

MARCELO SOTTO, PLAINTIFF AND APPELLEE, VS. FILEMON SOTTO, REPRESENTED BY THE TEMPORARY GUARDIANS: VICENTE A. MIRANDA AND DR. SUGA SOTTO YUVIENCO, GUARDIAN-APPELLANT, CESAR SOTTO...

G.R. No. L-20921. May 24, 1966

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

In his complaint, plaintiff Marcelo Sotto prays that he be declared an illegitimate, other than natural, son of defendant Filemon Sotto, hereinafter referred to as the defendant, based upon his (Marcelo's) alleged possession of the status of an acknowledged spurious child of said defendant.

Inasmuch as, by reason of his advanced age, the latter was confined in a hospital and there were doubts about his mental capacity or, at least, his capacity to adequately defend himself in this case, the Court of First Instance of Cebu, in which the same was commenced, had, in another proceedings, temporarily appointed his niece, Dr. Surra Sotto Yuvienco, hereinafter referred to as Dr. Yuvienco, as guardian of the person, and the clerk of court, Vicente A. Miranda, as guardian of the property, of said defendant, and both guardians were, as such, named as defendants in the complaint herein. Subsequently, the court, in the aforementioned separate proceedings, appointed Dr. Yuvienco as permanent guardian of the person of the defendant, and Fr. Sergio Alfafara and Cesar M. Sotto, hereinafter referred to as Fr. Alfafara and Cesar M. Sotto, respectively, as permanent co-guardians of his property.

Dr. Yuvienco and Fr. Alfafara filed their respective answers, stating that they have no knowledge or information to form a belief as to the truth of the averments in the complaint relative to plaintiff's alleged filiation and possession of the status of an acknowledged spurious child of the defendant, which were, however, denied in Atty. Sotto's answer. After appropriate proceedings, the lower court rendered judgment for the plaintiff. Dr. Yuvienco has appealed directly to the Supreme Court.

The main question raised in this appeal is whether or not plaintiff has established his alleged continuous possession of the status of an acknowledged spurious child of the defendant and the alleged relation of the latter to him as father and son. The lower court decided this question in the affirmative upon the ground that, according to plaintiff's testimonial and documentary evidence, the facts were as follows:

"In 1932 Jovita Butalid was single. She was employed by Don Filemon Sotto in his newspaper, the La Revolucion, in Cebu City. He took a fancy to her and courted her. She did not then know that he was a married man. It would appear that she was not averse to his profession of love. One evening two women, Dalmacia and Margarita Sarco, appeared at the Emerson Dormitory on Jones Avenue, Cebu City, where she was then boarding, and summoned her. When she met them, she was told that Don Filemon Sotto wanted to see her that evening. At the same time he had conveniently appeared near the dormitory in his private car. When, Jovita went to him to ascertain what he wanted, he pulled her inside the care and they made off for the house of a certain Manuel Noval on Mango Avenue, this City. Don Filemon Sotto then took her inside the upper story of Noval's house which he had previously been renting from the owner, and shut themselves alone. They slept

together during the evening. Since then Jovita Butalid never left the house. She continued to live there until the outbreak of the war. She and Don Filemon Sotto thus cohabited. He hired servants to serve her. He paid for the rentals of the house of Manuel Noval. He gave money to Jovita to buy food and other necessities. Out of their illicit union the plaintiff was born. When she was about to deliver the child, Don Filemon hired a midwife, a certain Angcay, to attend to the mother at childbirth. After he was born, Don Filemon was notified of the good news. So he visited both mother and son. How happy he was that a son had been born to him, as his other children were all girls. He instructed Angcay to report the event to the civil registrar of the City of Cebu and to register the name of 'Marcelo Sotto' as the name of the child in memory of his father, Marcolino Sotto or Marcelo Sotto, for short. She complied with his instruction; so, the child was named Marcelo Sotto which name he has been bearing since childhood until now.

"Don Filemon Sotto was then a married man; his wife being the late Doña Carmen Hallos. She was affectionately called Doña Mameng by the members of the family and by those who know her. She did not have any child with Don Filemon. When she came to know of the birth of Marcelo, she visited the child in the house of Manuel Noval. She was not angry at Don Filemon nor at the mother of the child. On the contrary, it would appear that she developed a sort of attachment or affection for the child, (as Don Filemon loved him. She visited him (child) occasionally and even brought gifts for him.

"Don Filemon did not want to have the child baptized while he was of tender age. He wanted to let the child determine for himself what religion he wishes to embrace when he grows old enough to do so. So, until now Marcelo has not been baptized.

