

95 Phil. 396

[ G.R. No. L-6087. July 14, 1954 ]

**LUCIA MISE, PETITIONER AND APPELLEE VS. MERCEDES RODRIGUEZ,  
CLAIMANT AND APPELLANT.**

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

**JUGO, J.:**

On September 7, 1935, the late Perfecto Gabriel executed his last will and testament, which was duly probated, in which he devised a certain parcel of land with the improvements thereon described in Transfer Certificate of Title No. 5280, (now Transfer Certificate of Title No. 14316) located at Nos. 231, 233, and 235 Legarda Street, Sampaloc, Manila, to Soledad Rodriguez, Obdulia Rodriguez, and Lucia Mise, with a proviso that

“Es mi voluntad que, en caso de fallecimiento de cualquiera de mis legatarias Soledad, Obdulia y Lucia sin sucesion legitima, pase a las sobrevivientes la participation de la que falleciere antes en las fincas, objeto de legado, \* \* \*.”

Lucia Mise, relying on the above provision of the will, and alleging that Soledad and Obdulia died without legitimate succession, asked that the shares of Soledad and Obdulia be adjudicated to her so that she would become the sole owner of the above described property. Mercedes Rodriguez opposed said petition on the ground that she was a legitimate successor of Soledad Rodriguez. The whole property was adjudicated by the Court of First Instance of Manila to Lucia Mise by virtue of the above provision. Mercedes appealed to the Court of Appeals which certified the case to this Court for the reason that only a question of

law was raised.

No question as to the validity and efficacy of the above quoted provision of the will was raised in the trial court, or in the Court of Appeals and is not raised in this Court now. The only question presented to this Court by Mercedes is whether or not she is the legitimate successor of Soledad Rodriguez. Obdulia died without any successor. The claim of Mercedes is based on the admitted fact that she and Soledad Rodriguez were the natural daughters of Trinidad Rodriguez, both having had the possession and enjoyment of the status of natural children of Trinidad, without, however, having been duly acknowledged. Mercedes contends that, being the natural sister of Soledad, she is the legitimate and collateral successor of the latter.

Article 945 of the Civil Code provides that "In default of natural ascendants, natural and legitimate children shall be succeeded by their natural brothers and sisters in accordance with the rules established for legitimate brothers and sisters."

In the case of *Puzon vs. Ortega*, (55 Phil, 756, 759), this court held that:

"\* \* \*. Although article 945 of the Civil Code, \* \* \*  
\*, does not mention acknowledgment, such a requirement is understood, since the section under which such article comes is entitled, "Acknowledged Natural Children," and deals with their right to succeed, and has nothing to do with the right of simple natural children who have not been acknowledged." It is clear, therefore, that Mercedes Rodriguez is not a legitimate successor of Soledad Rodriguez, and the testator could not have meant to include her in the phrase "sucesion legitima" in his will.

As already stated, no question has been raised by any party during the course of these proceedings in the Court of First Instance of Manila, in the Court of Appeals, and in this Court, now, as to the validity and efficacy of the above clause of the will.

In view of the foregoing, the order appealed from is affirmed without pronouncement as to costs. So ordered.

*Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.*

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