

PASCUALA SOTTO PAHANG, PLAINTIFF-APPELLEE, VS. FILEMON SOTTO, NOW DECEASED, SUBSTITUTED BY MARCELO SOTTO, DEFENDANT-APPELLANT.

G.R. No. L-21175. July 15, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Suit for compulsory recognition as natural child.[1] Defendant father opposed. The judgment below went for plaintiff child. Defendant - thru one of the guardians - Suga Sotto Yuvienco - appealed.[2]

To be decided by this Court is whether, upon the facts of record and the applicable law, we should give our imprimatur to the judgment below declaring Pascuala Sotto Pahang as an acknowledged natural child of Filemon Sotto.

The background facts are these:

In 1909, Filemon Sotto started courting Remedios Duterte, than a beauty queen in Cebu.[3] It was in the house of Remedios' cousin Romulo Agas and his wife on Plaridel Street, Cebu City, where Filemon Sotto used to pay her visits almost nightly. Before long, lovers' incontinence developed into intimacy. Remedios gave birth to a boy who died in infancy.[4] They continued. About this time, Filemon Sotto asked Romulo Agas to move out with his family because he was to rent the house where they were staying, for Remedios. Remedios became pregnant once again. On February 1913, she gave birth to a baby girl, plaintiff herein. Filemon Sotto had her baptized with the name Pascuala in memory of his own mother who was also named Pascuala. Remedios was at that time too sick to nurse the baby. So Filemon Sotto hired a nursemaid, Engracia Aguirre, to take care of plaintiff.

A misunderstanding, however, came between Filemon Sotto and Remedios Duterte. He left her and married Carmen Rallos. Remedios Duterte with her baby (the plaintiff) returned to her cousin, Romulo Agas and his wife. It was years later before she married another man.[5]

In the meantime, the spouses Carmen Rallos and Filemon Sotto became fond of Pascuala. They treated her as their own, endearingly called her "Lily". Lily (Pascuala), in turn, addressed Carmen Rallos as "Mama Mameng", and Filemon Soto as "Papa". At the behest of the couple, she was often brought by the nursemaid to visit them in their house.

Having reached school age, she was enrolled by Filemon Sotto in Farbulos, later called Colegio del Niño Jesus, and then at the Colegio de la Immaculada Concepcion, where she finished high school. She studied from 1920 to 1932. Filemon Sotto paid for her board in school and her school expenses, permitted her to bear his surname Sotto. Carmen Rallos oftentimes fetched plaintiff from school to go shopping, attended to her needs. The two women maintained a pleasant relationship. More than this, Carmen Rallos was fond and affectionate of Pascuala, considered her as her daughter with Filemon Sotto. Actually, when Carmen Rallos was confined at the Quezon Institute, she wrote Don Filemon Sotto a letter wherein she specifically mentioned plaintiff,[6] and another letter

to plaintiff herself wherein she referred to Antonio Sotto Pahang - son of Pascuala - as "our grandson's" and which she signed as "Your Mama Mameng".[7]

There was a time when the picture of plaintiff Pascuala Sotto Pahang, as a little girl, was taken with Carmen Rallos.[8] Similar childhood pictures of her were, also taken with Cesar Sotto (son of Vicente Sotto, only brother of Filemon Sotto), the nephew and protegee of Filemon Sotto who raised and reared him.[9] In fact, when Pascuala married Sixto Pahang in 1932, it was Cesar Sotto who gave her away in marriage.

During the Pacific war, Filemon Sotto and his family evacuated to the town of Carmen, Cebu, together with Pascuala Sotto Pahang and her family.[10]

After the Pacific war, Filemon Sotto permitted Pascuala and her family to construct a house on a lot at Ranudo Street owned by him without paying any rent. Later, when the lot was sold, Filemon Sotto allowed them to move to his summer residence in Lahug, Cebu City, where they are at present staying.[11]

Father and child were in close touch with each other. Filemon Sotto even periodically remitted money to Antonio Sotto Pahang, Pascuala's son, while he (Antonio) was a student in Manila. And when he took the bar examinations,[12] Filemon Sotto spent for him, paid for his registration fees when he passed the bar. Filemon Sotto also spent for the studies and training of Belen Pahang, a daughter of Pascuala, in the Southern Islands Hospital School of Nursing in Cebu City.

