

**ALFONSO COLORADO, ANTONIO COLORADO, PORFIRIO COLORADO,
EUFROCINIA VDA. DE COLORADO AND HER CHILDREN MINERVA
COLORADO CORPUZ, JOHN DOE “ROMY” CORPUZ,
AMADOR COLORADO, ARCHIMEDES ...**

G.R. No. L-39948. February 28, 1985

Ponente: CUEVAS, J.

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CUEVAS, J.:

Appeal by way of CERTIORARI from the decision of the then Court of Appeals (now Intermediate Appellate Court) in CA-G.R. No. 49528-R entitled "Gregorio Corpuz, et al, vs. Carmen Colorado, et al.", dated October 4, 1974 which modified the decision of the then Court of First Instance of Zambales (now Regional Trial Court) in Civil Case No. 163-I, by declaring that petitioners Leonardo, Alfonso, Juan, Antonio and Porfirio, all surnamed Colorado, are not the legitimated children of the late Flaviano Colorado.

Petitioners Leonardo, Alfonso, Juan, Antonio and Porfirio (all surnamed Colorado) are the natural children of Flaviano Colorado and Juliana del Rosario. The eldest, Leonardo, was born on May 16, 1915; while the youngest, Porfirio, on July 8, 1922. Before he died on August 31, 1922, Flaviano Colorado married Juliana del Rosario in articulo mortis on August 30, 1922.

Aside from the abovenamed children, Flaviano had four daughters by two previous marriages: Victoria Colorado, by his first wife, Agustina Sales; Carmen Colorado, Andrea Colorado and Fortunata Colorado, by his second wife, Felipa Beltran who died on July 27, 1913.

When Flaviano Colorado died intestate on August 31, 1922, he left several properties, among which are the two parcels of land described in paragraph 6 of the complaint filed with the Court of First Instance of Zambales which was docketed therein as Civil Case No. 163-I for "Partition and Delivery of Shares of Two Parcels of Land." These two parcels of land have been in the possession of Carmen Colorado from the time of Flaviano's death. In 1925, the properties left by Flaviano Colorado were orally partitioned among his widow, Juliana del Rosario, and his children Victoria Colorado, Carmen Colorado, Andrea Colorado, Fortunata Colorado, Leonardo Colorado, Alfonso Colorado, Juan Colorado, Antonio Colorado and Porfirio Colorado. The last five, being then minors, were represented by their mother Juliana. They all took delivery and possession of their respective shares. The two parcels subject of the complaint in the Trial Court were assigned to Carmen Colorado and her sisters Andrea and Fortunata (who died single and without a will on December 16, 1933).

Claiming that the properties left by his father Flaviano had not yet been partitioned among his heirs, Antonio Colorado on January 27, 1967 sold to Gregorio Corpuz his supposed undivided share over the two parcels in question. On February 10, 1967, Dolores Vda. de Colorado (widow of Juan Colorado), acting for and in behalf of her children, also sold their shares over these same (two) parcels to Gregorio Corpuz. Thereafter, Gregorio Corpuz advised Carmen Colorado of the sale and demanded that the two parcels be partitioned and to deliver to him the shares of Antonio and Juan Colorado. Carmen Colorado refused, claiming that these properties belong

exclusively to her and her late sisters as their share in the extrajudicial partition in 1923 of the properties left by their late father Flaviano Colorado. As a result of Carmen's refusal to honor and recognize the sale and partition of the two parcels of land in her possession, Gregorio Corpuz instituted a complaint against her, Civil Case No. 163-I, before the Court of First Instance of Zambales.

