

FEDERICO MAGALLANES, ET AL., PETITIONERS, VS. HONORABLE COURT OF APPEALS, ET AL., RESPONDENTS.

G.R. No. L-6851. September 16, 1954

Ponente: PARAS, C.J.

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PARAS, C.J.:

In Civil Case No. 1264 of the Court of First Instance of Iloilo, Maximo Magallanes, et al., plaintiffs vs. Federico Magallanes, et al., defendants, a decision was rendered on May 28, 1951, with the following dispositive part:

"In view of the foregoing considerations, the Court finds that the preponderance of evidence is that the above properties are of Justo Magallanes and that both plaintiffs and defendants are the heirs of Justo Magallanes and, therefore, they should share proportionately in the properties in question. Each child of Justo Magallanes from both wives is entitled to one-seventh of the undivided share of the land in question. Inasmuch as the plaintiffs paid P220 for the mortgages as shown in Exhibits D and G, the other heirs are obliged to reimburse proportionately the said amount of P220 to the plaintiffs."

Upon appeal by the defendants to the Court of Appeals, the latter court rendered on April 22, 1953, a decision the dispositive part of which reads as follows :

"Wherefore, the decision appealed from is hereby modified in the sense that each of the plaintiffs shall participate in the proportion subject of litigation in the proportion of one-half (1/2) of the share that corresponds to each of the defendants. The latter are further sentenced to pay jointly and severally to plaintiffs said sum of P220 that they spent for the redemption of the parcels of land under Tax Declarations Nos. 21719 (Exhibit D) and 2153 (Exhibit G). In the meantime this is not done, the properties mentioned in Exhibits D and G will answer for the payment of this sentence. Without pronouncements as to costs."

Not satisfied with the decision of the Court of Appeals, the defendants have filed the present petition for its review on certiorari.

The findings of fact of the Court of Appeals upon which its decision rests, quoted verbatim, are as follows:

"(a) That the properties under litigation were not of Damiana Tupia but of her husband, the late Justo Magallanes;

"(b) That plaintiffs Maximo, Gaspar, Baltazar and Bienvenido, surnamed Magallanes, had redeemed from their vendees a retro Filomeno Gallo and Soledad Canto (Exhibit D) and Jose Capanang (Exhibit G) the parcels of land under Tax 21719 and 2153 mentioned in said exhibits and paid for such redemptions the sums of P100 and P120, respectively;

"(c) That Enrica Tagaduar alleged mother of the plaintiffs, did not marry Justo Magallanes in the year 1918 after the death of his first wife Damiana Tupia occurred in 1915. We arrived at this conclusion not only because Justo's sister Aleja Magallanes positively declared 'that until the death of my brother (Justo) he was never married again,' but also because Justo Magallanes himself declared in various documents that he executed in his lifetime and up to 1936, that he was a widower (Exhibit B, C and I), and although it is true that

in 1939 his civil status appearing on Exhibit F is that of 'married' without stating to whom he was married then), it does not follow, even if the statement of such status was not due to a clerical error, that he was precisely married to Enrica Tagaduar who did not pretend that she married him between 1936 and 1938, but in 1918. Plaintiffs-appellees state that according to our jurisprudence:

'A man or woman who are living in marital relations, under the same roof, are presumed to be legitimate spouses, united by virtue of a legal marriage contract, and this presumption can only be rebutted by sufficient contrary evidence. (U. S. vs. Uri et al., 34 Phil., 653; U. S. vs. Villafuerte, 4 Phil., 559).

but this doctrine only establishes a presumption that in the case at bar was rebutted by the testimony of Aleja Magallanes and by documents executed by Justo Magallanes himself. In this case it is not a matter of imagining what might have happened to the plaintiffs, as the trial court does without adequate support in the record. Furthermore, and even considering that the plaintiffs are the natural children of Justo Magallanes and that sometime between 1936 and 1939 Justo Magallanes married Enrica Tagaduar, such marriage could not have the effect of automatically legitimizing the children born prior to the marriage, because our Civil Code provides:

'Art. 121. Children shall be considered as legitimized by a subsequent marriage only when they have been acknowledged by the parents before or after the celebration thereof.'

and the record fails to adequately show that such acknowledgment ever took place.

"(d) That the plaintiffs are the natural children of the late Justo Magallanes by Enrica Tagaduar. The defendants do not deny their status as such and it can be inferred from the records that they enjoyed such status during the life time of their deceased father."

Petitioners' main contention is that the Court of Appeals erred in holding that the respondents Maximo, Gaspar, Baltazar and Bienvenido Magallanes, as mere natural children of the deceased Justo Magallanes, without having been legally acknowledged, are entitled to inherit under article 840 of the old Civil Code, which reads as follows:

"When the testator leaves legitimate children or descendants, and also natural children, legally acknowledged, each of the latter shall be entitled to one-half of the portion pertaining to each of legitimate children who have not received any betterment, provided that it may be included within the freely disposable portion, from which it must be taken, after the burial and funeral expenses have been paid.

"The legitimate children may pay the portion pertaining to the natural ones in cash, or in other property of the estate, at a fair valuation."

Petitioners' contention is tenable. We are bound by the finding of the Court of Appeals in its decision that said respondents are the natural children of Justo Magallanes, that the petitioners do not deny their status as such, and that it can be inferred from the records that they enjoyed such status during the lifetime of their deceased father. Nonetheless, we are also bound by its finding that the record fails to adequately show that said respondents were ever acknowledged as such natural children. Under article 840 of the old Civil Code, above quoted, the natural children entitled to inherit are those legally acknowledged. In the case of *Briz vs. Briz*, 43 Phil. 763, the following pronouncement was made: "* * * the actual attainment of the status of a legally recognized natural child is a condition precedent to the realization of any rights which may pertain to such child in the character of heir. In the case before us, assuming that the plaintiff has been in the uninterrupted possession of the status of natural child, she is undoubtedly entitled to enforce legal recognition; but this does not in itself make her a legally recognized natural child." It being a fact, conclusive in this instance, that there was no requisite acknowledgment, the respondents' right to inherit cannot be sustained.

The respondents cannot demand that this suit be considered a complex action for compulsory recognition and

partition, under the authority of *Briz vs. Briz*, supra, and *Lopez vs. Lopez*, 68 Phil., 227, for the reason that the action was not instituted within the four years following the death of the alleged natural father (Art. 137, Old Civil Code; Art. 285, New Civil Code). According to the decision of the Court of Appeals, the father, Justo Magallanes, died in 1943, and the present action was instituted seven years later in 1950.

Wherefore, the decision of the Court of Appeals is hereby modified by eliminating therefrom the ruling that the respondents Maximo, Gaspar, Baltazar and Bienvenido Magallanes are entitled to inherit from the deceased Justo Magallanes in the proportion of one-half of the share that corresponds to each of the petitioners Federico, Fermin and Angel Magallanes. So ordered without costs.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion, and Reyes, J.B.L., JJ., concur.

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