

MANUEL M. COSTA, PLAINTIFF AND APPELLANT, VS. GENOVEVA V. BALMES, DEFENDANT AND APPELLEE.*G. R. No. L-11836. January 30, 1959*

Ponente: LABRADOR, J.

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Appeal from an order of the Court of First Instance of Rizal, Hon. Nicasio Yatco, presiding, refusing to admit the amended complaint filed by the plaintiff-appellant, and a second order thereafter dismissing the complaint on the ground that the action contained therein is barred by an order of settlement of the intestate estate of deceased Alejandro Costa, alleged father of plaintiff-appellant. The case was originally appealed to the Court of Appeals, which court endorsed the case to us for the reason that the appeal involves only questions of law.

The complaint originally filed alleges: that plaintiff -appellant is the son of intestate Alejandro Costa and Maria Mojica, both single and without impediment to marry at the time of plaintiff's conception; that plaintiff had been recognized as a natural child-in an authentic writing by the said deceased Alejandro Costa, and by the relatives of the latter, and had been given support both financial and moral by the deceased; that the deceased subsequently married defendant Genoveva Balmes", the latter being present at plaintiff's own marriage; that at the time of his death, Alejandro Costa left various properties, some of which had not been disclosed or accounted for in the proceedings for the settlement of his estate; that the only heirs of the deceased are plaintiff and the defendants, and in the partition of the properties left by the deceased Alejandro Costa, plaintiff was not included as an heir and was not given part in the properties partitioned or those not disclosed. In the prayer, plaintiff-appellant prays that defendant Genoveva Balmes render a true inventory of the properties left by the deceased, and that partition thereof be made by the heirs with the inclusion of plaintiff-appellant. Copies of the inventory and of the project of partition submitted in the intestate proceedings were attached to the complaint.

The defendants filed an answer denying most of the allegations of the complaint on) the relationship between plaintiff and the deceased Alejandro Costa, for lack of knowledge, information and belief and alleging as special defenses that the complaint states no sufficient facts to constitute an action for acknowledgment because the deceased (alleged father of plaintiff) is already dead, and plaintiff is already of legal age (Complaint filed on December 9, 1955 when plaintiff was already almost 24 years of age). It is also alleged by way of special defense that the nature and character of the supposed authentic writing is not stated in the complaint.

On January 25, 1956 plaintiff moved the court to admit an amended complaint. One amendment included therein is an allegation that the authentic writing of his recognition as a natural child was an affidavit executed by the deceased when manifesting his (deceased) consent to plaintiff's marriage; that said affidavit was attached to the plaintiff's marriage papers, but these can no longer be located. Another amendment is the new allegation made as an alternative cause of action that if his recognition as a natural child cannot be established, then he relies on his (plaintiff) being a compulsory heir under article 287 of the Civil Code of the Philippines.

Opposition to the admission of the amended complaint was made on the ground that the amended complaint

contained a new cause of action, different from that originally instituted, and that the right of plaintiff to share in the estate of the deceased should have been adjudged in the proceedings for the settlement of the estate of the deceased, and not in an ordinary civil action. The court, however, did not act upon these objections; instead it refused to accept the amended complaint on the ground that said amended complaint fails to comply with the Rules of Court. The rule evidently referred to is section 3 of Rule 17, which requires that the amendments be indicated by appropriate marks (such as capitals). Motions to consider this refusal of the court to admit the amended complaint were denied. Finally, the Court dismissed the complaint, holding:

"Upon a perusal of the complaint in this case, the Court finds that the plaintiff's cause of action is not based on any of the evidence of voluntary recognition sought for by the plaintiff in this case, as provided for in Art. 273 of the New Civil Code, to wit: Recognition shall be made in the record of birth, a will, a statement before a court of record, or in any authentic writing. Failure on the part of plaintiff to comply with the above provision of law on the matter, therefore, does not give rise to a cause of action, as the one brought by him in this case. Besides, the title of the present case is for partition of real estate of the deceased Alejandro Costa, and considering that the estate of the said deceased Alejandro Costa has already been settled in Special Proceeding No. 64 of the Court of First Instance of Sulu entitled 'In the Matter of the Intestate Estate of the Deceased Alejandro A. Costa, Genoveva Costa, petitioner', to which the present plaintiff did not interpose any opposition, the present action of plaintiff is therefore, barred by the order of partition issued in said case."

The first order of the court, refusing the admission of the amended complaint is clearly erroneous. The character of the amendments introduced were such as to render very difficult and inconvenient for plaintiff to indicate his amendments by capitals or other marks, as required by the rules. Besides, there is anew and alternative cause of action alleged in the amended complaint, which was so apparent as to need indication by marks. Then the technical requirements as to amendments should have been overlooked in order that they may not hamper the course of justice. The result of the unjustified refusal of the court to admit the amended complaint was to deprive plaintiff unjustly of his alternative cause of action.

The order of the court dismissing the action is also erroneous. The mere fact that the complaint alleged that the authentic writing was lost does not justify the conclusion that the authentic writing is non-existent. The statement of the court that plaintiff's action is barred because plaintiff did not file any opposition to the judicial settlement is also erroneous, it appearing from the complaint that the plaintiff was not served with copy of the partition nor was his name included in the petition in the intestate proceedings (Par. VIII of Complaint; Record on Appeal, p. 6). Besides, his alternative cause of action stated in the amendment complaint, which is so apparently justified, could not be ignored.

The orders appealed from are hereby set aside and the case is remanded to the trial court for further proceedings in accordance herewith. No costs. So ordered.

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

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