After trial, the then Court of First Instance ruled, among other things, that Leonardo, Alfonso, Juan, Antonio and Porfirio, all surnamed Colorado are the legitimated children of Flaviano Colorado and Juliana del Rosario, that Carmen Colorado-Battad and the heirs of Andrea Colorado Aquizap are the proindiviso owners of the two parcels of land described in the complaint; declared the deeds of sale executed by Antonio Colorado, Rebecca P. Colorado and Dolores Pascual Vda. de Colorado in favor of Gregorio Corpuz as null and void insofar as they affect the 3rd party plaintiffs and the parcels of land in question; and dismissed the plaintiffs' complaint.[1]

Their motion for reconsideration of the aforesaid decision having been denied, defendants interposed an appeal therefrom to the then Court of Appeals, raising two issues only, namely: (1) that the lower court erred in finding that Leonardo, Alfonso, Juan, Antonio and Porfirio are the legitimated children of Flaviano Colorado by his subsequent marriage to Juliana del Rosario; and (2) in concluding that there is lack of evidence to support the counterclaim of defendants and the intervenors.[2] The Court of Appeals sustained the Trial Court on the first assignment of error but overruled the second.

Hereunder is the pertinent portion of the appellate court's disposition of the aforesaid issues, to which we fully concur -

"It will be noted that the lower court, finding that Leonardo, Alfonso, Juan, Antonio and Porfirio, all surnamed Colorado, are the legitimated children of the late Flaviano Colorado by his subsequent marriage to Juliana del Rosario, leaned heavily on the certification of the local Civil Registrar of San Marcelino, Zambales: that according to the Civil Registry of Marriage, Book No. 1, Page No. 55, Register No. 42, on file in that office, Flaviano Colorado was married to Juliana del Rosario on August 30, 1922, by a Priest named Valeriano Canonizado (Exhibit "B"); the affidavit of Gerino Alvarez and Aniceto Beltran who deposed and said that they were actually present and witnessed the marriage ceremony performed by Father Valeriano Canonizado, contracted by Flaviano Colorado and Juliana del Rosario Vda. de Colorado (Exhibit "EE"); the certificate of death where it appears that the deceased Colorado was married to Juliana del Rosario (Exhibit "GG"); and a family photograph of Flaviano Colorado showing therein Juliana del Rosario, Victoria Colorado, Carmen Colorado, Fortunata Colorado, Andrea Colorado, Alfonso Colorado and Leonardo Colorado (Exhibits "A" to "A-8").

"The eldest son of the late Flaviano Colorado and Juliana del Rosario was Leonardo who was born on May 16, 1915 and their youngest son was Porfirio who was born on July 8, 1922, and was already about two (2) months old when Flaviano Colorado and Juliana del Rosario were married on August 30, 1922. For sometime before May, 1915, Flaviano was a widower.

"The law in force at the time of the birth of the five sons of Flaviano Colorado and Juliana del Rosario was the Spanish Civil Code. Since the status of the child is determined by the law in force at the time of its birth, the Spanish Civil Code particularly its Articles 121, 131 and 133, is the governing law on legitimation by subsequent marriage. Those articles are worded, as follows:

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

'Art. 131. The acknowledgment of a natural child must be made in the record of birth, in a will, or in some other public document.'

'Art. 133. The approval of the court shall be necessary to the acknowledgment of a minor unless such

acknowledgment be made in a certificate of birth or in a will.' (Underscoring supplied)

"The formalities for a valid acknowledgment of a natural child are provided for in Article 131 of the Spanish Civil Code. According to that Article such acknowledgment 'must be made in the record of birth, in a will, or in some other public document.' It is clear that the legitimation of natural children does not take place by mere subsequent marriage between the parents.

"The record shows that in the Register of Births on file in the Office of the Municipal Treasurer of San Marcelino, Zambales, the birth of Leonardo Colorado (Exhibit "E"), Alfonso Colorado (Exhibit "E-1"), Juan Colorado (Exhibit "E-2"), Antonio Colorado (Exhibit "E-3"), and Porfirio Colorado (Exhibit "E-4") was reported only on March 6, 1923, after about a year from the date of the death of Flaviano Colorado. In their record of birth it does not appear that Flaviano Colorado made acknowledgment, and there is nothing in the record to show that Flaviano Colorado signed any document pertaining to their status. Since no acknowledgment with respect to them was made by Flaviano Colorado in their certificate of birth or in some other public document and that he died without a will where the acknowledgment could be made, they cannot be considered as legitimated by the subsequent marriage of their parents.