"When Marcelo became of school age, he was sent to school in the Elementary School, San Fernando, this province. After completing his elementary education, he was enrolled in the Notre Dame College, San Fernando. He completed his high school course and 1st year college in the said institution. Don Filemon spent for his tuition, books, clothing, and other school expenses during his studies. During weekends, Don Filemon would have him fetched from San Fernando to the City so that he could spend his weekends with his father. In the city, Don Filemon took him around in his car and brought him to his house. He thus treated him as his son. People noticed the close similarities in their physical appearance (Exhs. M, M-1 to M-5) ; and when they inquired about him, he presented him as his son.

"After finishing his first year of college, he wanted to study law; but Don Filemon disapproved of his desire, saying that there are very many lawyers already and that he (Marcelo) did not possess the necessary talent to become a successful lawyer like him. He wanted his son to study in a nautical school, for there is still room for marine officers. At first Marcelo did not wish to become a marine officer. But Don Filemon told him that, if he wanted to study law, he had no money to support him in his studies; however, if he would study in a nautical school, he would spend for him. So, for one year Marcelo roamed around without any definite schooling. At last realizing- that his son would become a vagabond, he persuaded him to go to Manila to enroll in the Philippine Marine Institute; and Marcelo consented to humor him. After getting the prospectus of the school and informing himself of the requirements, he sent Marcelo to Manila in 1953 to enroll in the Philippine Marine Institute and take up the nautical course. Cesar Sotto, a nephew and protégé of Don Filemon, was then in Manila and was a member of the faculty of the said institution. He wrote him (Cesar) to take care of Marcelo while in college. Marcelo used to write his father, asking for money to pay for his books, board, tuition, and other expenses. (Exhs. N page 5, etc.) Don Filemon regularly sent him allowances. (Exhs. N page 8, etc.) His practice was to give the money to either Jovita or his secretary, one Dolores Laude, who bought money orders and sent these to Marcelo in Manila, accompanied by letters written on his (Don Filemon's) instructions. (Exhs. N page 8, etc.)

"He finished the nautical course in 1955; but, before being allowed to take the board examination, he had to have two years of apprenticeship in a boat. Don Filemon Sotto procured the position for him on one of the boats of the Bisaya Shipping Company, Cebu City. After completing his apprenticeship, he took the board examination and passed it. He secured employment as officer on the 'M/V Princess of Bantayan' of the Bisaya

Shipping Company.

"When he visited his father last March, 1962 the latter told him to take his leave of absence so that he might attend to him in his illness. Since then he has been on leave. Being a resident of San Fernando, he comes to Cebu City to be at the side of his father almost everyday whenever his means permit"

Dr. Yuvienco assails the accuracy of these findings of fact, which, however, she cannot question now for, having appealed from the decision of the court of first instance directly to the Supreme Court, she is deemed to have waived the right to raise issues of fact in the appeal—for, otherwise, we would have no jurisdiction to entertain it, and the appeal would be within the jurisdiction of the Court of Appeals[1]—and must confine herself, therefore, to raising questions of law,[2] Moreover, plaintiff and his witnesses—Jovita Butalid, Quintina de Noval, Margarita Sareo, and Dolores Laudo— had testified to the specific facts set forth in the above-quoted paragraphs of the decision appealed from—and the gist of appellant's argument is that their testimony, which is not only uncontradicted, but, also, partly borne out by said documentary evidence should not be given full faith and credence. Under the circumstances, and considering that said testimony is neither inherently incredible nor improbable, there is no plausible reason for us to disturb the aforementioned findings of facts.

Again, as stated in the appealed decision:

"No evidence was submitted by the oppositors to contradict the foregoing facts. On the contrary. Cesar Sotto, one of the guardians who filed an opposition to the complaint, testified for the plaintiff. The gist of his testimony is to the effect that since he was a baby of a few months old until he went to Davao before the war where he became elected first as councilor and then as Congressman of the province, he had been living with Don Filemon; that it was Don Filemon who reared him into manhood and spent for his education; that Don Filemon is his uncle, his father being the late Vicente Sotto, the younger brother of Don Filemon; that he knows for a fact that Marcelo Sotto is the son of Don Filemon with Jovita Butalid and that Don Filemon has acknowledged him to be his illegitimate son; that he spent for his education; that in his latest conversation with Don Filemon, the latter instructed him to withdraw all oppositions against the complaint for the acknowledgment of the plaintiff; and that, if he had filed the opposition in the beginning, it was in consonance with the apparent desire of Don Filemon to enjoy freedom of the disposition of his properties, because he feared that, if he formally acknowledges the plaintiff as his son, his freedom would thus be fettered. As for Dr. Suga Sotto Yuvienco, in whose behalf her counsel filed an opposition to the complaint, it also appeared that she expressly admits that Marcelo is the acknowledged illegitimate son of Don Filemon and that he has been in the continuous possession of the status of such illegitimate child. (Exhs. P, P-1, P-2.)

