99 Phil. 960

[G.R. No. L-7210. September 26, 1956]

OLIMPIA OBISPO AND FELICIANO CARPIO, PETITIONERS, VS. REMEDIOS OBISPO, CONRADO ALINEA AND THE COURT OF APPEALS (SECOND DIVISION), RESPONDENTS.

D E C I S I O N

PADILLA, J.:

Remedios Obispo, born out of wedlock on 5 of August 1921, is the daughter of Sebastian Obispo and Fructuosa Labrador who at the time of her conception and birth were free to marry, as in fact they did marry on 4 February 1924 before the justice of the peace of Botolan, Zambales. Sebastian Obispo is one of the children of the late Francisco Obispo and Dorotea Apostol. Sebastian Obispo died on 6 December 1940 and his widowed mother Dorotea Apostol on 15 June 1945. On 12 of August 1940, Dorotea Apostol and her five children with her late husband Francisco Obispo executed a deed of partition not only of the parcels of land which were the exclusive property of her late husband but also those belonging to her as paraphemal (Exhibit A). Parcels No. 2, 3 and 4 described in the complaint belonged exclusively to the late Francisco Obispo, whereas parcels Nos. 1 and 5 also described in the complaint were paraphemal of Dorotea Apostol. In accordance with the partition the live parcels of land were awarded to Sebastian Obispo. On 17 October 1940, Sebastian Obispo executed a deed of donation of eleven parcels of land including the five awarded to him in the deed of partition (Exhibit A) to his wife Fructuosa Labrador and his daughter Remedios Obispo Labrador (Exhibit B). As already stated, on 15 June 1945 Dorotea Apostol died and her daughter Olimpia Obispo commenced proceedings for the probate of a will of her late mother where she was named executrix (Exhibit 1). Remedios Obispo brought an action against Olimpia Obispo to recover possession of five parcels of land, alleging that the second, third and fourth parcels of land described in the complaint were inherited by her from her late father Sebastian Obispo who in turn had inherited them from his late father Francisco, by virtue of a deed of partition executed by the surviving widow and her five children had with her late husband Froncisco Obispo (Exhibit A); and the

first and fifth parcels of land also described in the complaint were inherited by her from her late grandmother Dorotea Apostol, in representation of her late father Sebastian Obispo. After trial, the Court of First Instance of Zambales rendered judgment holding—

> * * * that Remedios Obispo y Labrador was the natural child of the late Sebastian Obispo and Fructuosa Labrador, duly acknowledged and legitimated by the subsequent marriage of her parents, and—as such—is entitled to inherit front both her father and her grandmother, Dorotea Apostol; that the deeds of partition (Exhibit "A") and donation (Exhibit "B") were perfectly valid and binding with respect to Remedios Obispo and her grandmother, Dorotea Apostol, and other children of the latter and with respect to the properties described therein; and that said Remedios Obispo came into possession and became the owner of the said five parcels of land described in the complaint by virtue of said two deeds. The court likewise orders the defendants to return to the plaintiffs the above mentioned five parcels of land and to deliver to the latter thirty cavanes every year or to pay them the plaintiffs) the equivalent market value of P10 a cavan or in all P300 from 1942 until the delivery is made, and to pay the costs of this action.

Olimpia Obispo appealed from the judgment to the Court' of Appeals claiming that Remedios Obispo could t not be deemed legitimated by subsequent marriage because, she was not duly acknowledged by her father in the record of birth, or in a will, nor was she being then a minor acknowledged with judicial approval, as provided for in article 133 of the old Civil Code; that the deed of partition was not legally sufficient to convey and transfer to the parties thereto the possession and ownership of the parcels of land partitioned therein which included parcels of land belonging as paraphernal to Dorotea Apostol, for she could revoke said partition by the execution of a last will and testament. The Court of Appeals affirmed the judgment of the trial court. The defendants come to this Court by way of certiorari to have the judgment of the Court of Appeals reviewed.

