

**GENOVEVA CATALAN PAULINO, ASSISTED BY HER HUSBAND
FRANCISCO NIETO, PLAINTIFF AND APPELLANT, VS. PAZ H.
PAULINO, ASSISTED BY HER HUSBAND DALMACIO AQUINO,
EUFEMIA H. PAULINO, ASS...**

G.R. No. L-15091. December 28, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

On 4 February 1958 Genoveva Catalan Paulino, assisted by her husband Francisco Nieto, brought an action in the Court of First Instance of Laguna, Third Branch, San Pablo City, against Paz, Eufemia, Peregrino and Juan, all surnamed Paulino, to compel them to give her share of inheritance in the estate of the late Marcos Paulino, claiming and alleging that she is the illegitimate (spurious) child of Marcos Paulino, begotten by him and Rustica Catalan on 3 January 1916 in Los Baños, Laguna, while the former was lawfully married to Dionisia Hernandez; that on 5 February 1951 Marcos Paulino died, intestate in Manila at the Singian Clinic, leaving an estate consisting of realties listed and described in paragraph 8 of the complaint, is equivalent to 2/5 of the share of a legitimate child or 1/10 of the whole estate; that the defendants had refused and income of the estate amounting to P7,500; and that the defendants, through Juan H. Paulino, taking advantage of the plaintiff's ignorance, "deliberately, fraudulently and maliciously convinced her to sign a contract of waiver, stating among other things, that the herein plaintiff under the law has no right in the partition of the properties of the deceased." The plaintiff prayed that the defendants be ordered to deliver to her her share in the estate of the deceased consisting of 1/10 thereof and its income amounting to P7,500 annually from 5 February 1951 and to pay the costs of the suit, and for other just and equitable relief (civil No. SP 140).

On 20 February 1958 the defendants moved for the dismissal of the plaintiff's complaint on the ground that it states no cause of action and that, even if it does, the same is barred. In support of their motion they contend that the plaintiff's action does not lie because it is to establish her filiation as an illegitimate (spurious) child of the deceased and brought after the latter's death when she was already 35 years of age. On 19 March 1958 the defendants filed a "supplement to motion to dismiss," quoting an excerpt from the minutes of the public hearing on the proposed Civil Code conducted by the joint Senate and House of Code Committee of Congress relative to article 289. On 31 March 1958 the plaintiff filed an objection to the defendants' motion to dismiss and on 24 April 1958 the defendants, to the plaintiff's objection.

On 30 July 1958 the Court entered an order holding that the plaintiff's action to establish her filiation as the illegitimate (spurious) child of the deceased, brought after the latter's death, when she had reached the age of 35 years, is already barred, and dismissing her complaint.

The plaintiff has appealed.

The appellant claims that she is the illegitimate (spurious) child of Marcos Paulino and, relying on the majority opinion in the case of *Zuzuarregui vs. Zuzuarregui*, 106 Phil., 206, contends that all she should do to be able to

inherit from her putative father is to prove her filiation to him. It is not for her to show that in his lifetime she had brought an action to compel recognition and obtained judgment in her favor. The appellees contend otherwise and further claim that the appellant's action to establish her filiation does not lie it having been brought after the death of her putative father when she was already 35 years of age.

The Civil Code provides:

Art. 287. Illegitimate children other than natural in accordance with article 269 and other than natural children by legal fiction are entitled to support and such successional rights as are granted in this Code.

Art. 887. The following are compulsory heirs:

- (1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;
- (2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and ascendants;
- (3) The widow or widower;
- (4) Acknowledged natural children, and natural children by legal fiction;
- (5) Other illegitimate children referred to in article 287.

Compulsory heirs mentioned in Nos. 3, 4 and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.

In all cases of illegitimate children, their filiation must be duly proved.

The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code. (*Italic supplied.*)

An illegitimate (spurious) child to be entitled to support and successional rights from his putative or presumed parents must prove his filiation to them. Filiation may be established by the voluntary or compulsory recognition of the illegitimate (spurious) child. Recognition is voluntary when "made in the record of birth, a will, a statement before a court of record, or in any authentic writing."^[1] It is compulsory when by court action the child brings about his recognition. Thus the Civil Code ordains:

Art. 283. In any of the following cases, the father is obliged to recognize the child as his natural (or spurious), child:

- (1) In case of rape, abduction or seduction, when the period of the offense coincides more or less with that of the conception;
- (2) When the child is in continuous possession of status of a child of the alleged father by the direct acts of the latter or his family;
- (3) When the child was conceived during the time when the mother cohabited with the supposed father;
- (4) When the child has in his favor any evidence or proof that the defendant is his father.

Art. 284. The mother is obliged to recognize her natural child:

- (1) In any of the cases referred to in the preceding article, as between the child and the mother;
- (2) When the birth and the identity of the child are clearly proved. In her complaint the appellant alleges—

- That the plaintiff is the illegitimate child of Don Marcos Paulino, having been born on January 3, 1916 at Los

Baños, Laguna out of the common-law relationship of her father with Rustica Catalan who lived publicly as husband and wife at the said place;

- That out of the common-law relationship of plaintiff's parents, two other children were born, namely: Tomas and Alejandro, born on September 3, 1917 and 1918 respectively, and both having died on the year of their birth;

- That plaintiff's father Don Marcos Paulino, was married to Dionisia Hernandez, even before his cohabiting with plaintiff's mother;

- That on February 5, 1951, Don Marcos Paulino, plaintiff's father, died in the Singian Clinic in the City of Manila without any will or testament disposing of his estate;

- That Don Marcos Paulino is survived by his legal wife, Dionisia Hernandez and his four legitimate children, namely, Paz, Eufemia, Peregrine and Juan, all surnamed Paulino, and by the plaintiff Genoveva Catalan Paulino by his common-law relationship with Rustica Catalan;

- That at the time of his death, the deceased Don Marcos Paulino left several properties, among which were his exclusive and undivided one-half share, interest and right to and in the properties and parcels of land hereinbelow described:

- That after the death of Marcos Paulino, there was no intestate proceeding for the settlement of his estate;

- That the properties of the deceased in the said estate, however, were inventoried, divided, partitioned, and distributed among his alleged compulsory heirs pursuant to the extra-judicial partition dated February 5, 1953, and registered with the Register of Deeds of San Pablo City to the exclusion of the herein plaintiff;

and prays that the appellees be ordered to deliver to her her share in the estate of the deceased consisting of 1/10 thereof and its income amounting to P7,500 annually from 5 February 1951 and to pay the costs of the suit.

It is true that by their motion to dismiss the appellees are deemed to have admitted that the appellant is the illegitimate spurious, not natural, child of the deceased Marcos Paulino. Such an admission., however, does not entitle her to inherit from her alleged putative father. It is necessary to allege that her putative father had acknowledged and recognized her as such. Such acknowledgment is essential and is the basis of her right to inherit. There being no allegation of such acknowledgment the action becomes one to compel recognition which can not be brought after the death of the putative father.

The order appealed from is affirmed, with costs against the appellees.

Baustista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

Bengzon, C.J., concurs in the result.

Reyes, J.B.L., J concurs in the result, because action is already barred (Art. 137).

[1] Article 278, Civil Code; Zuzuarregui vs. Zuzuarregui, supra.

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