

[G.R. No. L-8606. December 27, 1956]

INTESTATE ESTATE OF THE LATE BIBIANA OLIVETE. HEIRS OP MARCIANO OLIVETE, PETITIONERS AND APPELLEES VS. RODRIGO O. MATA, OPPOSITOR AND APPELLANT.

D E C I S I O N

LABRADOR, J.:

Appeal from two orders of the Court of First Instance of Nueva Ecija, Hon. Luis N. de Leon, presiding, one for declaration of heirs and adjudicating the properties left by the above-named intestate in their favor and another denying a petition for probate in these proceedings. The case was certified to Us by the Court of Appeals on the ground that only questions of law are involved in the appeal.

Bibiana Olivete died intestate on March 30, 1911, while a resident of Lupao, Nueva Ecija. She was survived by Rodrigo Olivete Mata, her only child and issue, begotten with Candido Mata in August, 1910. Candido Mata was married since the year 1898 to Basilisa Manaliksa, who died in 1927. Candido Mata himself died in 1932. The other relatives of the intestate who survived her are her nephews Mariano Olivete and Antonio Olivete. Mariano died in 1932 and left five children, namely, Marcela, Florencio, Monica, Sixta and Melencio. Antonio is also dead and survived by his widow, Florencia Vda. de Olivete and his children Carina, Ponciano, Juliana and Maximo, all surnamed Olivete.

Rodrigo Olivete Mata, claims to be a recognized natural child of the intestate, as a stipulation was entered into by and between the parties that *he is the only child and issue of Bibiana Olivete*. He introduced in evidence an instrument executed and sworn to before a notary public by Bibiana Olivete, in which she declares that she recognizes Rodrigo Olivete to be her child, begotten by her and the child's father, both being without any legal impediment to marry, but this instrument was denied admission at the trial as incompetent and immaterial. (See Exhibit A and t. s. n., p. 5) But many witnesses for the petitioners testified without contradiction that Candido Mata was married to one Basilisa

Manaliksa from 1898 and that the latter died in 1927.

On the basis of the above facts the trial court held that the stipulation did not have the effect of an admission that Rodrigo Olivete was a recognized natural child, and that the instrument Exhibit A is not competent proof of recognition, as it is not the public document required by Article 131 of the Civil Code. On this appeal, counsel for Rodrigo Olivete contends that as the birth and identity of Rodrigo Olivete as child of the intestate is admitted, and as it is also admitted that the decedent lived with him and sent him to school, the instrument Exhibit A would satisfy such requirement. Counsel for petitioners claim that the argument is incorrect, insisting that Exhibit A is not the public document demanded in Article 131 of the Civil Code of Spain.

The claims and contentions of counsel on either side are beside the decisive point in the controversy. As Candido Mata, the father of Rodrigo Olivete, was a married man at the time Rodrigo was conceived, the latter is an adulterous child, an illegitimate child who may not be acknowledged legally by her mother. In order that an illegitimate child may be legally acknowledged, his parents must be free to marry at the time of his conception. (Article 119, Civil Code of Spain.) The conclusion of the trial court that Rodrigo Olivete Mata was not legally recognized by his mother is therefore correct, but this is so on another legal ground.

A subordinate question raised on the appeal is the refusal of the trial court to consider, in the same intestate proceedings, a petition for the probate of an alleged will of the intestate, supposed to have been newly discovered, and the trial court's direction that separate proceedings be instituted for such purpose. In view of the fact that the decedent died in 1911 (more than 45 years ago) and the oppositor had agreed to the stipulation that Bibiano Olivete died intestate, we find no error in the order of the trial court that another independent proceedings be instituted for the probate of the supposed newly discovered will.

The orders appealed from are affirmed, with costs against appellant.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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