In support of their contention that lack of judicial approval of the acknowledgment of minor Remedios Obispo as natural child made under oath on 17 October 1940 before the justice of the peace of Cabangan, Zambales, by her father Sebastian (Exhibit E), prevents

her from acquiring the condition or status of legitimated child by subsequent marriage, the petitioners cite article 121 of the old Civil Code which provides:

> Children shall be considered as legitimated by a subsequent marriage only when they have been acknowledged by the parents before or after the celebration thereof;

the second paragraph of article 133 of the same Code which provides:

> The approval of the court to be granted after hearing the prosecuting officers, shall be necessary to the acknowledgment of a minor, unless such acknowledgment be made in a certificate of birth or in a will;

and the decisions of this Court, to wit: Legarre *vs*. Cuerques, 34 Phil., 221; Madridejo *vs*. De Leon, 55 Phil 1; and In re: Judicial approval of the acknowledgment of Zenaida Jiro Mori, 46 Off. Gaz., 5460.

In Legarre *vs*. Cuerque, supra, and In re: Judicial approval of the acknowledgment of Zenaida Jiri Mori supra, there was no marriage of the natural parents; and an acknowledgment before a notary public was held insufficient. In Madridejo *vs*. De Leon, supra, the marriage of the natural parents alone without an acknowledgment by them of the natural child could not bring about legitimation of the child. For the validity or legality of an acknowledgment of a minor natural child by any of his natural parents, under the provisions of Article 133 of the old Civil Code, judicial approval thereof was necessary. Article 133 of the old Civil Code, comes under Chapter IV, Title V, Book I, that deals with illegitimate children and acknowledgment of natural children, whereas Article 121 of the same Code comes under the preceding chapter that treats of legitimated children. The acknowledgment required in article 121 is not the same as that required in Article 133 when the natural child to be acknowledged is a minor. The acknowledgment under the former article does not need judicial approval. Commenting on this article Manresa says:

> En que forma se ha de hacer el reconocimiento? El Codigo la establece taxativamente en el art. 131, y a el noa remitimos para esta cuestion.

> Pero ;bastara la manifestation a que se refiere el Articulo 67 numero 3.” de la ley del Registro civifl? Segun dicho numero, en las inscripciones de matrimonio deben constar los nombres de los hijos naturales que por el matrimonio se legitiman y que los constrayentes hayan manifestado haber tenido. Esta manifestation, seguida de su insercion en el acta de matrimonid, y de las notas que debe motivar en las respectivas actas de nacimiento, no pueden raenos de considerarse como un reconocimiento formal de los hijos naturales, consignado en forma que merece .fe, por lo cual creemos que es desde luego suficiente a los efectos del art. 121. * * * (Comentarios al Codigo Civil Espanol, Vol. 1, p. 569, 5th ed.)

From this it may be inferred that the judicial approval of an acknowledgment of a minor natural child for the purpose of legitimation by marriage of the natural parents is not necessary. And commenting on Article 133, the same author says:

> Los padres, como dijimos en su lugar, pueden contraer matrimonio, y hacer constar en el acta los nombres de sus hijos naturales que por el matrimonio han de ser legitimados. Hemos considerado este ncto suficiente a los efectos del reconocimiento; pero como no consta hecho ni en el acta de nacimiento, ni en el testamento de los padres si el hijo, o los hijos son menores de edad, como sera lo mas frecuente, se necesitara la aprobacion judicial, con arreglo al art. 133? Parece a primera vista irremediable ese requisito, lo que equevaldria a arrebatar a esos hijos, en muchos casos, algo irreflexivamente, la legitimidad que debia corresponderles. Aunque tenemos la creencia de que el legislador, lo mismo en este articulo que en el 131 y aun en el 121, no tuvo en cuenta la cuestion presentada, debe, en nuestra opinion, resolverse en el sentido mas favorable a los hijos, atendiendo al espiritu del Codigo en la materia, a los principios generales de Derecho, y las razones Qegales siguientes: primera, que la manifestation hecha por los padres en el acta de su matrimonio de tener determinados hijos naturales y querer legitimarlos, debe hacerse constar por nota en las actas de nacimiento de esos hijos, con arreglo a la ley del Registro civil con lo cual, el reconocimiento del menor resultara en el acta de su nacimiento, debiendo asi estimarse cumplido el art. 133; y segunda, que este articulo exige el consentimiento del hijo para ser reconcido como natural solamente; pero no hay articulo alguno considere necesario ese

> consentimiento, o, en su defecto, la aprobacion judicial para ser considerado como legitimo, y la exigencia de tal requisito y consiguiente aplicacion del articulo 133 al caso propuesto, solo conduciria a privar a los hijos en ciertos casos de su condicion de legitimos, por vanas, absurdas e innecesarias exigencias literales de interpretacion. (supra, pp. 595-596.)

