a nullity?
>
> We pause to reflect. If the case were to be remanded for probate of the will, nothing will be gained. On the contrary, this litigation will be protracted. And for aught that appears in the record, in the event of probate or if the court rejects the will, probability exists that the case will come once again before us on the same issue of the intrinsic validity or nullity of the will. Result: waste of time, effort, expense, plus added anxiety. These are the practical considerations that induce us to a belief that we might as well meet head-on the issue of the nullity of the provisions of the will in question. After all, there exists a justiciable controversy crying for solution.[26] (Citations omitted)

Similar to *Nuguid*, respondents, in the instant case, assailed the intrinsic validity of the Will. In fact, there appears to be no more dispute over the extrinsic validity of the Will. To recall, respondents only prayed for, before the RTC, the dismissal of the petition for probate on the ground of preterition. This issue became the meat of the case during trial, even on appeal before the CA. To reiterate, where practical considerations demand that the intrinsic validity of the will be passed upon, even before it is probated, the court should meet the issue.[27]

Needless to state, there is a need to resolve this crucial issue of preterition at this stage. Otherwise, the probate proceedings will be a mere "idle ceremony" as the very same issue will certainly arise at a later stage in the execution of the will. Thus, the probate court, in the instant case, correctly conducted a hearing to determine the intrinsic validity of the will by ascertaining the ownership of the condominium unit.

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25 123 Phil. 1305 (1996) [Per J. Sanchez, *En Banc*].

26 *Id.* at 1308–1309.

27 *Balanay v. Hon. Martinez*, 159-A Phil. 178, 723 (1975) [Per J. Aquino, Second Division], citing *Nuguid v. Nuguid, supra.*

To recall, the only property the testator bequeathed and disposed of in favor of the respondents in his Will was the condominium unit. It is, therefore, necessary to determine whether the testator is the owner thereof, giving him the right to dispose of it through a will. Otherwise stated, if Wenceslao was not the owner of the condominium unit, then respondents, who are all compulsory heirs in the direct line, would receive nothing from him, resulting in preterition.

As records reveal, petitioners adduced the following documentary evidence to prove Wenceslao's ownership over the condominium unit: "a.) letter dated [June 3,] 2014 . . . executed by the late Wenceslao demanding that [Monique] sign documents for the purported transfer of the subject property to the former, b.) Security Bank checks . . . payable to Pico de Loro Cove Condominium allegedly representing payments for monthly condominium dues, c.) keys . . . to the subject property, d.) letter dated [May 27,] 2013 . . . executed by the late Wenceslao and [Nelfa] informing the management of Pico de Loro not to allow anybody to use the subject property without their written authorization, and e.) Pico de Loro Beach and Country Club membership cards . . ."[28] After a careful review of the records, this Court agrees with the probate court and the CA that these do not clearly establish Wenceslao's ownership over the condominium unit.

On the contrary, the condominium unit is registered under the name of Monique, the daughter of Gregorio "Sonny" B. Trinidad, Jr. (Sonny), brother of Wenceslao. This fact alone belies petitioners' claim of Wenceslao's ownership.[29]

Furthermore, through the testimony of respondents' witness, Rosanne Jean Gopez (Gopez), formerly an employee of SM Investments, Inc., and used to be in charge of the sale of the Pico de Loro Condominium units, it was established that it was Sonny who she personally dealt with for the sale of the condominium unit.[30] She produced to the court the "AVC's Division-Year-End Report clearly showing that [Monique] was the listed client, who made reservation on [July 23,] 2008 for Hamilo Jacana 2BR-IS 41B unit. She likewise presented the Buyer's Information Sheet, showing [Monique], as the unit owner."[31] Gopez likewise testified that she did the interior design of Monique's condominium unit immediately after the unit was turned over to Sonny.[32]

As things are, petitioners contended that Monique was merely holding the condominium unit in trust for the late Wenceslao. Unfortunately, they miserably failed to prove the same.

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28 *Rollo*, p. 55, CA Decision.
29 *Id.*
30 *Id.*
31 *Id.* at 83, Amended Order.
32 *Id.* at 81.

Article 1444 of the Civil Code reads:

> ARTICLE 1444. No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended.