Long before the present litigation, correspondence was crossed between Pascuala and Cesar Sotto, who addressed the former as his "beloved cousin" and inquired about the health of her father, Filemon Sotto.[13]

Came the suit for compulsory recognition[14] adverted to at the beginning of this opinion. Drawing attention at this point is the fact that Filemon Sotto, a well-known lawyer, did not file his answer to the complaint, whereupon he was declared in default,[15] upon plaintiff's motion. Nonetheless, Filemon Sotto appeared before the court on the scheduled date of the reception of the evidence. Order of default was lifted on the same day upon motion of counsel for Filemon Sotto.[16]

Issues were joined by defendant's answer with counterclaim[17] and plaintiff's reply and answer to the counterclaim.[18]

After all the evidence was in, the lower court came out with the judgment for plaintiff heretofore mentioned.

The appeal, direct to this Court, casts a three-sided proposition: Firstly, the findings of fact made by the lower court are not supported by substantial evidence; secondly, defendant lost her right of action through laches; and thirdly, the proceedings for recognition being personal in nature should have been instituted and prosecuted against defendant personally, not against his guardians.

1. The appeal challenges the lower court's finding that plaintiff "has been enjoying the continuous possession" of an "acknowledged natural daughter of the defendant". This cannot be done now. The appeal was direct to this Court. Issues of fact cannot be raised.[19] At any rate, it would be worth going into the evidence.

First, to the controlling statute, Article 283 of the Civil Code. By its terms, "the father is obliged to recognize the child as his natural child" when the latter "is in continuous possession of status of a child of the alleged father by the direct acts of the latter or of his family".[20]

Was plaintiff a natural child in the first place? The lower court said so. Not without reason. While records of her birth were not available because they were destroyed during the last war,[21] copious evidence there is of record to prove this fact. At the time of plaintiff's conception, both her father and mother were free to marry each other there is plaintiff's testimony that she was born on February 1913. Marcelino Flores, an old man of 82, who stayed

in the house of Romulo Agas and his wife at the time of plaintiff's birth, assured the court that plaintiff was born before Filemon Sotto married Carmen Rallos.[22]

So did Cesar Sotto, one of the guardians of the property of Filemon Sotto and a nephew and protegee who lived with the latter.[23] Likewise did Soledad Vda. de Sanson, half-sister of the wife of Filemon Sotto.[24] This makes plaintiff a natural child. Because, by Article 269 of the Civil Code, children "born outside wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other, are natural".[25]

And evidence is overwhelming that plaintiff really enjoyed continuous possession of an acknowledged natural child of Filemon Sotto. Her father treated her all along as his child; gave her the Christian name Pascuala; allowed her to use his own surname Sotto; engaged and paid for the services of her nursemaid, Engracia Aguirre, to take care of her; gave her schooling, paid for her school expenses including her board; allowed her and her family even as she was already married to build her house on his own land; and after this land was sold, sent her and her family to live in his own house in Lahug, Cebu City, where they are at present staying.[26] Both Filemon Sotto and his wife, Carmen Rallos, were fond of Pascuala, treated her as their own child. Defendant presented her to friends and relatives his daughter. Why, Carmen Rallos even had a picture, Exhibit E, taken together with plaintiff when she was a child, wrote her ("Dearest Lily") a letter wherein she described herself as "Your Mama Mameng"

But if more were needed, there is the fact that Filemon Sotto even went as far as to spend for the expenses of Antonio Sotto Pahang, son of plaintiff, for his studies, his bar examinations, and paid his registration fees when he passed the bar. Plaintiff's father even shouldered the cost of the studies and training of Belen Pahang, a daughter of Pascuala, in pursuing her nursing studies.

And then, Cesar Sotto, nephew of Filemon Sotto and the latter's protegee who grew up with him, recognized plaintiff as a natural child of Filemon Sotto, so much so that Cesar Sotto gave her away in marriage.[27]

Dr. Suga Sotto Yuvienco, former guardian of the person of Filemon Sotto, had her share in giving evidence of such recognition. She did so in a pleading filed by her in Special Proceedings 2232-R,[28] where she admitted that "Pascuala Sotto Pahang, Mercedes Sotto Palicte and Marcelo Sotto" are "the children of Don Filemon Sotto". She also categorically testified in said proceedings that Pascuala was her cousin.[29]

If all of these facts have any meaning at all, they fully support the judgment below; they are controlling[30] they place plaintiff in the category of an acknowledged natural child of Filemon Sotto.

2. We now come to the defense of laches. Concededly, plaintiff brought suit only on November 25, 1960, when she was over 47 years of age. She gave as her reason the fact that because of continuous harmonious relations between her and her father, she felt that it would have been the better part of prudence to wait for the latter to take the initiative and voluntarily recognize her.