We are of the opinion that the acknowledgment under oath of minor Remedios Obispo as natural child of Sebastian Obispo made by the latter on 17 October 1940 before a justice of the peace (Exhibit E) did not need judicial approval for her to acquire the status of legitimated child by the marriage of her natural parents.

As regards the claim that the partition was null and void and of no effect because Dorotea Apostol could not enter into an agreement or contract regarding future inheritance with her children, suffice it to say that, as to the three parcels of land which belonged exclusively to her late spouse Francisco Obispo, said partition was lawful and valid as she did not have any right to said parcels of land except her usufruct as widow which she could waive. As to the first and fifth parcels of land which are paraphernal, the Court of Appeals found:

> * * * We have gone carefully over the evidence of record, and we fully concur with the trial court that each of the heirs of the late Francisco Obispo took possession of their respective shares alloted to them after the execution of the deed of partition (Exhibit A). In fact, it would even appear from the deed of partition itself that some of the heirs have possessed and sold some of their shares even before the execution of the deed of partition. Andres Obispo, another brother of appellant Olimpia, also said that all of the heirs took possession of their respective shares after the execution of the deed of partition. While this witness was presented as a witness for the appellees, his testimony deserves full faith and credit because we find nothing in the evidence of record to show why he took the side of plaintiff Remedios Obispo, his niece, as against defendant Olimpia Obispo, his own sister.
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> We also agree with the findings of the Court below that parcels Nos. 2, 3 and 4, of the complaint, were originally the exclusive property of the late Francisco Obispo, while the other two parcels of land "were the property of the late Dorotea Apostol. Parcels Nos. 2, 3 and 4 are declared in the name of

> Francisco Obispo while parcels Nos. 1 and 5 are declared under the name of Dorotea Apostol. Furthermore, Andres Obispo also testified that parcels Nos. 2, 3 and 4 belonged to his father, Francisco Obispo, and parcels Nos. 1 and 5 to his mother, Dorotea Apostol. We find, therefore, no valid reason why the extrajudicial partition made between Dorotea Apostol and her children had with the late Francisco Obispo, with respect to the estate of said Francisco Obispo, should not be respected. Its due execution is not impugned, and it has always been the tendency in courts, whether sittings as a probate courts or courts of ordinary jurisdiction, to respect the wishes of a deceased or the division made by his heirs, unless the disposition or division is not in accordance with law. With respect to the estate of Dorotea Apostol, such as parcels Nos. 1 and 5 of the complaint, which were also adjudicated in favor of the late Sebastian Obispo in the partition, we agree with counsel for the appellant that, upon the authority of the doctrine laid down by this Court in Maria Reyes *vs*, Anicia Reyes, 45 off. Gaz., April, 1949, p. 1836, the late Dorotea Apostol had the right to revoke the partition insofar as her own properties were concerned as she, in fact, did when she executed her will (Exhibit 1). But she could not deprive her granddaughter, Remedios,. of her just share in the inheritance. The right of Remedios Obispo to represent her father is not affected by the fact that her said father predeceased Dorotea Apostol, because she enjoys the same rights as legitimate children (Article 122, old Civil Code). This is one of the rights appertaining to a legitimated natural child of a descendant who predeceases his own legitimate parent, which is r.ot enjoyed by an acknowledged natural child (Llorente *vs*, Rodriguez, 10 Phil. 595). Since it has not been shown that the apportionment of parcels Nos. 1 and 5 in favor of the late Sebastian Obispo affects the two-thirds, legitlme of the others heirs of Dorotea Apostol, such apportionment should also be respected.

Finding no error in the judgment appealed from, we affirm it, with costs against the petitioners.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Reyes, J. B. L., Endencia, and *Felix, JJ.,* concur.

Date created: October 10, 2014