

ROSA GUSTILO, PETITIONER, VS. AUGUSTO GUSTILO, JOSE GUSTILO, CARLOS GUSTILO, FE GUSTILO, TINA POBLADOR, REGISTER OF DEEDS OF ILOILO, REHABILITATION FINANCE CORPORATION NOW DEVEL...

G. R. No. L-18038. May 31, 1965

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

When Calixto Gustilo died in May 1952, he was survived by his wife Martina Poblador and their four legitimate children Augusto, Josefa, Carlos and Fe.

It appears that in August 1945, the spouses executed a deed of sale (Exh. "H") to their said children, of almost all of their real properties; and so, in November 1952, Rosa Gustilo, claiming to be an acknowledged natural daughter of Calixto Gustilo, filed this action to annul the sale, and to get the part allegedly corresponding to her, as acknowledged natural daughter, in the estate of Calixto Gustilo. Defendants are his widow and four legitimate children plus two banks, who become mortgagees of some realties conveyed under Exhibit H.

After hearing the parties and considering their evidence, the Court of First Instance of Iloilo rendered judgment declaring that Rosa had been acknowledged as natural daughter by Calixto, and that Exhibit H was fictitious and void. It issued other orders, which, as we see the litigation, become immaterial. Previous to the judgment, the court had decreed the dismissal of the complaint against the two banking institution; and no appeal seems to have been taken therefrom.

Refusing to admit Rosa's claim, the widow and the legitimate children brought the matter to the Court of Appeals; and that court, after due deliberation, reversed the judgment, expressing the opinion that Rosa Gustilo had no interest to protect, nor right to see, because she was not a duly acknowledged natural child.[1]

This is now Rosa's petition for review, which was given due course to resolve the legal issues.

The pertinent facts of the case were accurately described in the decision of Mr. Justice Castro of the Court of Appeals:

"At the trial, she (Rosa) was allowed, over the objection of the defendants, to introduce evidence tending to show that she was begotten in 1898, out of wedlock, by Calixto Gustilo and Teodora Soqueño (both deceased) who, at the time of her conception, could marry each other without legal impediment; that from her birth until the age of 7, she was under the custody of her mother who was supported by Calixto Gustilo; that in 1902 Calixto Gustilo married Martina Poblador; and that at the age of seven she was taken into the custody of the said spouses with whom she lived for almost fifteen years. The evidence for the plaintiff further shows that in the year 1902, she studied at the Zarraga public school while she was staying with the mother of Martina at the poblacion of Zarraga; that she later enrolled at the Colegio de San Jose and at the Colegio de Santa Ana together with her sister Josef a, and all her expenses were borne by Calixto; that all along she was considered a member of the family and addressed by her father as 'Inday' and at times 'Rosa', and was introduced in public

gatherings by Calixto as his daughter; and' that she received the same treatment from her brothers and sisters and her foster mother Martina Poblador. x x x

The items of documentary evidence introduced by the plaintiff are the following:

(1) Exh. A— a marriage certificate which states that on the 8th day of October, 1922, Juan Sumagaysay, 26 years of age, the son of Rufino and Gregorio Sebusa, resident of Leganes, Iloilo, was married to Rosa Gustilo, 23 years of age, daughter of Calixto Gustilo and Teodora Soqueño.

(2) Exh. B— a letter of Calixto Gustilo addressed to Rosa, and dated February 12, 1917, pertinent part of which reads: 'Señorita Rosa Gustilo y su hermana Josefa, Queridas hijas: x x x Conservamas buenas que es siempre el deseo de tu padre (Fdo.) CALIXTO GUSTILO.

(3) Exh. C— a letter of Augusto Gustilo to Rosa Gustilo dated September 5, 1918 which in part says: 'Senorita Rossa Gustilo Colegio, Santa Ana, Molo, Iloilo, Islas Filipinas, Mis muy queridas Hermanas: x x x Vuestro hermano que es quiere (Fdo.) AUGUSTO GUSTILO.

