

CLEMENTE FORTUS, ET AL., PETITIONERS, VS. ROSARIO NOVERO AND JULIA T. FORTUS, RESPONDENTS.

G.R. No. L-22378. June 29, 1968

Ponente: DIZON, J.

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DIZON, J.:

Appeal by certiorari from the decision of the Court of Appeals in G.R. L-22378, affirming the one rendered by the Court of First Instance of Lipa City in its Special Proceedings No. 610.

The proceedings for the summary settlement of the intestate estate of the late Ciriaca Angelo, who died sometime in the year 1930 in the municipality of Rosario, province of Batangas, were commenced by Rosario Novero who claimed to be an illegitimate child of the deceased Victorino Fortus (Ciriaca's grandson), born on April 4, 1922 out of Victorino's alleged illicit relations with Patricia Novero. Her claim was opposed, on the one hand, by Julie T. Fortus, the surviving widow of Victorino, and on the other, by Clemente, Zoilo, Faustina, Catalino, Pio, De-metria, Francisca and Roman, all surnamed Fortus, hereinafter referred to as the Fortuses, who claimed to behalf brothers and sisters of said deceased. After the required notice by publication and subsequent trial the aforesaid Court of First Instance rendered judgment as follows:

"WHEREFORE, judgment is hereby rendered dismissing the claims of petitioner and the Fortus brothers and sisters to succeed to the estate left by Victorino Fortus, and declaring Julia T. Fortus as the sole heir and the absolute owner of all the properties left by Victorino Fortus. Julia T. Fortus is hereby ordered to reimburse Felicidad Peña Gonzales the amount of P1,303.04. No pronouncement as to cost is hereby made."

Rosario Novero and the Fortuses appealed to the Court of Appeals who in due time rendered the appealed decision. As the first did not appeal, said decision must now be deemed final, as far as she is concerned. The Fortuses, however, interposed the present appeal by certiorari and urge Us to reverse the appealed decision claiming that the Court of Appeals committed the following errors:

"The trial court erred in finding that petitioners' parents, Fermin Fortus and Jacoba Aguil, were not legally married:

- (1) By holding that the legal presumption of marriage was overcome by Exhibit 5 and by the testimony of Clemente Barbosa;
- (2) By construing the certification Exhibit 5 without reference to Act No. 3022 and the explanatory testimony of David de Jesus, Jr. of the Bureau of Public Libraries;
- (3) By holding that Exhibits 2, 4, 9-B and 9-C did not constitute a proof of marriage between Fermin Fortus and Jacoba Aguil, much less a proof of the legitimacy of the oppositors Fortuses; and
- (4) By not applying the law and applicable decisions of the Supreme Court to the undisputed facts of the case."

The above assignment of errors make it obvious that the only issue involved in this appeal is one of fact: whether or not Fermin Fortus and Jacoba Aguil were legally married. Indeed, at page 8 (last paragraph) of their brief the

Fortuses openly admit that "the sole question in this case" is "whether petitioners' mother, Jacoba Aguil, was legally married to Fermin Fortus". The Court of Appeals' (1) holding that the legal presumption of marriage was overcome by Exhibit 5 and by the testimony of Clemente Barbosa"; (2) said court's "construing the certification Exhibit 5 without reference to Act No. 3022 and the explanatory testimony of David de Jesus, Jr., of the Bureau of Public Libraries"; (3) its "Holding that Exhibits 2, 4, 9-B and 9-C did not constitute a proof of marriage between Fermin Fortus and Jacoba Aguil, much less a proof of the legitimacy of the oppositors Fortuses" involve nothing more than evaluation of evidence and are but the reasons that led said court to declare as a fact that Fermin and Jacoba were never married. The evaluation made by the Court of all or part of the evidence of record; its finding of fact - that the persons just named were never legally married -, even if wrong, may not now be reviewed by Us, the present being an appeal by certiorari. We have held in a long line of cases that in appeals of this nature We pass upon and decide only questions of law (Cabrera vs. Lopez, 84 Phil. 834-5; Pacheco vs. Arro, 85 Phil. 505-15; Celesto vs. People, G.R. L-3935, Dec. 21, 1951; Traders etc. vs. Golangco, G.R. L-6442, Sept. 21, 1954). In the recent case of Jesusa Lacson Vda. de Arroyo vs. Beaterio etc. We held:

"According to the decision of the Court of Appeals, the lone assignment of error submitted by the appellants in their brief argued 'for the sufficiency of plaintiffs-appellants' evidence as a fair and reasonable basis for resting a finding that the donation in question is inofficious'. It is clear, therefore, that the only issue submitted to said court, and by it decided, was purely one of fact.

