

CATALINA MENDOZA AND RODOLFO PAREJA, PETITIONERS, VS. TEMISTOCLES C. MELLA, RESPONDENT.*G.R. No. L-18752. July 30, 1966*

Ponente: MAKALINTAL, J.

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The Court of Appeals affirmed the judgment of the Court of First Instance of Sorsogon in civil case No. 954, filed by present respondent against petitioners. We gave due course to the instant petition for review by certiorari in view of the question of law involved.

The litigated property is lot No. 3390-B of the Sorsogon cadastre. It was owned originally by Paciano Pareja, who donated it in 1939 to his son Gavino. Gavino disappeared in 1943 and has not been heard of since. According to the Court of Appeals he died that same year. At the time of his disappearance, he was living with his common-law wife Catalina Mendoza and their son Rodolfo, mother and son being the petitioners here.

In 1948 Paciano Pareja sold the lot to Temistocles C. Mella, who notified petitioners in 1952 to vacate the same, they being then and had been since prior to Gavino's disappearance in possession thereof. The notice to vacate went unheeded, whereupon Mella commenced this action in 1955 on the basis of the deed of sale by Paciano Pareja in his favor. Petitioners claim ownership for Rodolfo, first on the ground of succession from his father Gavino, and secondly by adverse possession for more than 10 years.

Both the trial and appellate courts turned down the defenses and rendered judgment for the plaintiff.

Petitioners challenge the findings of said courts that Gavino Pareja died in 1943 and contend that such death is only presumed from his continued absence since the time of his disappearance, and hence should be deemed to have occurred in 1953, or after the lapse of ten years, pursuant to Article 390 of the Civil Code, which provides:

"ART. 390. After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes, except for those of succession.

The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened, (n)"

Respondent in turn calls attention to the fact that the foregoing issue is raised for the first time in this Court and therefore may not be properly considered. The point is well taken. It is significant that nowhere in the decision of the Court of Appeals is there any indication that the applicability or interpretation of Article 390 of the Civil Code had been touched upon by the parties. They seemed to be in agreement that the death of Gavino Pareja occurred in 1943. Indeed, in respondent's memorandum there is quoted a portion of petitioners' brief in the appellate court, pages 4 and 5, as follows:

'1.a.—De acuerdo con el convenio de hechos firmado y sometido por los abogados de las partes, el terreno en cuestion habia sido donado por Paciano Pareja a su hijo Gavino Pareja el año 1939, y este, había fallecido el

año 1943. * * *."

Quoted likewise by respondent are portions of the transcript of testimony at the trials wherein petitioner Catalina Mendoza herself as well as one of her witnesses declared that Gavino Pareja was killed by guerrilleros in January "1942" (sic). And in petitioners' answer to respondent's amended complaint in the Court of First Instance, they alleged that Paciano Pareja could not have validly sold in 1948 the land in question to herein respondent because at that time Rodolfo Pareja was already the owner, having inherited it from the deceased Gavino. If that is so, then obviously, under petitioners' own theory of the case, Gavino's death took place before the sale was executed, at a time when the old Civil Code was still in force.

The next issue is whether or not under the provisions of that Code Rodolfo Pareja may be considered as an acknowledged natural child and consequently entitled to successional rights. The Court of Appeals resolved this issue in the negative on two grounds: first, the only evidence on the matter is Rodolfo's birth certificate, Exhibit 1, which the Court ruled is not proof of acknowledgment; and second, there is no showing that Rodolfo's parents could have married each other when he was conceived.

Only the first ground need be resolved. The birth certificate was disregarded by the appellate court because, it reasoned out, the system of civil registry provided in the old Civil Code (Title XII) was never established in this country (*Samson vs. Corrales Tan*, 48 Phil. 401) and therefore Article 131[*], in so far as it referred to acknowledgment in the record of birth, never became effective. It should be noted, however, that a civil registry law was passed in 1930 (Act No. 3753) containing provisions for the registration of births, including those of illegitimate parentage; and the record of birth under such law, if sufficient in contents for the purpose, would meet the requisites for voluntary recognition even under Article 131. Since Rodolfo was born in 1935, after the registry law was enacted, the question here really is whether or not his birth certificate (Exhibit 1), which is merely a certified copy of the registry record, may be relied upon as sufficient proof of his having been voluntarily recognized. No such reliance, in our judgment, may be placed upon it. While it contains the names of both parents, there is no showing that they signed the original, let alone swore to its contents as required in Section 5 of Act No. 3753 (*Vidaurreaga vs. Court of Appeals*, 91 Phil. 493; *In re Adoption of Lydia Duran*, 92 Phil. 729). For all that might have happened, it was not even they or either of them who furnished the data to be entered in the civil register. Petitioners say that in any event the birth certificate is in the nature of a public document wherein voluntary recognition of a natural child may also be made, according to the same Article 131. True enough, but in such a case there must be a clear statement in the document that the parent recognizes the child as his or her own (*Madridejo vs. De Leon*, 55 Phil. 1) ; and in Exhibit 1 no such statement appears. The claim of voluntary recognition is without basis.

Petitioners' plea of acquisitive prescription cannot be sustained in view of the factual findings by the Court of Appeals that their possession of the disputed property was by tolerance on the part of Paciano Pareja and consequently was not adverse, at least prior to the sale to herein respondent in 1948. Thereafter only seven years had elapsed when the complaint for recovery of possession was filed against them.

Concerning petitioners' claim for the value of the improvements they had placed on the land, alleged by them to be P2,000.00, the Court of Appeals denied the same on the ground that it was offset by the reasonable rentals they were bound to pay since 1952 when for the first time demand for possession was made upon them by respondent. We find no justification to disturb this ruling.

Wherefore the judgment appealed from is affirmed, without pronouncement as to costs.

Concepción, C. J., Reyes, J. B. L., Barrera, Dizon, Regala, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Judgment affirmed.

[*] Article 131, Spanish Civil Code

"Art. 131. The acknowledgment of a natural child must be made in the record of birth, in a will, or in some other public document.

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