The essence of an express trust is exhaustively explained in the case of *Goyanko, Jr. v. United Coconut Planters Bank*,[33] to wit:

> A trust, either express or implied, is the fiduciary relationship ". . . between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter." Express or direct trusts are created by the direct and positive acts of the trustor or of the parties. No written words are required to create an express trust. This is clear from Article 1444 of the Civil Code, but, the creation of an express trust must be firmly shown; it cannot be assumed from loose and vague declarations or circumstances capable of other interpretations.[34] (Citations omitted)

Guided by these standards, We hold and so rule that there was no express trust created and existing between Wenceslao and Monique.

Petitioners' bare allegation of the existence of the alleged trust agreement between Wenceslao and Monique for the latter to hold the condominium unit in trust for Wenceslao deserves scant consideration. Without any clear and convincing proof, this allegation remains as such, a mere allegation. It bears stressing that mere allegations are not legally compelling unless proved.[35]

While petitioners presented and offered as evidence a letter dated June 3, 2014,[36] whereby deceased Wenceslao was purportedly demanding that Monique sign all the documents for the transfer of ownership of the condominium unit to the former, this piece of evidence did not help petitioners' case.

Again, the contents of the letters are all self-serving. More importantly, the letter does not establish with such clarity and definiteness the purported trust agreement between Wenceslao and Monique. Simply put, the intention to create an express trust was not firmly established in the letter. To reiterate, the creation of an express trust must be firmly shown; it cannot be assumed from loose and vague declarations or circumstances capable of other interpretations.[37] Accordingly,

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33 703 Phil. 76 (2013) [Per J. Brion, Second Division].

34 *Id.* at 85–86.

35 *Pacific Royal Basic Foods, Inc. v. Noche,* G.R. No. 202392, October 4, 2021 [Per J. Hernando, Second Division].

36 *Rollo*, pp. 56–57.

37 *Goyanko, Jr. v. United Coconut Planters Bank*, 703 Phil. 76, 86 (2013) [Per J. Brion, Second Division].

no express trust can be deduced from the letter.

From the foregoing, we hold and so rule that at the time of Wenceslao's death, he was not the owner of the condominium unit. Since only the property and the transmissible rights and obligations existing at the time of a decedent's death and those which have accrued thereto since the opening of the succession are considered part of the inheritance,[38] Wenceslao could not have bequeathed the condominium unit to respondents through his Will. This is in keeping with the principle that one cannot give what one does not have— *nemo dat quod non habet.*[39]

As things are, Article 854 of the Civil Code defines preterition as the 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. It shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious.

In *Morales v. Olondriz*,[40] this Court exhaustively explained the concept and effect of preterition, thus:

> Preterition consists in the omission of a compulsory heir from the will, either because he is not named or, although he is named as a father, son, etc., he is neither instituted as an heir nor assigned any part of the estate without expressly being disinherited — tacitly depriving the heir of his legitime. Preterition requires that the omission is total, meaning the heir did not also receive any legacies, devises, or advances on his legitime.
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> In other words, preterition is the complete and total omission of a compulsory heir from the testator's inheritance without the heir's express disinheritance.
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> Article 854 of the Civil Code states the legal effects of preterition:
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> > 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.
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> > If the omitted compulsory heirs should die before the testator, the institution shall be effectual, without prejudice to the right of representation.

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38 CIVIL CODE OF THE PHILIPPINES, Article 781.

39 *Odrada v. Lazaro*, 868 Phil. 736, 751–752 (2020) [Per J. Reyes, Jr., First Division].

40 780 Phil. 317 (2016) [Per J. Brion, Second Division].

> Under the Civil Code, the preterition of a compulsory **heir in the direct line** shall annul the institution of heirs, but the devises and legacies shall remain valid insofar as the legitimes are not impaired. Consequently, if a will does not institute any devisees or legatees, the preterition of a compulsory heir in the direct line will result in total intestacy.[41] (Citations omitted)

To recall, in his Will, Wenceslao bequeathed only one property, *i.e.*, the Pico De Loro Condominium Unit in favor of respondents. All the other properties were left to petitioners. As above-discussed, however, this could not be given effect considering that the condominium unit does not belong to him at the time of his death. In effect, respondents will receive nothing from the decedent as there are no other properties bequeathed in their favor. Otherwise stated, though respondents were named as compulsory heirs in the Will, they were not assigned any part of the estate without expressly being disinherited—tacitly depriving the heirs of their legitimes. This is the very essence of preterition.

Furthermore, during the evidentiary hearing to resolve the issue of preterition, Nelfa failed to prove that respondents received a substantial amount of money from Wenceslao during the latter's lifetime.