"In this connection it is a matter removed from dispute that We can review decisions of the Court of Appeals only on errors of law, its findings of fact being conclusive.

"A question of law has been declared as one not calling for the examination of the probative value of the evidence presented by the parties (Goduco vs. Court of Appeals, et al. G.R. No. L-17647, February 28, 1964; Air France etc. vs. Carrascoso et al. G. R. No. L-21438, September 28, 1966). Moran's Comments on the subject (Rules of Court, Volume II, 1963 Edition, p. 412) are to the effect that 'For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them'.

"In a case similar to the one at bar (Lim vs. Calaguas, G. R. No. L-2031, May 3, 1949, 40 O.G., 11 Supp. 247, 83 Phil. 796) We held:

'Our review should be confined to the facts and circumstances found by the Court of Appeals. And we agree that such facts and circumstances in this case do not sustain the theory of the appellant. Indeed it is seriously to be doubted whether we could reverse the conclusion of the appellate court to the effect that those facts and circumstances are not 'enough evidence' to show clearly and beyond doubt that the parties intended the contract to be a mortgage instead of a conditional conveyance. That conclusion is obviously ONE OF FACT, not a bit different from the verdict of a jury in a murder trial that the circumstantial evidence presented by the prosecution has proved, or has not proved that the accused had killed the deceased.

'In disputes of this nature, the pivotal inquiry is: Do the circumstances show beyond doubt that the parties made a contract different from the express terms of the document they signed? Is the evidence clear, convincing and satisfactory that the deal was a mortgage instead of a sale with pacto de retro? (Cuyugan v. Santos 34 Phil. 100; Tolentino v. Gonzales, 50 Phil. 558). That query necessarily invites calibration of the whole 'evidence', considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation. Consequently the question must be deemed factual for the Appeals' Court to solve.'

'In the United States where questions of law are for the jury, it is held that if the question whether a given transaction amounts to a conditional sale or mere mortgage depends upon written instruments alone, it is a

question for the court; but if extra-neous evidence is required or received for the purpose of ascertaining the real intention of the parties, the question is for the jury (41 C.J. 361 citing many cases, particularly Bogk v. Gasset, 149 U.S. 17, Howard v. Kopperl, 74 Tex. 194; 5 SW 627 and Kinnert v. Strong, 103 Wis. 70; 79 N.W. 32) and 'an issue involving determination of the xxx xxx intent of a person or persons with respect to acts done by them is a question of fact for the jury. (64 C.J. 365).' underlining ours.

"In Rapatan vs. Chicano, G.R. No. L--13828, February 25, 1960, We likewise said:

'But the trial court did not merely dismiss the complaint, proceeded to re-ceive evidence on the counterclaim of defendants. In this respect the trial court said 'With respect to the counter-claim alleged in the amended answer of the said defendants, the preponderance of evidence discloses that the imputations contained in the complaint that the late Escolastico G. Chicano, husband of Coleta de Chicano and father of Elpidio Chicano had acquired the land in question from the plaintiffs through fraud and that the said defendants 'taking advantage of the igno-rance of the plaintiffs herein managed fraudulently to transfer the tax declara-tion of the land in question in the name of the plaintiffs to the name of defendants, are false, malicious and defamatory to the memory of the late Escolastico Chicano and the reputation of his heirs, Elpidio Chi-cano and Coleta de Chicano, thus causing the latter mental anguish, besmirched re-putation, wounded feelings, moral shock and similar injuries,' and accordingly, ordered plaintiffs to pay the sum of P5,000.00 as moral damages.

'Considering that the foregoing finding is a question of fact which involves an evaluation of the evidence and the same is now assigned as error, we are of the opinion that this case comes within the appellate jurisdiction of the Court of Appeals.'"

We have also held, however, that, in extreme cases calling for the exercise of our supervisory jurisdiction, We may disturb or reverse any particular finding of fact of the Court of Appeals should We find it to be arbitrary or whimsical or entirely outside the issues raised by the parties in their respective pleadings.

