34 Phil. 522

**[ G.R. No. 10474. March 29, 1916 ]**

**FRANCISCO OSORIO Y GARCIA, PLAINTIFF AND APPELLEE, VS. SOLEDAD OSORIO AND VICENTE FERNANDEZ, DEFENDANTS AND APPELLANTS.**

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

**TORRES, J.:**

An appeal by bill of exceptions, raised by counsel for defendants from the judgment of September 10, 1914, in which the Court of First Instance of Cavite held that plaintiff, Francisco Osorio y Garcia, is a natural, recognized son of Francisco Osorio y Reyes and ordered that the defendant spouses recognize plaintiff as a natural son of Francisco Osorio y Reyes, duly entitled to share in the latter's estate in the proportion determined by law, and to the enjoyment of such other rights as are inherent in his said status of natural, recognized son; with the costs against defendants.

On January 29, 1914, counsel for Francisco Osorio y Garcia filed a written complaint in the Court of First Instance of Cavite, in which he alleged that plaintiff is a natural son of one Francisco Osorio y Reyes who died in 1896; that said Francisco Osorio y Garcia has been in continuous possession of the status of natural son of said Osorio y Reyes, as proven by direct acts of the latter and of his family; that the defendant Soledad Osorio is the lawful daughter and lawful heir of said Francisco Osorio y Reyes and is married to Vicente T. Fernandez, for which reason the latter was included as defendant; and that said Francisco Osorio y Reyes left at his death real and personal property, specified and described in the fourth paragraph of the complaint and now in the possession of Soledad Osorio. Said counsel petitioned that as plaintiff was a minor Joaquin Luciano be appointed by the court as his *curator ad litem*; that the defendant Soledad Osorio be ordered to recognize plaintiff as a natural son of said Francisco Osorio y Reyes, deceased, and as entitled to share in his father's estate; and, furthermore, that said defendant be ordered to furnish subsistence to plaintiff in such amount as the court might deem proper to fix.

The demurrer interposed by counsel for defendants to the aforementioned complaint having been overruled, the latter answered denying each and all the facts therein contained, and in special defense alleged that Francisco Osorio y Reyes during his lifetime did not perform any act tending to show his intention to recognize plaintiff, Francisco Osorio, as his natural son; that in no public document, will, or instrument whatever unquestionably executed by Francisco Osorio y Reyes, had the latter recognized plaintiff as his natural son, wherefore the defendant Soledad Osorio is not obliged to recognize him as such. Said counsel therefore prayed the court to render judgment absolving defendants from the complaint, with the costs against plaintiff.

After the hearing and the introduction of evidence by both parties, the judgment aforementioned was rendered, to which defendants excepted and by written motion moved for a reopening of the case and a new trial. This motion was overruled and, the proper bill of exceptions having been filed, the same was approved and forwarded to, the clerk of this court.

This case deals with the claim of the minor Francisco Osorio y Garcia to be recognized as a natural son of Francisco Osorio y Reyes, and we have to determine whether plaintiff has enjoyed the status of natural son who was duly recognized by his father during the latter's lifetime.

There is no question of investigating plaintiff's paternity, and we are confined to deciding whether his father Osorio y Reves did by his acts lead his relatives and other persons not of his kin to believe that he recognized plaintiff as his natural son.

The fact is not to be gainsaid that after Francisco Osorio y Reyes, the father of the defendant Soledad Osorio, became a widower, he maintained intimate relations with ConsolaciOn Garcia y Morillo, an unmarried woman, from which relations the boy Francisco Abdon Osorio y Garcia was born; therefore, pursuant to article 119 of the Civil Code and the provisions of General Orders No. 68 of the year 1899, the child begotten by said widower, Osorio, and the spinster, Consolacion Garcia, should be reputed to be their natural son and, therefore, as capable of being legitimized or recognized by his parents (art. 119, Civ. Code).

It is also an unquestionable fact, as evidenced by the baptismal certificate Exhibit A, issued and attested by the former acting parish priest of the pueblo of Cavite, Father Cecilio Damian, and admitted in evidence at the trial, that on August 13, 1893, the presbyter Pedro Manalac baptized in the parish of Cavite a boy born 15 days before, named Francisco

Abdon, the natural son of Francisco Osorio y Reyes, a widower, and Maria Consolacion Garcia y Morillo, a spinster, the filiation of the baptized child appearing in a document found in the files of said parish and signed by said priest and two witnesses.

Tomasa Osorio, a sister of plaintiff's father, corroborated the fact that the latter, her brother, while living, supported plaintiff and plaintiff's mother; that she and her parents respectively considered plaintiff to be their nephew and grandson; that witness considered plaintiff's mother to be her sister-in-law; and that plaintiff, after the death of his father Francisco Osorio y Reyes, lived in the house of his paternal grandparents and the latter had supported him and provided him with all the necessities of life.

Plaintiff's own grandfather, Antonio Osorio, recognized him as such natural, recognized son of Francisco Osorio y Reyes, and, to make his filiation more manifest, bequeathed a part of his property to him, making the following provision in his will, probated as case No, 456 of the Court of First Instance of Cavite:

> "I also leave to my grandson, Francisco Osorio y Garcia, a natural son of my son Francisco Osorio, deceased, the property * * * (described in the will, Exhibit B.)"

The acts performed by Francisco Osorio are unimpeachable proof that, from the time of his birth, he always considered plaintiff to be his natural son. Plaintiff's natural filiation has been confirmed by his grandfather and by a daughter of his grandfather, a sister of Francisco, his natural father.

In a decision rendered by the supreme court of Spain on June 23, 1902, it was said that:

> "Recognition of the child as a natural child must be made if he has been in continuous possession of his filiation, proven by the attendance of his father at his baptism, in the certificate in which his name and that of his mother appear, though the document contains errors, and by his father's statement to various friends that the boy was his natural son, and by his father's always having attended to the care, education and support of his son."

So that the plaintiff, Francisco Osorio y Garcia, according to the facts proven in this case

and the law on the subject, is entitled to have his half sister Soledad Osorio, a legitimate daughter of the father of both of them, recognize him as being the natural, recognized son of Francisco Osorio y Reyes and as entitled to the rights granted him by law in respect to his deceased father's estate, all of which is in possession of the defendant spouses (agreement, p. 19 of the record).

As for the rest, in view of the fact that appellants took no exception to the order overruling their motion for a new trial, an omission which makes it impossible for this court to review the evidence adduced by the parties, therefore, and conformably to the weight given by the lower court to the evidence, it is by all means proper to affirm the judgment appealed from, and, deeming the errors thereto assigned to have been refuted, we should for the foregoing reasons, affirm, as we do hereby affirm the said judgment, with the costs against appellants. So ordered.

*Arellano, C. J., Johnson,* and *Trent, JJ.,* concur.
*Moreland, J.,* see concurring opinion.

---

CONCURRING OPINION

MORELAND, J.:

I agree to an affirmance of the judgment of the trial court on the grounds that the facts set forth in the judgment fully support the conclusions of law, and that said judgment conforms to the issues raised. No exception whatever having been made to the order denying the motion for a new trial, we cannot examine the evidence.

---

Date created: May 29, 2014