(4) Exh. V— a letter of Augusto Gustilo to Rosa dated February 1, 1920, which in part says: 'Señorita Rosa Gustilo, Zarraga, Iloilo

(5) Exh. E— a motion filed by Augusto Gustilo with the Court in behalf of Rosa, dated December 10, 1945, which in part reads 'Rosa Gustilo, my sister, is the registered owner of Lot 9500 of the Cadastral Survey of Santa Barbara, now Zarraga. x x x (Fdo.) AUGUSTO GUSTILO.

(6) Exh. F—a deed of donation executed by Calixto Gustilo himself in favor of Rosa in a public document, duly accepted by the latter in the same document, which states in substance that in consideration of the donation the donee will renounce her participation in his estate after his death."

Under the facts set out in the first paragraph above quoted, Rosa Gustilo could conceivably have filed an action for compulsory recognition under Art. 283 of the New Civil Code[[2]] alleging continuous possession of the status of a natural child of Calixto Gustilo by direct acts of the latter or of his family; but as she did not file such action before his death, she is now precluded from bringing it, inasmuch as she was already mature [54] when Calixto died: and she did not claim (nor prove) to have discovered after his death some document actually recognizing her.[3]

Therefore, this action may not be entertained as an action to compel recognition. It must be regarded as an action by a recognized natural child to enforce her rights as such. As the Court of Appeals has stated, the only provision of law upon which Rosa may now rest her claim is Art 278 of the New Civil Code, [4]which reads as follows:

"Art. 278.—Recognition shall be made in the record of birth, a will, a statement before a court of record, or in any authentic writing (131a)".

Admittedly, plaintiff, has not been recognized in a record of birth, nor in a will; but she rests her claim to filiation on the strength of either a statement before a court of record or statements in an authentic writing. It must be obvious that such statement, to be effective, must be one made by Calixto himself; and that the writing must be the writing of Calixto.

Let us now examine the documents presented.

Exh. A—the certificate of marriage of Rosa Gustilo with Juan Sumagaysay, stating she was the daughter of Calixto Gustilo and Teodora Soqueño.

As it does not appear that this has been signed by Calixto [5]—it is not enough.[[6]]

On this same ground, the other papers, Exhs. C, D and E all signed by Augusto Gustilo must be discarded.

Exh. B—is a letter signed by Calixto addressed to "Rosa Gustillo y su hermana Josefa". It say: "Queridas hijas: x x x Conservamas buenas que es siempre el deseo de tu padre."

The Court of Appeals deemed this letter to be insufficient for it contains no unequivocal avowal that Rosa was Calixto's child. Indeed, it was addressed also to Josefa who was admittedly his own child. It should specially be noted that the letter spoke of "tu madre" referring to his wife Martina who was the mother of Josefa not of Rosa. At any rate, there is such sense in Justice Castro's observation that "it is not uncommon in many Filipino homes that a child who is a perfect stranger to the family but who was taken under similar circumstances, is regarded as a member of the family and called "hija" or hijo" by the head thereof." This view follows and coincides with the line of thought expressed by Manresa in that portion of his commentaries, quoted with approval in *Joaquin v. Joaquin*, 60 Phil. 399[7] wherein advertising to written acknowledgements of paternity of a natural child, he explained

"En cuanto al otro requisito de ser expreso el reconocimiento x x x el escrito, aunque contenga otros particulares, como sucede en los testamentos, ha de tener por objeto el reconocimiento deliberado y expreso del hijo natural. No llena, pues ese objeto la manifestacion que incidentalmente haga el padre de ser hijo natural suyo la persona a quien se refiera, y mucho mas el dar a una persona el titulo y tratamiento de hijo en cartas familiares." (Manresa, *Comentarios al Codigo Civil*, Tomo 1, pag. 580, 3. A ed.)[Underlining Ours]

Needless to add, Manresa's above opinion was written as a comment to Art. 131 of the Spanish Civil Code which is exactly the same as Art. 278 of the New Civil Code, except that "in some other public document" has been substituted with "in any authentic writing".

