

INTESTATE ESTATE OF DECEASED NATIVIDAD PAREJA, PAZ PAREJA, PETITIONER AND APPELLEE, VS. JULIO PAREJA, REGINA PAREJA, AND JOSE PAREJA, OPPOSITORS AND INTESTATE ESTATE OF PAREJA V...

G.R. No. L-5824. May 31, 1954

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal from an order of the Court of First Instance of Sorsogon declaring Julio Pareja, Regina Pareja, Paz Pareja, and Jose Pareja, as well as Soledad Pareja Marcial, acknowledged natural children and heirs of the deceased Natividad Pareja. The appeal was certified to this court by the Court of Appeals on the ground that fundamental question involved is one of law and not of fact.

The record discloses that Natividad Pareja died on April 6, 1943. He and Eulogia Fernandez lived together as man and wife without being married, although both had no impediment to contract marriage, and out of their relationship the said Julio Pareja, Regina Pareja, Paz Pareja, and Jose Pareja were born. Soledad Pareja was recognized by the deceased as his natural child, in compliance with a judgment rendered by this court in which he was found guilty of the seduction of Timotea Patria, as a result of which crime Soledad was begotten (Exhibit 1). She was declared by the trial court an acknowledged natural child, and she opposed the claim of the other children of the deceased, the appellees herein, as acknowledged natural children. So trial was held and evidence submitted, after which the court entered the order appealed from.

It is to be noted that no action for recognition was instituted during the lifetime of the deceased to compel him to recognize the appellees. (Article 135, paragraph 2, Spanish Civil Code.) Claim is made, however, that he had recognized them in the records of their births and in public documents. The records of birth are Exhibit B, birth certificate of Paz Pareja wherein it appears that she was born on September 10, 1905, "legitimate," father, "Natividad Pareja"; Exhibit C, baptismal certificate of Julio Pareja, in which it appears that he was baptized on May 7, 1898, as "legitimate" child of "Natividad Pareja"; Exhibit D, baptismal certificate of Regina Pareja, wherein it appears that she was born on September 7, 1900, and baptized on October 6, 1900, as "legitimate" child of "Natividad Pareja"; Exhibit E, birth certificate of Jose Patricio Pareja, who is supposed to have been born on March 15, 1902, as a "legitimate" child, but with the name of the father as "P. N. C." (padre no conocido—father unknown.) Another documentary evidence presented at the trial is the "Information for Membership Insurance" (Exhibit A) dated March 12, 1939, filed by the deceased with the Government Service Insurance System on April 4, 1939, and containing the following designation of beneficiaries :

Name

Family Name

Relationship

Age

Julio

Pareja

son

40

Regina

Pareja

daughter

38

Jose

Pareja

son

26

Paz

Pareja

daughter

24

The trial court held that the birth certificates, Exhibits B and E, of Paz Pareja and Jose Patricio Pareja, respectively, and the baptismal certificates, Exhibits C and D of Julio Pareja and Regina Pareja, respectively, are public documents, which "constitute proofs of the facts contained therein," i.e., Julio, Regina, Paz, and Jose, all surnamed Pareja, are recognized natural children of the deceased; that even if Exhibit E contains the statement that the father of the child mentioned therein is "P. N. C.", this deficiency is supplied by the testimony of Eulogia Fernandez, who declared that Jose Pareja is one of the four children she bore to Natividad Pareja; and that even if because of the technicalities of the law the above-named children have not proved their acknowledgment as natural children under the provisions of article 131 of the Spanish Civil Code, or can not now bring the action for recognition because they were all of age when their father died, still the court, which sits as a court of equity, should decree their recognition for the reason that the deceased had brought them up and reared them in every possible way, "ministering to their physical and moral needs, with tenderness and solicitude proper of every good father." Against these legal conclusions of the trial court Soledad Pareja Marcial has appealed.

The law which governs the form and manner in which recognition of natural children may be made is article 131 of the Spanish Civil Code, thus:

ART. 131. El reconocimiento de un hijo natural debera hacerse en el acta de nacimiento, en testamento o en otro documento publico.

The public document that is pointed out in the above article as one of the ways of acknowledgment is denned in article 1216 of the same code, as follows:

ART. 1216. Son documentos publicos los autorizados por un Notario o empleado publico competente, con las solemnidades requeridas por la ley.

Under the Spanish Civil Code there are two classes of public documents, those executed by private individuals which must be authenticated by notaries, and those issued by competent public officials by reason of their office. The public document pointed out in Article 131 as one of the means by which recognition may be made belongs to the first class. (Willard, *Notas alCodigo Civil Español*, pp. 25-28.)

Sanchez Roman, on the other hand, states that recognition of natural children must be precise, express, and solemn.

54. En cuanto a los elementos formales del reconocimiento de hijos naturales, o sean las formas legales de llevarlo a cabo, las establecidas por el Codigo son de caracter taxativo, expreso y solemne.

Lo primero, porque, segun el art. 131 y sus complementarios, 132, 133, solo puede tener lugar dicho reconocimiento en el acta de nacimiento, en testamento o en otro documento publico, y en este ultimo caso, cuando el reconocimiento sea de un menor, con la aprobacion judicial y audiencia del Ministerio fiscal, asi como cuando es de un mayor, siempre con su consentimiento, segun ya se ha dicho (1).

