

PRIMITIVA CANALES, PLAINTIFF AND APPELLEE VS. FILOTEO ARROGANTE, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-3821. March 17, 1952

Ponente: REYES, J.

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REYES, J.:

Bernardina Canales died intestate in 1945, leaving some property. She was survived by her husband, Filoteo Arrogante, and two legitimate children, Gaudiosa Arrogante and Leonida Arrogante.

To claim a portion of the inheritance of the deceased, Primitiva Canales brought the present action in 1948 against the surviving heirs, alleging that she is a natural daughter of the deceased, begotten before the latter's marriage to Filoteo Arrogante. Answering the complaint the defendants denied this allegation and set up the defense (1) that the complaint did not state a cause of action in the absence of averment that plaintiff had been acknowledged by the deceased and (2) that plaintiff's action for acknowledgment was already barred by statute.

At the trial plaintiff was allowed, over defendants' objection, to introduce evidence tending to show that she was born in Daan Bantayan, Cebu, in 1893, the daughter of the deceased Bernardina Canales, who was then single; that she continuously lived with her mother even after the latter's marriage to Filoteo Arrogante in 1910 and until her death in 1945; that according to the church record of her town, of which Exh. B is a certified copy, she was baptized as the daughter of said Bernardina Canales and an unknown father and was given the name Apolinaria Canales; that some time in 19-14 plaintiff looked for said record in church but failed to find it because the pages of the book where it was entered had been detached and mislaid; and that though the church record in question describes her as Apolinaria Canales, her real name is Primitiva Canales. Defendants presented no evidence, having taken the position that plaintiff had, with her evidence, failed to establish her right to the inheritance left by the deceased.

Deciding the case, the trial court declared that plaintiff had "satisfactorily established her status as a natural child of the deceased Bernardina Canales, and as such, irrespective of whether or not she had been duly recognized by her mother, is entitled to share in the latter's estate * * *." From this decision defendants have appealed to this Court.

The appeal raises no question of fact, and the only question for determination is whether or not a natural child who has not been legally acknowledged by its mother is entitled to share in her inheritance.

Article 2263 of the new Civil Code provides that "rights to the inheritance of a person who died, with or without a will, before the effectivity of this Code, shall be governed by the Civil Code of 1889, by other previous laws, and by the Rules of Court." This provision applies to the present case because plaintiff's mother died before the effectivity of the new Code. And as plaintiff herself was born in 1893 when the Civil Code of 1889 was already in effect, the substantive law to govern her rights is that contained in this Code. (*Malonda vs. Infante Vda. de Malonda et al.*, 45 Off. Gaz., No. 12, p. 5468; 81 Phil., 149).

It is now settled that under the Civil Code of 1889, "a natural child not recognized has no rights whatsoever." (Buenaventura vs. Urbano, 5 Phil. 1; Malonda vs. Infante Vda. de Malonda et al., supra.) This recognition, as this Court had occasion to observe in the first case, may be voluntary, in accordance with the provisions of article 131, or it may be, in a sense, obligatory, under articles 135 and 136. In either case it is only after the recognition takes place that the child is entitled to the rights accorded by article 134 to "an acknowledged natural child."

The complaint does not allege and the evidence does not show that plaintiff has been recognized by her presumptive mother through either one of the modes above mentioned. The church record of her baptism in which she is described as a daughter of Bernardina Canales, but in the preparation of which the latter does not appear to have had any intervention, cannot be held to be a voluntary recognition of parentage. (Adriano vs. De Jesus, 23 Phil., 350; Samson vs. Corrales Tan, 48 Phil., 401; Madridejo vs. De Leon, 55 Phil., 1; Malonda vs. Infante Vda. de Malonda, supra.)

The trial court, however, held, as already stated, that plaintiff, "irrespective of whether or not she had been duly recognized by her mother, is entitled to share in the latter's estate."

This view is untenable. As already stated, under the old Civil Code a natural child has no successional rights until it is acknowledged. As Manresa says,

"La naturalidad del hijo es siempre un hecho, independientemente de que los padres lo reconozcan o no; pero el reconocimiento se hace necesario para que aquel pueda exigir de estos la satisfaccion de los derechos que como a tal hijo le corresponden. (1 Manresa, 574.)

Not having been voluntarily acknowledged as a natural child, what plaintiff should have done was to bring an action to compel recognition, for, as this Court said in the case of Madridejo vs. De Leon et al., supra, "the compulsory acknowledgment by the father established in article 135 of the Civil Code, and by the mother according to article 136, requires that the natural child take judicial action against the father or mother, or against the persons setting themselves up as the heirs of both, for the purpose of compelling them to acknowledge him as a natural son through a judgment of the court." But plaintiff has instituted no such action during the lifetime of her mother, and the present action—in which she seeks to recover her share of the latter's inheritance—if regarded as one for compulsory recognition would, as defendants plead in their answer, be barred by statute.

Article 137 of the Civil Code of 1889 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. If the father or mother died during the minority of the child, in which case the latter may commence the action within the four years next following the attainment of its majority.

"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."

Pursuant to this article—and the rule is practically the same under the new Civil Code—plaintiff's action for recognition should have been brought during the lifetime of her mother. That action cannot be brought now because plaintiff does not come under either one of the exceptions provided for in the article, it appearing that plaintiff was already above fifty when her mother died and, as the trial court observes, no document, before unknown, has been discovered in which she is expressly acknowledged by her mother.

In view of the foregoing, the judgment below is revoked and the complaint dismissed, with costs.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Jugo, and Bautista Angelo, JJ., concur.

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