Her delay notwithstanding, plaintiff's right to sue is still within the coverage of Article 285 of the Civil Code. The language of this statutory provision is clear and expressive. It says that the action "for the recognition of natural children may be brought only during the lifetime of the presumed parents". And this case was filed during the lifetime of Filemon Sotto,

A principle that springs directly from the statute is that an action for recognition, if brought during the lifetime of the presumed parents, is imprescriptible. The status of persons is outside the commerce of man. Hence, it cannot be acquired or lost by prescription.[31] The rule is best understood in a situation, such as we have here, where a child had no desire to press the matter of her recognition by way of a suit in court, unpalatable to many, in the hope that her father would voluntarily concede to her such a right and in that way preserve harmony. It is to be

remem-bered that the code itself does not put any limitation to the action for recognition other than death of the presumed parents. And even after death of the presumed parents, the law allows action to be brought -

"(1) If the father or mother died during the minority of the child, in which case the latter may file the action before the expiration of four years from the attainment of his majority;

(2) If after the death of the father or of the mother a document should appear of which nothing had been heard and in which either or both parents recognize the child.

In this case, the action must be commenced within four years from the finding of the document." [32]

Laches is not a defense. [33]

3. All else unavailing, the brief for defendant would seek from this Court dismissal of the case because the same has not been prosecuted against defendant personally, but against his guardians. It reasons out that "the guardianship Court has explicitly avoided declaring the mental incapacity of the ward" (Filemon Sotto).

First to the facts. The present action was commenced on November 25, 1960. Filemon Sotto answered on January 30, 1961. He was subsequently declared incompetent because of advanced age and a greatly weakened physical condition, and placed under guardianship on July 24, 1962. He died on October 10, 1966 after this case was submitted for decision in this Court. In this factual backdrop, there is no reason why the complaint should be dismissed. All that the codal provision exacts from a child seeking recognition is to bring the action "during the lifetime of the presumed parents" and nothing more. If the reason behind this requirement is to give the alleged parents an opportunity to be heard, [34] then, such an opportunity had been given and, from the factual point of view, taken advantage of by Filemon Sotto. He had knowledge of the complaint; filed the answer thereto; appeared in court. The assumption that he was still a "sui juris", as defendant's brief insists, even after he was declared incompetent in Special proceedings 2232-R, will not carry the day for defendant. Atty. Francisco F. F. Remotigue, Filemon Sotto's counsel right from the start, continued to represent the latter throughout the proceedings below. He not only cross-examined the witnesses; he took the witness stand himself. He filed the motion to reconsider the judgment below. Indeed, Atty. Remotigue stayed on at the insistence of the court below which desired that plaintiff's evidence "be subjected to a rigorous test to prevent collusion among the parties". [35]

Besides, there is nothing clear about the substitution of Filemon Sotto by his guardians. Plaintiff was authorized to amend her complaint to include the guardians and the amended complaint merely mentioned the fact that guardians of the person and property of Filemon Sotto have been appointed. All this boils down to the conclusion that Filemon Sotto remained a party in the case until his death. The brief before this Court was filed in Filemon Sotto's behalf.

Again, Filemon Sotto's failure to attend to his case personally - granting it needs such personal attention - weakens rather than strengthens the case on appeal. For, then, it lends credibility to Cesar Sotto's testimony in court that his uncle, Filemon Sotto - who at first was averse to giving his children legal recognition because he wanted to be free to apportion his property - [36] finally consented to withdraw his opposition to the recognition suit herein. [37]

All along from the start to the end of the suit, the interests of defendant Filemon Sotto were well represented and guarded, were never at any time prejudiced. Therefore, even conceding that the case was improperly prosecuted against his guardians alone, such error is harmless. It will not induce reversal of the judgment below. [38]

For the reasons given, the judgment under review is hereby affirmed. No costs allowed.

SO ORDERED,

Concepcion, C.J, Reyes, JBL, Dizon, Makalintal, Zaldivar, Ruiz Castro, Angeles and Fernando, JJ., concur.

[1] Civil Case R-6823, Court of First Instance of Cebu, entitled "Pascuala Sotto Pahang, Plaintiff, vs. Filemon Sotto, Defendant".

