

CARLOS PIÑERO, PLAINTIFF AND APPELLANT, VS. MARCELO ENRIQUEZ, PEDRO ENRIQUEZ, PAZ ENRIQUEZ, AND RANDOL INGAN, DEFENDANTS AND APPELLEES.

G.R. No. L-833. October 20, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

The plaintiff-appellant instituted this action in the Court of First Instance of Negros Oriental for the partition of two parcels of land described in his amended complaint, alleging as cause of action the following facts:

That he is the natural child of Francisca Piñero, born on November 4, 1895, when his mother could have legally married his father with or without dispensation; and that he has been legally acknowledged by his mother as such natural child, and has been in the uninterrupted possession of the status of a natural child of said Francisca Piñero, justified by her own conduct and that of her family, specially the defendants herein;

That long after plaintiff's birth Francisca Piñero married the defendant Marcelo Enriquez; that the defendant Pedro Enriquez and Paz Enriquez are the legitimate children of Marcelo Enriquez and Francisca Piñero; that the defendant Randol Ingan is their legitimate grandson, being the only child of their daughter Soledad Enriquez, who died on March 14, 1940; and that Francisca Piñero died on August 29, 1929, leaving the two parcels of land described in the complaint, which she had acquired during her marriage to Marcelo Enriquez;

That after Francisca Piñero's death, the defendants took possession of the parcels of land in question and have since then enjoyed them to the exclusion of the plaintiff, and that notwithstanding repeated requests the defendants have refused to partition the properties in question or to give to the plaintiff his corresponding share in the yearly produce thereof.

The plaintiff prayed for the partition of said properties in the proportions provided by law and for his share in the produce thereof from 1929 at the rate of P325 per annum.

The defendants filed a motion to dismiss the complaint on the ground that it did not state facts sufficient to constitute a cause of action. That motion was sustained by His Honor Judge Sotero B. Cabahug on the theory that the plaintiff could not inherit from his deceased mother without having been legally acknowledged by her as her natural child, and that since his mother had died long after he had reached the age of majority, the plaintiff could not in the present action ask for such compulsory recognition in order to be entitled to the inheritance in question.

In reaching that conclusion the trial judge considered as insufficient proof of recognition the documents attached to the record consisting of plaintiff's certificate of birth and baptism and certain letters written by the defendants to the plaintiff. Thus in effect the trial judge practically decided the case on the merits in resolving defendants' motion to dismiss.

We think that the trial court erred in dismissing the complaint. The motion to dismiss was based on the ground that the complaint did not state facts sufficient to constitute a cause of action. It having been expressly alleged in

the complaint "that the said plaintiff has been legally acknowledged by the late Francisca Piñero as such natural child," and that allegation having been hypothetically admitted by the defendants' motion to dismiss, the court could not dismiss the complaint on the theory that that allegation is not true.

It seems that after the plaintiff had filed an opposition to defendants' motion to dismiss, the trial court ordered him to submit his proofs of his status as a natural child of Francisca Piñero, and in compliance with said order the attorney for the plaintiff filed a "manifestation" submitting five documents consisting of the certificate of birth and baptism (Exhibit A) and certain letters marked as Exhibits B, C, C-1, and C-2. In said, manifestation counsel for the plaintiff stated: "These are the doctunentary evidence in support of the complaint. The oral evidence is ready to be presented if the Honorable Court so desires." The trial court resolved the motion to dismiss upon said documents and not upon the allegations of the complaint.

We find such procedure to be irregular and not authorized by the Rules. The question submitted to the court upon the motion to dismiss was whether the facts alleged in the complaint were sufficient to constitute a cause of action, and not whether those allegations of fact were true. If the court thought said allegations to be sufficient but doubted their veracity, it should deny the motion to dismiss and require the defendants to answer and then proceed to try the case on the merits. Section 3 of Rule 8 provides: "After hearing [the motion to dismiss] the court may deny or grant the motion or allow amendment of pleading, or may defer the hearing and determination of the motion until the trial if the ground alleged therein does not appear to be indubitable." The trial court should have heard all the evidence before deciding the case on the merits.

Finding that plaintiff's amended complaint states facts sufficient to constitute a cause of action, we reverse the trial court's order of dismissal and order the case remanded to the court of origin for further proceedings, with the costs of this instance against the appellees.

Paras, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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