"Plaintiffs-appellees and third party defendants-appellees cited the compromise agreement of the parties (Exhibit "U") filed in Civil Case No. 4 of the lower court, where the legitimacy of the five Colorado brothers is admitted, and invoked the doctrine of estoppel. The law on estoppel has no application when the compromise agreement is relied upon to establish civil status because no compromise can be made with respect to civil status of persons. x x x x"

The Court of Appeals then finally decreed -

"WHEREFORE, the appealed decision is hereby MODIFIED, in the sense that it is declared that Leonardo, Alfonso, Juan, Antonio and Porfirio, all surnamed Colorado, are not the legitimated children of the late Flaviano Colorado by the subsequent marriage of the latter to Juliana del Rosario and, therefore, not entitled to inherit from said Flaviano Colorado. The decision appealed from is AFFIRMED in all other respects."[3]

From the said decision as modified, petitioners appealed to this Court on the sole issue of - whether or not the Court of Appeals erred in applying the formal requisites for acknowledgment of natural children as specified by Articles 131 and 133 to the legitimation of natural children by subsequent marriage of their parents as provided for by Articles 120 to 125 of the Spanish Civil Code.

Petitioners argue that the acknowledgment of the five (5) Colorado brothers (petitioners) should be considered under Article 121 which falls under Chapter III (on legitimated children) covering Arts. 119 to 128 of the said Code and not under Arts. 131 and 133 which falls under Chapter IV on illegitimate children. In support of their aforesaid submittal, they cite the case of *Obispo vs. Obispo*, 99 Phil. 960.

Petitioners' reliance on the aforesaid case is misplaced.

The aforesaid *Obispo* case involved the questioned legitimation of Remedios Obispo who was born out of wedlock on August 5, 1921, the daughter of Sebastian Obispo and Fructuosa Labrador who, at the time of her conception and birth, were free to marry as in fact they did marry on February 4, 1924 before the Justice of the Peace of Botolan, Zambales. The issue of whether said Remedios Obispo was legitimated by the subsequent marriage of her parents (Sebastian Obispo and Fructuosa Labrador) arose because of the challenge against Remedios' right to inherit from her late father Sebastian Obispo who, in turn inherited several parcels from his late father Francisco Obispo. After trial, the Court of First Instance of Zambales rendered judgment holding that Remedios Obispo y Labrador was the natural child of the late Sebastian Obispo and Fructuosa Labrador, duly acknowledged and legitimated by the subsequent marriage of her parents and as such is entitled to inherit from both her father and grandmother Dorotea Apostol.

Olimpia Obispo, the defendant against whom the action to recover possession of the five (5) parcels in dispute was brought by Remedios Obispo, appealed the aforesaid judgment to the Court of Appeals, claiming that Remedios Obispo could not be deemed legitimated by the subsequent marriage of her parents because she was not duly acknowledged by her father either in the record of her birth or in a will, nor was she, being then a minor, acknowledged with judicial approval, as provided for in Article 133 of the old Civil Code.

In support of her contention that lack of judicial approval of acknowledgment of the minor Remedios Obispo as natural child made under oath on October 7, 1940 before Justice of the Peace of Cabukay, Zambales by her father Sebastian Obispo, prevents her from acquiring the condition or status of legitimated child by subsequent marriage, petitioners cite Article 121 of the old Civil Code which provides -

"Children shall be considered as legitimated by a subsequent marriage only when they have been acknowledged by the parents before or after the celebration thereof."

and it was therein held -

"..... For the validity or legality of an acknowledgment of a minor natural child by any of his natural parents, under the provisions of Art. 133 of the old Civil Code, judicial approval thereof was necessary. Art. 133 of the old Civil Code comes under Chapter IV, Title V, Book I, that deals with illegitimate children and acknowledgment of natural children, whereas Article 121 of the same Code comes under the preceding chapter that treats of legitimated children. The acknowledgment required in Article 121 is not the same as that required in Article 133 when the natural child to be acknowledged is a minor. The acknowledgment under the former article does not need judicial approval.

