

SERGIO ALABAT, PETRONILO ALABAT, NICOLAS ALABAT AND FORTUNATO ALABAT, PLAINTIFFS-APPELLANTS, VS. TORIBIA TANDOG VDA. DE ALABAT, LEONCIO ALABAT, JARMILO ALABAT, AND PREMIA ALABAT...

G.R. No. L-22169. December 29, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Direct appeal on questions of law from a decision of the Court of First Instance of Surigao (in its Civil Case No. 1318).

Appellants, who are the four children of the late Escolastico Alabat by his first marriage with Cornelia Bucayan (also deceased) have instituted this action for partition in the Court below against the four (4) Alabat appellees, children of the second marriage of Escolastico, and against his surviving widow, Toribia Tandog. Plaintiffs sought partition of several unregistered parcels of land in Taganaan, Surigao, and of a cash deposit of P4,000.00 in the Philippine National Bank, Butuan Branch, standing in the name of Escolastico Alabat. Defendants pleaded in answer that the properties in question originated from a death benefit payment made by the U. S. Veterans Administration to Escolastico Alabat and his second wife Toribia Tandog, on account of the death of their son Leonardo Alabat, a full-blood brother of defendants, who was a USAFFE soldier killed in action during World War II; that said Leonardo died unmarried but survived by his parents and by a natural daughter, intervenor-appellee, Wenifreda Alabat. Defendants claimed that the only heirs to the properties sought to be partitioned were the soldier Leonardo Alabat's surviving mother and his daughter Wenifreda, herein intervenor.

At the trial the parties agreed upon the following facts: (Rec. on Appeal, pp. 14-15) ?

"1. That a certain Wenifreda Alabat, the inter-venor, was born to Carmen Almeda with the now deceased Leonardo Alabat as her father, but Carmen Almeda and Leonardo Alabat were never legally married altho they were in a capacity to marry at the time that Wenifreda Alabat was conceived;

"2. That Carmen Almeda also filed a claim with the US Veterans Administration for the death benefit of Leonardo Alabat for the amount of P16,000.00 but this amount was not granted to her but to the now deceased Escolastico Alabat and the defendant Toribia Tandog, because Carmen Almeda could not show proof of having been legally married to Leonardo Alabat;

"3. That the parcel of land that were purchased with the money received from the US Veterans Administration as death benefits of Leonardo Alabat are parcels 1, 2, 3, 4 and 5 under paragraph three of the amended complaint; and

"4. That the amount of P4,000.00 mentioned in paragraph 3 of the complaint is also a part of the P16,000.00 received by the spouses Escolastico Alabat and Toribia Tandog which has been deposited with the Philippine National Bank, in Butuan City."

In addition, the trial Judge, Hon. Teofilo Buslon, further found from the evidence that Wenifreda Alabat "enjoyed the status of a recognized natural child from the time she was born until the present time" (Decision, R. App., p. 16); and on the basis of Article 991 of the new Civil Code, decided that the only parties entitled to share in the property were the mother, appellee Toribia Tandog and intervenor Wenifreda Alabat, to the exclusion of the appellants, issue of Escolastico's first marriage. Plaintiffs appealed.

We agree with appellants that the appealed decision can not stand as it is in error on at least four counts.

First, the Court below erred in applying the new Civil Code to the succession of Leonardo Alabat who died in 1945, or even before, (the exact date being uncertain) under the regime of the Code of 1889 (Civil Code of the Phil., Art. 2263).

Next, it erred in declaring the natural daughter, Wenifreda Alabat, entitled to succeed her late natural father, Leonardo Alabat, solely on the basis of her enjoyment of the status of a natural child. It is an elementary and basic principle in our law of succession that the rights of a natural child spring not from the filiation itself but from the child's acknowledgment by the natural parent, made voluntarily or by court decree.[1] Equally basic and elementary but also ignored by the trial Court, is the fact that possession or enjoyment of the status of natural child is per se not a sufficient operative acknowledgment but only a ground to compel the parent to acknowledge the child (Civ. Code of 1889, Art. 135; new Civil Code, Art. 283). The record of appeal before us nowhere shows, or even suggests, that intervenor Wenifreda was voluntarily or compulsorily acknowledged in the manner prescribed by law. Neither does it show that, because her natural father died during her minority, she has instituted a timely action to compel her acknowledgment. As the case stands now, there is no way to declare her possessed of hereditary rights in the estate of Leonardo Alabat. Whether she may still bring an action to compel acknowledgment, we can not decide now, for lack of adequate data.

Third, the trial Court erred in considering the death benefit payment by the U. S. Veterans Administration as part of the estate of Leonardo Alabat. This money was paid to his parents by the United States Government by way of indemnity or insurance for the death of the soldier. The latter was never entitled to it himself, since he died before the payment accrued. The money paid was there-fore exclusive property of Leonardo Alabat's parents, Escolastico Alabat and Toribia Tandog. Considering it community property, Escolastico was entitled to one half thereof, and, hence, of the property acquired thereby. Upon his death in 1959 without leaving any testament, that half descended unto all his eight (8) surviving children of the first and second marriages, with the surviving widow being also entitled to a share equal to that of each of the children (Civil Code of the Philippines, Art. 996):

"ART. 996. -- If a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children."

In the fourth place, the assumption in the appealed decision that Article 991 of the new Civil Code applies, is erroneous, in view of the facts previously adverted to. But even if it did apply, the death benefit payment should belong, in equal shares, to the natural child and the parents of the soldier Leonardo Alabat; and the half of the parents can not belong to the mother alone, for she was not the only surviving parent of the predeceased Leonardo Alabat. In excluding the father, Escolastico, the lower Court acted contrary to all logic and common sense.

After all is said, the basic fact is that the estate to be settled is that of Escolastico Alabat, and not that of his predeceased son, Leonardo Alabat, as mistakenly assumed by the Court a quo. Hence, the plaintiffs-appellants being children of Escolastico are clearly entitled to share in the properties described in their complaint and to maintain this suit for partition.

Whether the natural child, Wenifreda, can succeed to the share of her father, Leonardo, by right of representation,

depends upon whether she has been properly acknowledged as his natural child. Considering that this point was apparently not litigated, and taking into account that if Leonardo died during his daughter's minority, the latter had four (4) years after attaining majority, to file an action to compel acknowledgment,[2] both equity and justice demand that Wenifreda be given ample opportunity to establish in the Court below whatever rights she is entitled to in accordance with law.

IN VIEW OF THE FOREGOING, the decision appealed from is reversed and set aside, and the case is ordered remanded to the Court of origin for further proceedings conformably to this opinion. Costs against defendants-appellees.

SO ORDERED.

Concepcion, C.J., Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.
Dizon, and Fernando, JJ., did not take part.

[1] Canales vs. Arrogante, 91 Phil. 6; Mundoc vs. Caluag, 97 Phil. 982; Mise vs. Rodriguez, 95 Phil. 396; Magallanes vs. Court of Appeals, 95 Phil. 795; Puzon vs. Ortega, 55 Phil. 756, 759.

[2] Art. 137, Civil Code of 1889 in force when intervenor was born and Leonardo Alabat died during the Japanese Occupation.

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