Lo segundo, porque de este mismo criterio legal taxativo y de los mediosunicos que establece el articulo 131, se deduce una vez mas, que el Codigo, apartandose del sentido declarado por la jurisprudencia del Derecho anterior, no acepta la doctrina del reconocimiento tacito, ni siquiera la de la libertad para acreditarlo por cualquiera de los medios de prueba establecidos en Derecho, cuando del reconocimiento voluntario propiamente tal se trate, siendo, a la sumo, aquellos medios, elementos para jundar la demanda del llamado reconocimiento forzoso, a que se refieren los articulos 135 y 136 (2), siempre que concurran las circunstancias especificas, en cuanto a la prueba de la filiation natural, que los mismos enuzneran.

Lo tercero, porque todas las formas de llevar a cabo el reconocimiento, taxativamente expresadas en el Srticulo 131 y complementadas para algun caso en el segundo parrafo del 133, son de caracter soiemne, segun lo revelan sus distintas especies, y hasta la mas generica que expresa de documento publico, cuyo valor legal se establece por el articulo 1.216 (3) del Codigo; y para este efecto, como tal, debe considerarse el acta de conciliation, calificada de documento publico y solemne por la ley de Enjuiciamiento civil (4). Tampoco cabe negar tal caracter a la forma especial del testamento olografo, no, obstante la condition privada de su otorgamiento, puesto que la cualidad de documento publico la adquiere desde el momento en que es protocolado (5). (Tomo 5, Vol. 2, Sanchez Roman, p. 1043.)

None of the documents presented, Exhibits B, C, D, and E, F, satisfies the requirements of precision and solemnity retired by article 131 of the Spanish Civil Code. Evidently, the trial court failed to distinguish the public document mentioned in said article 131 from "public instruments" in general. "Public instruments" and "public documents" have been used interchangeably. "Public instruments," under the Spanish notarial law, are a class of public documents and are denned in article 596 of the Ley Enjuiciamiento Civil. They are similar to the public instruments mentioned in sections 38 and 39 of Rule 123 of the Rules of Court. Certificate of birth, which are copies of official records (Section 35), or copies of public writings (Section 38, Rules 123), although issued by public officers, are in no sense public documents as defined in articles 131 and 1216 of the Spanish Civil Code. Neither are the baptismal certificates (Exhibits C and D) public documents or public writings, because the parochial records of baptisms are not public or official records, as they are not kept by public officers, and are no proof of relationship or filiation of the child baptized. (*Adriano vs. De Jesus*, 23 Phil., 350; *Madridejo vs. Leon*, 55 Phil., 1.), Exhibits B, C, D, and E are not, therefore, public documents as required in article 131 of the Spanish Civil Code by which parents may acknowledge their natural children. However, it remains to be seen if Exhibit A may not be so considered.

Exhibit A is not acknowledged before a notary public; a sheriff signed the document but he only signed as a witness. But in the document the deceased made an express statement that the appellees are his children. It is admitted that it is an official document, because it was made by the deceased in his capacity as an employee falling under the Government Service Insurance System, which is a Government institution. As to its authenticity, there is also no dispute. But as it was not executed with the formalities required by article 131, in the sense that it should be made before a notary public solemnly, we are constrained to hold that it does not possess the requisites of a public document of recognition. The trial court erred, therefore, in holding, on the basis of the documentary evidence, that the appellees are acknowledged natural children.

However, the court finds and declares Exhibit A as an authentic document or indubitable writing within the meaning of article 135, paragraph 1, of the Spanish Civil Code, which provides:

ART. 135. The father may be compelled to acknowledge his natural child in the following cases:

1. When an indubitable writing of his exists in which he expressly acknowledges his paternity.

* * * .

And as it does not appear from the record whether or not the appellees had knowledge of the existence of this indubitable writing prior to the death of their father, in the interest of justice, sufficient opportunity should be granted them to bring their case under the provisions of article 137, paragraph 2, of the Spanish Civil Code, which provides:

ART. 137. Actions for the acknowledgment of natural children 'may be commenced only during the lifetime of the putative parents except in the following cases:

1. * * *

2. If, after the death of the father or mother, some document, before unknown, should be discovered in which the child is expressly acknowledged.

In this case the action must be commenced within the six months next following the discovery of such document.

The record discloses that the deceased died during the war, and that the petition for administration was presented by Paz Pareja on May 21, 1945. No allegation is made therein that Paz Pareja and the other appellees are natural children of the deceased. From these facts we infer that the appellees herein may not have been aware of the existence of Exhibit A. Exhibit A appears to have been secured from the Government Service Insurance System on December 2, 1949, while the trial took place on December 10, 1949. However, unless evidence is submitted that the appellees had no knowledge of the existence of the said document more than six (6) months prior to December 2, 1949, they may not invoke or take advantage of the provisions of said article 137, paragraph 2, of the Spanish Civil Code.

Wherefore, the order appealed from is hereby reversed, but the appellees are hereby granted the right to secure a declaration that they are recognized natural children under the provisions of article 137, paragraph 2, of the Spanish Civil Code, the same to be exercised within thirty (30) days from the date on which this decision becomes final, subject to the condition above-mentioned. Without costs.

Pablo, Dengzon, Montemayor, Reyes, A., Jugo, and Bautista Angelo, JJ., concur.

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