

[G.R. No. 3257. March 23, 1907]

PETRONA, MARIANO, REGINO, PEDRO, JOSE, AND VICTORIA CAPISTRANO, PLAINTIFFS AND APPELLANTS, VS. THE ESTATE OF JOSEFA GABINO, DECEASED, REPRESENTED BY JUAN FABELLA, EXECUTOR, DEFENDANT AND APPELLEE.

DECISION

TORRES, J.:

Josefa Gabino, a married woman of the age of 84 years, and a resident of the town of Pagsanjan, Province of La Laguna, made and executed her last will and testament, in her own house, at the hour of 11 on the morning of June 22, 1904, in the presence of the witnesses whose names appear signed to the instrument, namely, Roman Abaya, Monico Maceda, and Lorenzo Abordo; the testatrix declared, among other things, in the said will that she had been married two times; that she was first married to Eustaquio Capistrano, the issue of which marriage and union were two daughters, named Damiana and Teresa; that she contracted her second marriage with Juan Salamero, with whom she then lived, and the issue of said second marriage were *three children who all died during infancy*; that during the period of married life with her first husband, Capistrano, neither of them contributed or acquired any property whatsoever and that it was only after the death of her husband and during her widowhood that she acquired a lot in the barrio of Maulauin, of said town; but that during her second marriage she and her husband, Salamero, acquired various properties and, in addition thereto, she had received other properties coming to her from the estate of her deceased mother, Catalina Caballes; that after having set apart the legacies left by her to different persons, together with the bequests mentioned by her in the first clauses of the will, the testatrix named her two daughters *Teresa and Damiana Capistrano as her heirs by force of law*, in accordance with the division of her properties in the manner designated in clause 12 of said will; that she named, as her executors under the will, Juan Fabella and Carlos Soriano, in order that they, said executors, jointly and severally could comply with the obligations of their office under said will; that no bond was to be furnished by said executors by reason of the confidence and trust had in them by the

testatrix.

The original will was filed in court for legalization by the executor under the same; the court, in view of the fact that no opposition or claim whatsoever was made against such legalization, did, on August 9, 1904, enter an order granting the petition of said executor and causing the corresponding letters of administration to be issued to the petitioner, together with that which is mentioned in the aforesaid decree.

During the administration of the estate and pending the compliance with that which was requested and set out by the testatrix in her said will, the brothers and sisters of the testatrix, Petrona, Mariano, Regino, Pedro, Jose, and Victoria, all surnamed Capistrano, filed their petition in court on February 11, 1905, asking that the court order the distribution of all the properties belonging to the said estate, with respect to the bequests of the testatrix to her legatees, valued in the sum of 2,019.80 pesos, and that that part remaining thereafter, valued in the sum of 16,303 pesos, be divided in five parts and adjudicated in two-fifth parts—that is to say, properties of the value of 6,521.20 pesos—to each of the two legitimate daughters of the testatrix, and a one-fifth part—that is to say, properties of the value of 3,260.60 pesos—to the petitioners in the name of Tomas Capistrano; that the actual cash on hand and other properties of the testatrix be divided and adjudicated to the three children of the same and in the same way as should be done with respect to inventoried properties, and that the court should name commissioners for the partition of the estate into five parts and that thereafter two of said parts be adjudicated to each one of the two legitimate daughters, and one part to the petitioners, together with any and all other equitable remedies. This petition alleged, in effect, that all of the plaintiffs were of age and legitimate children of Tomas Capistrano, formerly surnamed Leonardo, until the year 1850 when such surname was ordered changed, with the deceased wife of said Capistrano, Calixta Cabrales; that said Capistrano died intestate on March 4, 1900, leaving as his sole heirs his legitimate children, the petitioners, and two others named Rosa and Enrica; that the deceased Tomas Capistrano was a natural child, a son, and so acknowledged by the testatrix, Josefa Gabino; that she, Josefa Gabino, at the time of making her will made no mention therein of her said natural child, Tomas Capistrano, nor of any of the descendants of said Tomas Capistrano, such failure, however, not being meant in the sense of disinheritance but from the fact that it was a matter of dishonor for a woman to confess her personal weakness in acknowledging that she had had a natural child by an unknown person while single; and stated in what manner the estate left by the testatrix should be divided, and that of the eight said heirs of their father, Tomas Capistrano, one of them named Rosa died without having left any descendants, and that the other, named Enrica, had renounced

in favor of the petitioners that portion corresponding to her inheritance and interest in the estate of her grandmother, the testatrix.

The party defendant answering to the amended complaint denied generally and specifically each and all of the allegations contained in the same and prayed for judgment in defendant's favor, dismissing the amended complaint as against the defendant and praying that the court order the partition of the properties of the estate in the manner determined by the testatrix, together with the costs of the action against the plaintiffs, and any and all other just and equitable remedies.

After proofs of both parties had been duly presented, the court below, after considering the same, rendered its decision in this case on February 5, 1906, in favor of the defendant and without any express mention of the costs herein, from which judgment the plaintiffs, through their attorney, appealed to this court, after having duly furnished a bond.

The action brought by the plaintiffs herein, as has been seen, is that of a petition for inheritance, and based and founded in that the father of the plaintiffs was a natural child of and acknowledged by the deceased testatrix, Josefa Gabino.

All of the allegations contained in the complaint of the plaintiffs have been denied generally and specifically by the executor of the estate of said deceased, and if this is to be considered as has been duly set forth by the court in its decision appealed from, it only remains to consider whether or not the facts alleged by the plaintiffs as a basis for their claims have been proven.