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"From this it may be inferred that the judicial approval of an acknowledgment of a minor natural child for the purpose of legitimation by marriage of the natural parents is not necessary.

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x x x x x

x x x x x

"We are of the opinion that the acknowledgment under oath of minor Remedios Obispo as natural child of Sebastian Obispo made by the latter on 17 October 1940 before a justice of the peace (Exhibit E) did not need judicial approval for her to acquire the status of legitimated child by the marriage of her natural parents."[4]

As it is, appellants failed to consider that Article 133 of the old Civil Code which falls under Chapter IV, Title V, Book I thereof, deals not only with "Illegitimate Children" but also of "Acknowledgment of Natural Children" which is Section 1 of the Chapter (IV) dealing with illegitimate children. It will be noted that acknowledged natural children are placed in the same class or category as illegitimate children. And this is so, because unless the parents of the acknowledged natural child subsequently marry each other, the child although acknowledged, remains illegitimate.

The child being illegitimate does not however, preclude his being acknowledged either jointly by his parents or by anyone of them under Article 129 which provides -

"Article 129. A natural child may be acknowledged by the father and mother jointly or by either of them alone."

In case of separate acknowledgment, Article 132 provides -

"Article 132. When the acknowledgment is made separately by the father or the mother, the name of the child's other parent shall not be revealed by the parent acknowledging it, nor shall any circumstance be mentioned by which such person might be recognized."

Article 121 properly falls under Chapter III on "legitimated children" because in this instance the parents of the child marry each other and the marriage legitimated the acknowledged natural child. In other words, the parents should be married to each other in order to effect the legitimation of their acknowledged natural children. And once legitimated, the child becomes legitimate child. Since the parents marry each other, the acknowledgment of the natural children need no judicial approval. This is exactly what this Court held in that Obispo case. The acknowledgment required by Article 121 must be made in the manner provided for by Article 131 which states - "the acknowledgment of a natural child must be made in the record of birth, in a will, or in some other public documents"

Coming now to the case at bar, the evidence do not show that Flaviano Colorado, during his lifetime, has formally acknowledged the five Colorado brothers as his natural children in any of the manner prescribed by Article 131. True enough, he lived with them under the same roof together with his older children by previous marriages. But, under the Spanish Civil Code, recognition by the parents to be valid must be expressed or formal - not tacit or implicit. Under the law prior to the Spanish Civil Code, tacit acknowledgment was sufficient; but since the enactment of the Code acknowledgment must be effected as prescribed by Article 131.[5] Acknowledgment by the parents is the conditional compliment of the natural filiation of a child born out of wedlock before such child can be legitimated by the subsequent marriage of his parents under Article 121 of the Spanish Civil Code.[6]

Petitioners vainly attempted to prove that Flaviano Colorado acknowledged the five brothers by presenting the photograph[7] showing Flaviano Colorado together with Juliana del Rosario and his children Victoria Colorado, Carmen Colorado, Fortunata Colorado, Andrea Colorado, Alfonso Colorado and Leonardo Colorado. Such photo gives them no support whatsoever in the light of Article 131. Not being a record of birth nor a will, nor a public document, it does not suffice for the purpose. At most, it merely serves as a basis for compulsory recognition and not as evidence of acknowledgment. Besides, family pictures do not constitute proof of filiation.[8] Not even the insurance policy taken by Flaviano Colorado naming his sons as beneficiaries since it does not come within the purview of recognition.[9]

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby **AFFIRMED**.

Costs against petitioners.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Abad Santos, and Escolin, JJ., concur.
Aquino, J., concurs in the result.

[1] Rollo, pages 30-31.

[2] Brief for Plaintiff and Third Party Defendants, Court of Appeals, page 5.

[3] Rollo, pages 36-39.

[4] 99 Phil. 960, 962-963.

[5] Ramirez vs. Gmur, 42 Phil. 855.

[6] Cosio vs. Pili, 10 Phil. 72.

[7] Exhibits "A", "A-1" to "A-8".

[8] Berciles vs. GSIS, 128 SCRA 53.

[9] Pareja vs. Pareja, 95 Phil. 171.

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