To recall, when Nelfa testified in court during the evidentiary hearing to resolve the issue of preterition, she averred that Wenceslao, during his lifetime, told her that he gave PHP 10,000,000.00 each to respondents. Nelfa, however, failed to adduce sufficient evidence to prove the same.[42] While she produced a list of the names of the children, who allegedly received the corresponding amounts, she admitted that it was in the handwriting of Wenceslao's secretary and that it was not prepared in her presence. Unfortunately, Wenceslao's secretary was not presented in court to identify and authenticate such list.[43] Without any clear and convincing proof, this allegation remains as such, a mere allegation that is bare and self-serving. It bears stressing that mere allegations are not legally compelling unless proved.[44] We, therefore, cannot fault the RTC for reaching the reasonable conclusion that there was preterition despite Nelfa's allegation that respondents received a substantial amount prior to Wenceslao's demise.

The instant case is similar to the case of *Morales v. Olondriz*[45] *(Morales)*. Therein, a compulsory heir (Francisco) was omitted in the will of the decedent. During the evidentiary hearing to resolve the issue of preterition, petitioner

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41 *Id.* at 322–323.
42 *Rollo*, p. 73, Amended Order.
43 *Id.* at 74.
44 *Pacific Royal Basic Foods, Inc. v. Noche,* G.R. No. 202392, October 4, 2021 [Per J. Hernando, Second Division].
45 780 Phil. 317 (2016).

(Morales) in the probate proceedings failed to appear, effectively waiving her right to present evidence on the issue of preterition. The RTC, after the hearing and without requiring the parties to make an inventory of all the properties of the deceased, thus, observed: (1) that Morales expressly admitted that Francisco is an heir of the decedent; (2) that Francisco was clearly omitted from the will; and (3) that based on the evidentiary hearings, Francisco was clearly preterited. Thus, the RTC ordered the case to proceed in intestacy.[46]

In the instant case, during the evidentiary hearing to resolve the issue of preterition, petitioners adduced evidence trying to prove that respondents were not omitted in the will and that they have already received a substantial amount during Wenceslao's lifetime. As earlier discussed, however, the only property bequeathed to respondents in the will – the condominium unit, does not belong to the decedent but to Monique. Furthermore, petitioners failed to prove by clear and convincing evidence that respondents already received something from Wenceslao prior to the latter's death. It is, therefore, beyond cavil that respondents were preterited in Wenceslao's will.

Moreover, Articles 930[47] and 931[48] of the Civil Code find relevance in this case. As above discussed, Wenceslao is not the owner of the condominium unit. As such, the devise in his Will pertaining thereto is void by clear mandate of Article 930. Moreover, the clear and unambiguous wording of the devise in the Will [49] does not impose on the estate an obligation to acquire the condominium unit so that it may be given to the devisees.

From the foregoing, We conclude that respondents were preterited from the Will.

Despite respondents' preterition, the legacies and devises contained in the Will should be respected and given force and effect in so far

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46 *Id.*

47 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.

48 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.

49 That upon my demise, it is my wish and desire to bequeath, grant and devise my properties abovementioned, as follows:

. . . .

A. To my wife, NELFA DELFIN TRINIDAD, and to ALL MY CHILDREN, namely, ROY WENCESLAO, ANNA TRINIDAD KUMP, GREGORIO TRINIDAD, PATRICIA TRINIDAD, SALVADOR TRINIDAD, JON WILFREDO TRINIDAD and TIMOTHY MARK TRINIDAD, the PICO DE LORO CONDOMINIUM UNIT, in equal shares.

as they are not inofficious or excessive

It bears stressing at this point, however, that the Will contains legacies and devises in favor of petitioners. The entirety of the Will is herein quoted, *viz.*:

LAST WILL AND TESTAMENT
OF
WENCESLAO BAYONA TRINIDAD

KNOW ALL MEN BY THESE PRESENTS:

I, **WENCESLAO BAYONA TRINIDAD**, of legal age, married, a Filipino citizen, and a resident of 2458 Park Avenue, Pasay City, with sound and disposing mind and memory, and not acting under undue influence, violence, fraud, or intimidation of [whatever] kind, do by these presents declare this to be my Last Will and Testament, in English, a language that I speak and write with and of which I am well conversant:

1) I am the owner of the following properties:

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 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.