This letter - to recall our previous indications-could probably be material evidence in a suit to compel recognition. However, it is not by itself a voluntary act of recognition, such as is contemplated by Art. 278, which act must be precise and express [8][*Pareja vs. Pareja*, L-6823, May 31, 1954]. For as *Gitt vs. Gitt* [9] exemplifies, there may be direct acts of the father which though not constituting voluntary acknowledgment of a natural child, may be used to "compel" recognition as such.

We may now consider the deed of donation, Exh. "F" executed by Calixto in favor of Rosa wherein it is stated, in substance, that in consideration of the donation, the donee renounced her rights to Calixto's inheritance.

This document, petitioner argues, is a clear admission by Calixto that she was his natural, daughter; because what rights could she renounce except those of a recognized natural daughter?

The Court of Appeals explained that the document might imply recognition of possible hereditary rights of Rosa, but it does not amount to the unequivocal avowal of relationship required by law.[10] We believe this to be a correct evaluation. And answering Rosa's question, it is possible that Calixto paid for renunciation of her rights as illegitimate child, not as a natural child. Who knows? [11]

And then, he might have previously used her own money or her mother's in acquiring some of his properties.[12] Or he might have realized that his acts of kindness might induce a suit to compel recognition; and as he did not want to be so compelled, he donated.[13] It is thus clear, he did not wish to recognize. Wherefore, it would be against his wishes now to hold that by Exh. "F", Calixto voluntarily recognized Rosa as his natural child.

To emphasize, we have here an alleged voluntary recognition by Calixto. But what could be more involuntarily than his act of paying Rosa a certain amount so that she will never claim to be his natural daughter, supposing that as Rosa herself contends, such is the documents meaning? Calixto did not want Rosa to join his estate

proceedings as his natural daughter; so he gave her money. At most, the document might imply a tacit admission that Rosa had some right to the inheritance; but certainly it is not a voluntary acknowledgment of a natural child.

In this connection, the matter of equity should not be overlooked. The donation document Exh. "F" was a contract. It was accepted by Rosa. In exchange for the donation (plus recognition according to her) she promised "and "Now that he is dead, the doubt should be resolved in his favor to waive all rights to Calixto's estate.[14] Now that she welshed on her promise by insisting to be his heir, is it equitable to require Calixto to abide by his part of the bargain (the recognition)? It is the law that even after repudiating the document, Rosa may still enforce it (as an act of recognition)? It is apparent that to render judgment for her on the strength of the donation would amount to sanctioning a situation which may look like entrapment, or deception at least.

For the reasons herein set forth, the conclusions of the Court of Appeals must be sustained; so its decision dismissing Rosa's action is hereby affirmed. No costs.

Bautista Angelo, Reyes, J. B. L., Barrera, Paredes, Bengzon, J. P. and Zaldivar, JJ., concur.

[1] A natural child has no right to inherit, unless acknowledged.

[2] And also Art. 135 of the Spanish Civil Code.

[3] The complaint made no such allegation. The Court of Appeals said nothing of a put mortem discovery. The brief now makes general allegations, without citing pages nor documents. And the Exhibits presented, specially Exhs. B and F should have been known to Rosa during the lifetime of her father.

[4] Applicable even though she was born before the New Civil Code (Art. 2260).

[5] It is not usually signed by parents of the newlyweds.

[6] Malonda vs. Malonda, 81 Phil. 149; Cf. Dayrit vs. Piccio, 92 Phil., 729, 49 Off. Gaz. 949; Adriano vs. Jesus, 23 Phil. 350.

[7] Signing "as father" the school report card of child held insufficient recognition. See also Montilla vs. Montilla, L-14462, June 30, 1961.

[8] Must be express, not merely tacit.- Reyes, J. B. L., Civil Law, Vol. 1, p. 264.

[9] 68 Phil. 385.

[10] See footnote 8.

[11] and [12] Now than he is dead, the doubt should be resolved in his favor.

[13] See footnote 11 and 12.

[14] Supposing it is valid. Cf. Art. 816, Spanish Civil Code and Art. 905, New Civil Code. Having presented Exh. F, Rosa cannot or does not raise the issue; anyway, she may avoid it only after the establishing her status-which is the question. On the other hand, for the heirs to raise it would mean admission of Rosa's status.

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