

**IN THE MATTER OF THE PETITION FOR CHANGE OF NAME.
DOLORES GEMORA PADILLA, IN REPRESENTATION OF HER MINOR
CHILDREN MICHAEL, ABIGAIL, RAFAEL, GABRIEL AND ANNABELLE,
ALL SURNAMED C...**

G.R. No. L-28274. April 30, 1982

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

This is an appeal by the State from the decision of the Court of First Instance of Pampanga - perfected before the effectivity of Republic Act No. 5440 - granting the petition of Dolores Gemora for change of surname of her minor children: Michael, Abigail, Rafael, Gabriel and Annabelle, from "Copuaco" or "Co" to "Padilla".

Dolores Gemora and Vincent Co, a Chinese national, were married on May 5, 1954. This matrimonial union begot five children, namely: Michael Copuaco, Abigail Copuaco, Rafael Copuaco, Gabriel Copuaco, and Annabelle Co.

Sometime in November 1960, Vincent Co left the conjugal abode in Caloocan City and has since never returned to, or even visited, his family. It is alleged that he was a fugitive from justice, having been charged with several offenses of estafa before the Court of First Instance of Manila [1]

and the City Court of Caloocan City.[2]

Because of his continuous absence, the Court of First Instance of Pampanga, on petition of Dolores Gemora, issued an order dated December 29, 1964 in Sp. Proc. No. 1776, declaring Vincent Co as an absentee.[3]

On October 30, 1965, Dolores Gemora contracted a second marriage with Sgt. Edward Padilla, an American serviceman stationed at Clark Air Base, Angeles City. The five minor children, who had been living with said spouses, were generously supported by Padilla and were treated by him with affection as if they were his own children.

This harmonious relation existing between said minors and their stepfather prompted Dolores Gemora to file the instant petition for change of the minors' surname from "Copuaco" or "Co" to "Padilla", which petition was granted by the lower court after due notice and hearing.

Hence, this appeal.

We find merit in the contention of the Solicitor General that our laws do not authorize legitimate children to adopt the surname of a person who is not their father. Said minors are the legitimate children of Vincent Co; and Article 364 of the Civil Code explicitly provides that "legitimate children x x x shall principally use the surname of their father."

To allow said minors to adopt the surname of their mother's second husband, who is not their father, could result

in confusion in their paternity. It could also create the suspicion that said minors, who were born during the coverture of their mother with her first husband, were in fact sired by Edward Padilla, thus bringing their legitimate status into discredit.

The case before Us is not of first impression. In *Moore vs. Republic*[4], a case involving the same factual milieu, We held that:

"Our laws do not authorize a legitimate child to use the surname of a person who is not his father. Article 364 of the Civil Code specifically provides that legitimate children shall principally use the surname of their father, and Article 369 of the same Code provides that in case of annulment of avoidable marriage the children conceived before the annulment shall principally use the surname of the father, and considering by analogy the effect of a decree of divorce, it is correctly concluded that the children who are conceived before such a decree should also be understood as carrying the surname of the real father.

"If a child born out of a lawful wedlock be allowed to bear the surname of the second husband of the mother, should the first husband die or be separated by a decree of divorce, there may result a confusion as to his real paternity. In the long run the change may redound to the prejudice of the child in the community. While the purpose which may have animated petitioner, the minor's mother, is plausible and may run along the feeling of cordiality and spiritual relationship that pervades among the members of the family of her second husband, there is a legal barrier which cannot at present be overlooked or brushed aside. x x x."

Apart from the legal obstacles discussed above, We consider the instant action taken by petitioner in behalf of her minor children to be premature. Indeed, the matter of change of their surname should better be left to the judgment and discretion of the children themselves when they reach the age of maturity. If in their adulthood they want to change their surname, then they themselves or any of them may take such appropriate action as the law may permit.

WHEREFORE, the decision of the lower court granting the petition is hereby set aside, and the petition dismissed. No costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., De Castro, and Ericta, JJ., concur.
Abad Santos, J., on official leave.

[1] Criminal Cases Nos. 47925, 55554 & 57169 Exhibit C-1.

[2] Criminal Cases Nos. 28911 and 29729 Exhibit D-1.

[3] Exhibit F.

[4] 8 SCRA 282.

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