2) That upon my demise, it is my wish and desire to bequeath, grant and devise my properties above-mentioned, as follows:

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,

C. 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.

D. 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.

3) That for the purpose of rendering this Last Will and Testament effective thru the proper proceeding in Court, I hereby name and constitute ATTY. ERNESTINA BERNABE CARBAJAL, as Executor and Administrator of this Last Will and Testament, and she shall be excused from posting any bond.

4) I hereby revoke, set aside, and annul any other will or testamentary disposition I have made, signed, or proclaimed.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th of August, 2014 at Muntinlupa, Philippines.[50] (Emphasis supplied and italics omitted)

Based on Wencesalo's Will, the Family Home (TCT No. 146219), one-half conjugal share of the Malibay Property (TCT No. 003-2012000268), and one-half conjugal share of the Teachers Bliss Property (TCT No. 003-2012000146) were all bequeathed to Nelfa and their two children, Timothy and Jon. He also leaves to them his Pico de Loro membership shares. Meanwhile, Wenceslao willed all the remaining money in his bank account to Nelfa.

In the early case of *Neri v. Akutin*[51] (*Neri* case), We emphasized that preterition does not automatically result in intestacy, thus:

> The annulment of the institution of heirs in cases of preterition does not always carry with it the ineffectiveness of the whole will. Neither Manresa nor Sanchez Roman nor this court has ever said so. If, aside from the institution of heirs, there are in the will provisions leaving to the heirs so instituted or to other persons some specific properties in the form of legacies or mejoras, such testamentary provisions shall be effective and the legacies and mejoras shall be respected in so far as they are not inofficious or excessive.[52]

The *Neri* case[53] went further and differentiated the concept of the institution of heirs from legacies or betterment. "Institution of heirs is a bequest

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50 *Rollo*, pp. 51–53, CA Decision.
51 74 Phil. 185 (1943) [Per J. Moran, First Division].
52 *Id.* at 191.
53 The applicable law during that period was the Civil Code of Spain.

by universal title of property that is undetermined. On the other hand, legacy refers to specific property bequeathed by a particular or special title."[54]

As above discussed, the Will subject of the petition for probate contains several devises and legacies in favor of petitioners. Following Article 854 of the Civil Code, and the prevailing case law, these should be given force and effect to the extent that they do not impair the legitime of the respondents. Otherwise stated, these devises and legacies should be respected without prejudice, however, to the legitimes that the preterited respondents ought to receive from the estate of the deceased. There is, therefore, a need to determine whether the devises and legacies impair respondents' legitimes, and reduce the same if found inofficious and excessive. Such reduction should comply with the pertinent articles of the Civil Code.[55] As We are not a trier of facts, remanding the case to the probate court for further proceedings is the proper recourse.

All told, while the instant petition is bereft of merit as respondents were indeed preterited from the Will, the dismissal of the Petition for Probate, however, is unwarranted. The devises and legacies remain valid to the extent that the legitimes of the preterited heirs are not impaired. Needless to state, there is a need to remand the case to the probate court not only to determine whether these devises and legacies are inofficious or excessive but also whether there is a need to reduce the same to satisfy the legitimes of respondents.

ACCORDINGLY, in view of the foregoing premises, the instant petition is **PARTIALLY GRANTED**. The Court of Appeals Decision promulgated on September 17, 2020, and the Resolution dated November 27, 2020, in CA-G.R. CV No. 113463 are **MODIFIED**. The Petition for Probate of the Will of Wenceslao B. Trinidad is **REMANDED** to the Regional Trial Court for further proceedings.

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54 74 Phil. 185, 192 (1943) [Per J. Moran, First Division].

55 **Article 911.** After the legitime has been determined in accordance with the three preceding articles, the reduction shall be made as follows:

(1) Donations shall be respected as long as the legitime can be covered, reducing or annulling, if necessary, the devises or legacies made in the will;

(2) The reduction of the devises or legacies shall be pro rata, without any distinction whatever.

If the testator has directed that a certain devise or legacy be paid in preference to others, it shall not suffer any reduction until the latter have been applied in full to the payment of the legitime.

(3) If the devise or legacy consists of a usufruct or life annuity, whose value may be considered greater than that of the disposable portion, the compulsory heirs may choose between complying with the testamentary provision and delivering to the devisee or legatee the part of the inheritance of which the testator could freely dispose.

Article 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, 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.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:

See Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

(On official leave)
JAPAR B. DIMAAMPAO
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice