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**[ G.R. No. 1921. March 14, 1907 ]**

**ALEJANDRA SIGUIONG, PLAINTIFF AND APPELLANT, VS. MANUEL SIGUIONG ET AL., DEFENDANTS AND APPELLEES.**

**D E C I S I O N**

**CARSON, J.:**

This is an application for partition of the estate of Juan (Jose) Siguiong, deceased, and his wife, Juana Tan-Ayco, deceased, in which the plaintiff claims an interest as the legitimized daughter of Jose (Juan), their son.

The judgment rendered by the trial court is as follows:

> "Alejandra Siguiong filed an amended complaint on the 10th of October, 1902, against Manuel Siguiong, Gertrudis Siguiong, and Deogracias Reyes, praying that she be declared to be entitled to the property of Jose Siguiong and Juana Tan-Ayco, who died intestate, and that the defendants be directed to make a partition of the said property, and that Manuel Siguiong be especially directed to account for the administration of the estate of which he had possession.
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> "The plaintiff alleges in support of her claim that she is the legitimate child by subsequent marriage of Jose (Juan) Siguiong, the brother of the defendants Manuel Siguiong and Gertrudis Siguiong, and one Felipe Siguiong, whose interest in the estate had been transmitted to the other defendant, Deogracias Reyes, and that the deceased, Juan (Jose) Siguiong and Juana Tan-Ayco, the parents of the defendants Manuel and Gertrudis and of the assignor to their codefendant Reyes, and grandparents of the plaintiff in this case, died possessed of the real property described in the complaint.
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> "The defendant, Manuel Siguiong, denies that the plaintiff is the legitimate child

of Jose (Juan) Siguiong and alleges that the plaintiff reached legal age in the month of March, 1882, and that since that time, and until the death of her alleged father, Juan Siguiong, and notwithstanding the fact that she had ample time to do so, she did not take any legal steps to secure the recognition of the legitimacy which she now alleges, and prayed that the complaint be dismissed, with the costs against the plaintiff.

"The evidence introduced by her during the trial consists of several sacramental certificates and the testimony of her mother, Maria Lerma, and the witnesses Higinio Samingco and Adriano Roman, as well as her own testimony. From these sacramental certificates it appears that on the 2d day of March, 1859, the plaintiff was baptized in the parish church of Tondo as the legitimate child of Juan Siguiong and Maria Lerma, and that on the twenty-second day of September of the same year, about seven months later, there were married in the parish church of Binondo the said Juan Siguiong and Maria Du-Yujo, who appears to be the person who, according to the first of these two certificates, was registered under the name of Maria Lerma. The other sacramental certificates show the peaceful relations existing between the said Juan Siguiong and the deceased Jose Siguiong and Juana Tan-Ayco. It may be inferred from the testimony that Juan Siguiong and Maria Lerma or Du-Yujo prior to their marriage had a natural child who is the plaintiff in this case, although after their marriage, and perhaps on account of disagreements between the spouses, they lived apart, the plaintiff with her mother, and the deceased, Juan Siguiong, with his brothers or with strangers, he not supporting the mother and child. It further appears from the evidence that the deceased Juan Siguiong never expressly recognized the plaintiff as his natural child and that the plaintiff during the life of her father never sought either in the courts of justice or in any other way to obtain such recognition.

"In view of these facts, and admitting that the plaintiff is the natural child of the deceased, Juan Siguiong, it can not be said that she has ever been legally recognized in such a manner that she acquired the status of a legitimate child by the subsequent marriage of her parents.

"Counsel for the plaintiff contends that her certificate of birth is a legal recognition and sufficient for this purpose, but this contention has been adversely decided in several civil judgments of the supreme court of Spain,

> among others that of the 23d of June, 1858, wherein it was held, 'that a certificate of baptism in which the parents are named is not sufficient proof of the recognition of a natural child,' and the judgment of the 18th of March, 1873, wherein it was held, 'that a mere certificate of baptism is not sufficient proof either in favor of or against paternity.'
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> "Wherefore, the defendant, Manuel Siguiong, is hereby acquitted of the complaint, without special provision as to the costs of these proceedings."

No motion for a new trial was submitted in the court below on the ground that the findings of fact in the foregoing judgment are contrary to the weight of the evidence. We are, therefore, precluded from reviewing the evidence of record to discover errors either of omission or commission in the findings of fact set out in the decision.

The principal question submitted for consideration on this appeal is whether the trial court erred in holding that the plaintiff is not entitled to the status of a legitimized child of Jose (Juan) Siguiong, with the corresponding right of inheritance, it having been proven that the said Jose (Juan) Siguiong was her father; that after her birth her father married her mother; that her baptismal certificate sets out that she was the legitimate daughter of the said Jose (Juan) Siguiong; that he never expressly recognized her as his natural child; and that during his life she never attempted either in the courts of justice or in any other way to secure such express recognition.