[2] While the case was still pending in the Court of First Instance of Cebu defendant Filemon Sotto was declared incompetent in Special Proceedings 2232-R (In the Matter of the Guardianship of the Person and Property of Don Filemon Sotto, Pascuala Sotto Pahang, Petitioner). Dr. Suga Sotto Yuvienco, guardian of the person of Filemon Sotto, who was one of three guardians included in the amended complaint herein, filed the notice of appeal and record on appeal. But the brief on appeal before this Court was filed by Yuvienco's counsel as "Brief for the appellant Don Filemon Sotto". Finally, on October 10, 1966, during the pending of this case before this Court, Filemon Sotto died; and his administrator, Marcelo Sotto (Special Proceedings 2706-R, In the Matter of Intestate Estate of the deceased Filemon Sotto), was substituted for Dr. Suga Sotto Yuvienco as party defendant herein.

[3] Exhibit A.

[4] Exhibit B.

[5] Remedios Duterte died during the last war. Tr. (Bornia), September 10, 1962 pp. 9-10.

[6] Exhibit FF-1.

[7] Exhibit GG-1.

[8] Exhibit E.

[9] Exhibits D and D-1.

[10] Tr., October 23, 1962 (La Paz), p. 195.

[11] Id., pp. 195-197.

[12] Antonio Sotto Pahang was admitted to the bar on May 11, 1959.

[13] Exhibit K-4.

[14] Commenced on November 25, 1960.

[15] On January 14, 1961.

[16] January 21, 1961.

[17] Filed on January 30, 1961.

[18] Filed on February 8, 1961. Upon defendant's having been declared incompetent in Special Proceedings 2232-R, the following guardians were appointed: Dr. Suga Sotto Yuvienco, guardian of the person and Rev. Father Sergio Alfafara and Cesar Sotto, guardians of the property. Subsequently, the guardians were included as party defendants. Father Alfafara answered the complaint on August 15, 1962; Cesar Sotto adopted the answer filed by defendant himself. On objection of Dr. Yuvienco upon the ground that Filemon Sotto was not declared mentally incompetent, but only declared incompetent (because of advanced age and a greatly weakened physical

condition), the court allowed Atty. Francisco E. F. Remotigue to appear on behalf of Filemon Sotto.

[19] Sotto vs. Sotto, L-20921, May 24, 1966.

[20] Paragraph 2, Article 283, Civil Code.

[21] Exhibits X and Z.

[22] Tr. September 10, 1962 (Bornia), pp. 38-50.

[23] Tr., October 12, 1962 (La Paz), pp. 69-71.

[24] Tr. September 18, 1962 (Bornia), pp. 129-130.

[25] Emphasis supplied.

[26] See: Dizon vs. Ullmann, 13 Phil. 88, 91; Osorio vs. Osorio, 34 Phil. 522, 525.

[27] See: Dalistan vs. Armas, 32 Phil. 648, 649,

[28] See: Decision in Sotto vs. Sotto, supra, attached to the Rollo.

[29] Exhibit LL. See also: Decision below, R.A., p. 81.

[30] See: Aballe vs. Santiago, L-16307, April 30, 1963; Cason vs. San Pedro, L-18928, December 28, 1963; Government Service Insurance System vs. Cloribel, L-22236, June 22, 1965; Development Bank the Philippines vs. Ozarraga, L-16631, July 20, 1965.

[31] I Tolentino, Civil Code of the Philippines, 1960 ed., p. 567, citing Laurent.

[32] Article 285, Civil Code.

[33] Villalon vs. Villalon, 71 Phil. 98, 100; Ramos vs. Ortuzar, 89 Phil. 730, 744; Narag vs. Cecilio, L-13353, August 31, 1960; Barles vs. Ponce Enrile, L-12894, January 28, 1961; Gustilo vs. Gustilo, L-18038, May 31, 1965; Bartolome vs. Bartolome, 1967D Phil. 775, 779.

[34] Villalon vs. Villalon, supra.

[35] R.A., p. 81.

[36] Tr. October 22, 1962 (La Paz), pp. 102-104; 106-109.

[37] "Q Did you have occasion to... do you recall having had a conference with your uncle at the hospital concerning the instant case?

A I had occasions to... I mean I talked with him on many occasions.

Q What was the subject of your conversation?

A Well, on one occasion he, after informing him about his particular condition that because so many lawyers are attending to this case what he has accumulated for so many years might go only to the lawyers, well, I advised him to withdraw the denial because God knows these children are really his, so I told him it would be a sin if you do not recognize your children.

Q What did Don Filemon say?

A Well, after weighing what I told him he instructed me to have the denial withdrawn, so, one day I came to Court and made manifestation of what Filemon Sotto told me." Tr., October 22, 1962 (La Paz), pp. 95-97.

[38] Section 5, Rule 51, Rules of Court.

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