It is a fact, and as such is proven in the record and not questioned by either of the parties herein, that Tomas Capistrano was born and thereafter baptized with the surname Leonardo in January, 1846, and consequently, in accordance with the transitory provisions of the Civil Code, bearing on the filiation of son to father and of the civil status of the said individual (the child), the law applicable to such a case is the law in force before the present Civil Code—that is to say, Law 11 of *Toro*, which afterwards became Law 1, title 5, book 10, of the *Novisima Recopilacion*. That law is as follows:

“And for the purpose of avoiding doubt as to who are natural children, we order and decree that natural children are those, who, at the time of their birth or conception were of fathers who could have married their mothers properly and justly and without dispensation; provided that the father acknowledged such

issue as his child, although he would not have had the woman with whom he had had such relations in his house, or any other one. We decree that the child having the qualifications above mentioned is a natural child.”

It follows then, that in order to consider the plaintiffs as heirs having a share in the estate of the said testatrix by reason of the fact that they are legitimate children of Tomas Capistrano, deceased, it is absolutely indispensable and it must be satisfactorily proven that the said father of the plaintiffs was a natural child of the testatrix, Josefa Gabino, and that he had been tacitly or expressly acknowledged by her as her natural child while single.

But we have here the fact that mere acknowledgment by itself does not make natural children of those who are not such; it is the conditional accomplishment of the status of the natural descendant, and thus the Law of *Toro* defines natural children—that is, those children born of free parents, upon the fundamental ground of the truth and certainty of the filiation as completed by the acknowledgment of such children.

It should be noted also that the law upon which the plaintiffs herein base their pretension to a part of the estate, the subject-matter herein, was enacted, but not put into effect, before the enforcement of the Civil Code, and therefore, can only be taken into consideration with respect to its extension, and in the terms recognized in former legislation; with regard to its practice, duration, and the proceedings necessary to make it of value, the same is subject to the prescriptions of the said Civil Code, in accordance with those provisions contained in rule 4 of the transitory provisions therein set forth.

From a careful examination of the record as well as from what is alleged and proven by both parties, it is necessarily deduced, as was also properly taken into consideration by the court below, that the plaintiffs have not proven completely and satisfactorily that Josefa Gabino, when she was still single, had given birth to a son or child, or that this child was the identical child that was afterwards baptized with the name of Tomas and surnamed Leonardo, or that the said child from its infancy was at all times in the continuous possession of its status as her, Josefa Gabino's, natural child.

The certificate of baptism presented in the case by the plaintiffs, Exhibit G, is not authentic proof that Tomas Leonardo, afterwards known under the surname of Capistrano, is truly a natural child of the deceased Josefa Gabino, and this in conformity with the doctrine established by the supreme court of Spain in its application and interpretation of the provisions of the Civil Code now in force, and identical with the Code of Spain, as set forth

in its many decisions, which decisions, among others, those of June 23, 1858, June 28, 1864, March 18, 1873, April 13, 1894, and July 1, 1895, now firmly fix the jurisprudence of the courts; also in the decision of the same supreme court of November 29, 1886, is held the doctrine that baptism is not the acknowledgment by the father required by Law 1, title 5, book 10, of the *Novisima Recopilacion*.

The silence maintained by the testatrix in her will with respect to the father of the plaintiffs herein and the fact that she bequeathed nothing to them in the will, not even the smallest portion, when mentioning the various legatees therein and bequeathing to such legatees their respective legacies, confirms the conclusion established in the judgment appealed from, in that Tomas Leonardo Capistrano was not the natural child of Josefa Gabino and that the plaintiffs, the children of Tomas Leonardo Capistrano, have no right, in the representation of their father, to any part of the estate of the testatrix.

The father of the plaintiffs, Tomas Leonardo Capistrano Daan, died, and his remains were interred on March 5, 1900, Josefa Gabino then being alive, and not dying until some years thereafter, in 1904; and if it were true that he was the natural child of Josefa Gabino, he should have himself requested that he be acknowledged as such natural child by his supposed mother during her lifetime, as is required by article 137 of the Civil Code. The plaintiffs, the children of the pretended natural child, after the death of their father, they then all being of legal age, could also have taken the necessary action against their grandmother for the acknowledgment by her of the natural filiation of their said father, their supposed grandmother surviving their father for a period of more than three years, and when they did not do this it was only because they themselves did not believe they had the right to bring forward such pretension; the plaintiffs are not included in any of the exceptions set out in the article of the code just cited.

Continuing, with respect to the legal presumption, according to the judgment appealed from, there is established for the first time by article 130 of the Civil Code, a presumption in favor of one who obtains acknowledgment by one only of his parents for the purpose of considering him the natural child of the one person, party to the acknowledgment, if such person at the time of the conception of said child had the legal capacity to contract marriage. Such presumption assumes the acknowledgment of such natural child on the part of the supposed mother or father. But if the parents refuse to make this acknowledgment, or no proofs are presented in support of the facts as expressly provided by law, and applicable especially in the case of the mother, there can exist no such presumption, for the reason that it is absolutely indispensable that the pretending party be the true and real child of the

person to whom is attributed such child's paternity or filiation, and this, once proved, shall give to said child its status in such grade of illegitimacy as it is found. In the present case there is no proof that Tomas Leonardo Capistrano Daan was the son of Josefa Gabino.

Wherefore, by reason of the considerations herein set forth, together with the review of the law and the merits of the case, the judgment appealed from is affirmed, with the costs of this instance against the appellants. After the expiration of twenty days from the date of the notification of this decision let judgment be entered in accordance herewith, and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

Arellano C. J., Johnson, Willard, and Tracey, JJ., concur.

Mapa, J., concurs in the result.