The citations in the opinion of the trial court are sufficient to dispose of the contention that the baptismal certificate furnishes satisfactory proof of recognition of paternity by her father; and they are reinforced by the consideration that there is nothing before us which tends to show that the father knew of the existence of this certificate, or had any part in its preparation or execution, and by the further consideration that the certificate falsely set forth that the plaintiff was at the time of its execution the legitimate child of her parents.

It is urged, however, that in accordance with the law in force at the time of the marriage, the paternity of the father having been proven, his subsequent marriage with the mother of his child was in itself sufficient to legitimize such child without any further or other act of recognition.

The doctrine touching the legitimation of children, like the kindred doctrine touching the status of natural children, was originally adopted into the Spanish from the Roman law, with

but slight and unimportant modifications. Thus Law 1, title 13, *Partida* 4, which provided that the subsequent marriage of the father with his *barragana* (concubine) or *sierua* (bond servant) legitimized the children of the father by such *barragana* or *sierua* had prior to the marriage, is substantially identical with the proceeding temporarily introduced by the Emperor Constantine and later permanently adopted into the Roman law, whereby the children of a concubine were legitimized by the subsequent marriage of the father to their mother; so the Roman mode of legitimation by rescript of the prince was adopted in Law 4, title 15, *Partida* 4, and was also applicable to children of *barraganas*, and so Law 5, title 15, *Partida* 4, provided for legitimation of *hijos naturales* (natural children) *per curiae dationan*; Law 6, title 15, *Partida* 4, for legitimation of *hijos naturales* by public document *(carta)*.

Title 14, *Partida* 4, determines who and what *barraganas* were, who could lawfully have, and who could lawfully be *barraganas*, and it will be found upon examination that the status of concubinage thus recognized and the relation of the father to the concubine were such, that originally in the Spanish, as in the Roman law from which the doctrine was adopted, there was no necessity for a formal or tacit recognition on the part of the father of his legitimized children because their paternity could be, and was presumed, substantially as paternity was, and is, presumed in the case of those standing in the relation of husband and wife. (Goyena, *Concordancias del Codigo Civil,* vol. 1, p. 139.)

With the lapse of time, however, customs changed and doubt arose as to the application of these provisions of law; some holding that only those children could be legitimized who were born of *barraganas* living in the house with their fathers, while others were of opinion that the children of any unmarried man by an unmarried woman *(ex solutu et soluta)* might be legitimized.

> "Videtur approbare opinionem Bart. in 1. fin. *D. de concubin*, ut sit necesse, quod ut legitimentur filii per contractum matrimonii, quod nascantur ex concubina, retenta in domo; communior tamen, et verior opinio est, quod sufficiat, quod nascantur ex soluto, et soluta, licet inter eos non sit talis concubinatus, ut dicit Gloss. in cap. *innotuit, de elect.* ubi Joan. And. et tenet Abb. quem vide in dicto cap. *tanta;* et ista lex non est contraria, neque exigit redemptionem in domo: et adde Decium ita consulentem, et allegantem multa, consil. 155." (Law 1, tit. 13, *Partida* 4, note 8, p. 483, *Los Codigos Españoles Concordados y Anotados,* edition 1848.)

Law 11 of Toro was enacted to put an end to doubt as to who should be regarded as natural children and it provided:

> "E porque no se pueda dubdar cuales son fijos naturales, ordenamos e mandamos que entonces se digan ser los fijos naturales, cuando al tiempo que nascieren o fueron concebidos, sus padres podian casar con sus madres justamente, sin dispensacion, con tanto que el padre lo reconozca por su fijo, puesto que no haya tenido la muger de quien lo ovo en su casa ni sea una sola: ca concurriendo en el fijo las calidades susodichas mandamos que sea fijo natural."[1]

The provisions of this law (which were continued in force by the *Nueva Recopilacion* and the *Novisima*) definitely determined the right of children other than children of *barraganas* to the status of "natural children," when it appeared that at the time of their birth or conception the parents could lawfully marry without dispensation, but since in such cases the presumption of paternity arising under the older law as to the children of *barraganas* did not and could not exist, it provided and required recognition of his paternity by the father before the status of a natural child could be maintained.