"The Court has no reason to doubt the sincerity of both Cesar Sotto and Dr. Suga Sotto Yuvienco. By the way, she is the niece of Don Filemon Sotto, being the daughter of the late Don Vicente Sotto."

Appellant assails the veracity of Atty. Sotto, in view of the fact that, in his answer to the complaint, he denied the truth of the principal allegations therein, it should be noted, however, that Atty. Sotto is a nephew of the defendant,[3] who is now a widower, without legitimate descendants. In other words, Atty. Sotto would be a prospective heir of the defendant, should the latter die intestate,[4] and the aforementioned testimony of the former is, consequently, adverse to his interest. Then, too, as indicated in the decision appealed from, in a pleading filed in the proceedings for the guardianship of the defendant,[5] Dr. Yuvienco explicitly alleged, and, hence, admitted, that "Pascuala Sotto Pahang, Matilde Sotto Palute and Marcelo Sotto"—plaintiff herein—"are the children of Don Filemon Sotto" (Exhibit P).

It is urged that the lower court erred in denying a motion filed by Dr. Yuvienco praying that the decision later appealed from be set aside and that the case be reopened "to allow the presentation of evidence in opposition to the complaint for recognition", upon the ground that her counsel "could not appear during the continuation of the hearing" of this case in Cebu, "in view of the fact that," at that time, he "was in Manila". The motion did not try to

explain, however, why said counsel had neither filed a motion for postponement of the hearing, nor made any effort to return to Cebu on time therefor. In other words, it says nothing to excuse his absence therefrom. Besides, the motion did not allege, or even hint—and neither does appellant's brief allege or hint—the nature of the evidence she would introduce, or the facts she would establish, if a reopening were granted. Worse still, Dr. Yuvienco's answer avers that "she is without knowledge or information to form a belief as to the truth of the averments contained" in the main paragraphs of the complaint. In other words, there is absolutely nothing in the record before us to warrant either the surmise or the hope that she might perhaps have some evidence that could materially affect the result of the case. Hence, we can not possibly justify the reopening prayed for.

Lastly, it is contended that there is no legal provision explicitly authorizing an action of this nature. But neither is there any law to the contrary. Appellant says that plaintiff might possibly press his present claim in the testate or intestate proceedings for the settlement of the estate of the defendant or in the proceedings, either for the partition of his property, or for plaintiff's support. However, the latter proceedings cannot be instituted unless plaintiff is in need of such support.[6] Upon the other hand, the former proceedings (testate, intestate, or partition) may take place only upon defendant's death, and, as set forth in the separate opinions given in the "Intestate Estate of Zuzuarriague vs. Enrique Zuzuarriague", 102 Phil., 346 (October 31, 1957), several members of the Supreme Court entertain doubts on whether a spurious child, who is of age, may, after the death of his supposed father, establish his (the child's) aforementioned relation with the latter, relying upon the alleged possession of the status of an acknowledged spur-iou child, considering that a natural child may not do so.[7]

Wherefore, the present appeal is untenable and the decision appealed from should be, as it is hereby affirmed, with the costs of this instance against appellant Dr. Suga Sotto Yuvienco. It is so ordered.

Bengzon, C.J., Bmitista Angelo, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bevgzon, J.P., Zaldivar and Sanchez, JJ., concur.

Judgment affirmed.

[1] Inasmuch as this case involves neither the constitutionality or validity of any treatyf law, ordinance, or executive order or regulation, nor the legality of any tax, impost, assessment or toll, or of any penalty imposed in relation thereto, nor the jurisdiction of a trial court, and the value of the present controversy does not exceed P200.000.00.

[2] Descutido vs. Jacinto, L-11765, April 29, 1961; Ahalle vs. Santiago, L-16307, April 30, 1903; .Suvellano vs. Diaz, L-17941, July 31, 1963; Esquejo vs. Fortaleza, L-15897, February 26, 1905; GSIS vs. Hon. Cloribel, L-22236, June 22, 1965; Development Bank of the Philippines vs. Ozarraga, L-16631, July 20, 1965.

[3] Whose brother, Vicente Sotto, is the father of Cesar Sotto.

[4] For collateral relatives within the fifth degree, succeed intestate, in the absence of descendants, ascendants, illegitimate children and surviving spouse (Art. 1003, Civil Code of the Philippines).

[5] Special Proceeding No. 2232-R of the Court of First Instance of Cebu.

[6] And then record does not show that he needs it.

[7] Article 285, Civil Code of the Philippines; Gabrinao vs. Latorre, L-5825 (Feburary 26, 1953).

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