Since the enactment of Law 11 of Toro, there has never been any question as to the right of natural children, as defined therein, to legitimation as a legal consequence of the marriage of their parents, but our attention has not been directed to any decision of the supreme court of Spain which definitely determines whether the mere act of marriage in itself constitutes such a recognition of paternity as is required by the provisions of that law, or whether in addition thereto it must appear that there was such a recognition of paternity as would entitle the child to the status of a natural child, had the marriage not taken place; and it must be admitted that the learned Spanish law writers and commentators on the codes of Spain have given expression to widely divergent opinions on this much debated question. We think, however, that the reasons which caused the law-maker to require some act of recognition of paternity by the father, either tacit or express, before a child not born of a *barragana* could claim the status and rights of inheritance of a natural child, in like manner required a recognition of paternity by the father before such a child could acquire the status and rights of a legitimized child, and the mere marriage of the parents in such cases can not be held to be such a recognition of a particular individual, because at the time of the marriage there might be children, the fruit of *ante* nuptial illicit relations, of whose existence the father was not even aware, or children claiming to be his children, of whose

existence he might, or might not, be cognizant but whose paternity he did not recognize; in such cases his marriage with their mother could not properly be said to be a recognition of paternity, either tacit or express. The provision of Law 11 of Toro, requiring recognition of paternity by the father, was introduced to secure certainty in a matter as to which, without such recognition, doubt and uncertainty might so readily arise, and this doubt and uncertainty as to paternity of children born out of lawful wedlock is not dispelled by the mere marriage of the putative father to the mother of such children.

The supreme court of Spain in its decision of June 28, 1864, held that as to natural children in cases wherein rights of inheritance are claimed, the claimant, in addition to paternity, must prove some act of recognition by the father, either tacit or express, or that the paternity of the alleged father has been recognized in a solemn declaration or a final judgment of a competent tribunal *(una ejecutoria)*. And this court in discussing Law 11 of Toro in the case of Emilio Buenaventura *vs*. Juana Urbano et al.[1] (4 Off. Gaz., 213) made use of the following language:

> "It will be seen that this law, in a case like the one at bar, requires a recognition on the part of the father before the child acquires the status of a natural child. Under this law the fact that Don Telesforo was the father of the plaintiff gave to the latter no right to be recognized by him as such natural child. The mere fact of birth gave no legal right to the child, and imposed no legal duty upon the father, except, perhaps, in cases arising under the criminal law, which are always considered as being excepted in this opinion. The father was not, prior to the Civil Code, and is not now, bound to recognize his natural son by reason of the mere fact that he is its father. The recognition is and always has been a purely voluntary act on the part of the father. This is not true in regard to the mother. We have already held that, under the law in force prior to the Civil Code, proof of the maternity was sufficient to impose upon the mother the duty of recognizing the child. (Llorente *vs*. Rodriguez,[1] 2 Off. Gaz., 535.) The same thing is provided by article 136 of the Civil Code. But as to the father the question is, and always has been, Has he performed any acts which indicate his intention to recognize the child as his?"

We think that the doctrine laid down in these cases touching natural children applies with at least equal force in the case of legitimized children, who acquire much more extensive and

important hereditary rights than do natural children. To hold otherwise would make possible the admission of fraudulent claims made after the decease of a married couple, based upon an allegation that the claimant was the fruit of illicit relations prior to their marriage, and without any attempt to show that the putative father had ever recognized the claimant as his child or even knew of its existence; and the mere possibility that such claimants might present themselves would cast doubt and confusion on many inheritances, and open wide the door to a form of fraud which the legitimate heirs would find great difficulty in combating.

There is no finding in the judgment of the trial court that the plaintiff was ever recognized expressly or tacitly by the father, as his child, or that his paternity appears in a solemn declaration of a final judgment *(ejecutoria)*, and the burden of proof being on the plaintiff to establish affirmatively some one of these facts, her claim to the status of a legitimized child of her father can not be sustained.

What has been said disposes of all the errors assigned on appeal, except in so far as they undertake to assign a failure on the part of the trial court, "to make the judgment conform to the complaint, the judgment being given as to one defendant only while the complaint is against three." The prayer of the complaint was for the partition and distribution of a certain estate, in which it was alleged the defendants had a joint interest, and plaintiff's right of action was based on the allegation that she is the legitimized daughter of one Jose (Juan) Siguiong. This allegation having been denied by one of the defendants, and the trial court having failed to sustain plaintiff's contention on this point, it is manifest that unless this finding be reversed, the judgment of the court having been against the plaintiff and in favor of one of the defendants, the failure of the court to make an express finding as to the other defendants was, as to the appellant at least, error without prejudice.

The judgment of the trial court should be and is hereby affirmed with the costs of this instance against the appellant.

After the expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter let the case be returned to the court wherein it originated for the necessary action. So ordered.

*Torres, Johnson, Willard,* and *Tracey, JJ.,* concur.

[1] For translation, see p. 139.

[1] 5 Phil. Rep., 1.

[1] 3 Phil. Rep., 697.

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