In De Luna vs. Linatoc 74 Phil. 15, answering our own question: "When may the Supreme Court review such deduction of fact based on uncontroverted or plain evidence?", We said:

"x x x Only when reasonable men readily agree that the inference is mani-festly mistaken, absurd or impossible. If however, fair-minded men may differ on whether or not the main conclusion of fact is rightly drawn from the undisputed evidence, the Supreme Court should not, as a rule, in-quire into the discretion exercised by the Court of Appeals. The instant case is of the latter category, because the findings of the Court of Appeals that there has been no deceit may or may not be persuasive, according to one's own reasoning after reading the decision and resolution of that Court. It cannot be said that fairminded men will not differ in this case on the existence of fraud."

Then, in Evangelista vs. Alto Surety and Insurance Co., Inc., speaking through the present Chief Justice, We said:

"Considering, therefore, that neither the pleadings, nor the briefs in the Court of Appeals, raised an issue on whether or not copies of the writ of attachment and notice of attachment had been served upon Rivera; that the defendants had impliedly admitted - in said pleadings and briefs, as well as by their conduct during the entire proceedings, prior to the rendition of the decision of the Court of Appeals - that Rivera had received copies of said documents; and that, for this reason, evidently, no proof was introduced there-on, we are of the opinion, and so hold that the finding of the Court of Appeals to the effect that said copies had not been served upon Rivera is based upon a misapprehension of the specific issues involved therein and goes beyond the range of such issues, apart from being contrary to the aforementioned admission by the parties, and that, accord-ingly, a grave abuse of discretion was com-mitted in making said finding, which is, furthermore, inaccurate."

In connection with all the foregoing, the following facts are either undisputed or fully borne by the evidence.

Ciriaca Angelo was the owner of the parcel of land located in barrio Alpaye, Rosario, Batangas, with an area of approximately 20,102 sq.m., subject of the petition for summary settlement mentioned at the beginning of this decision. It was registered in her name under Original Certificate of Title No. 370. She had only one child, a daughter by the name of Crisanta Ilagan, married to Fermin Fortus. This couple had an only son, the deceased Victorino Fortus. As Crisanta Ilagan predeceased her mother, Ciriaca Angelo, who died intestate sometime in the year 1930, the property aforesaid passed on to Victorino Fortus as the lone surviving heir of his grandmother. It is a fact, however, that he never caused the original certificate of title covering the property to be cancelled and to have another issued in his name.

It is not disputed that Victorino Fortus and Julia T. Fortus were husband and wife and that up to Victorino's death on January 8, 1954 they were childless. It is similarly admitted that at the time of his death, Victorino had been estranged from his wife for a number of years and had been living maritally with another woman named Felicidad Gonzales Peña. Out of this illicit relation, however, no issue was begotten.

That the property is now covered by transfer certificate of title No. 6831 issued by the Registrar of Deeds of Batangas is due to the fact that upon Victorino's death, his widow, Julia T. Fortus, executed the required affidavit of extra-judicial summary settlement and had it registered in accordance with law. By reason thereof, original certificate of title No. 370 was cancelled and the transfer certificate of title already referred to was issued in Julia's name. In this connection, the Fortuses (page 7 of the their brief) make the claim that in her affidavit in connection with the extra-judicial settlement of the estate of Ciriaca Angelo, Julia had "falsely re-presented the original owner Ciriaca Angelo to be her grandmother." While this alleged falsehood is unsubstantial, We venture the observation that Julia's statement contained no real falsehood, for, indeed, Ciriaca was the grandmother of her husband and therefore her own grandmother-in-law.

As Rosario Novero did not appeal from the decision of the Court of Appeals, it is now proper to say something only about the claim of the Fortuses - that they are Victorino's legitimate half-brothers and sisters, being the legitimate children of Fermin Fortus (father of Victorino) and Jacoba Aguil who were allegedly married sometime between 1902 and 1905 before Isabelo Bolaños, at that time justice of the peace of the municipality of Rosario, Batangas.

As correctly held by the court of origin (Court of First Instance of Lipa City) it was incumbent upon the Fortuses to prove their affirmative allegations that Fermin and Jacoba were legally married and that they, the Fortuses, are their legitimate children.

According to the record, the presentation of the evidence of the parties began before Judge Conrado Vasquez; was later continued before Judge Luis B. Reyes; and when both were transferred to other judicial districts the hearings were continued before Judge Damaso S. Tengco, who penned the decision of the court. These circumstances are here stated to show that Judge Tengco cannot be said to have rendered his decision relying only upon the transcript of the testimonial evidence.

In connection with the vital question of fact involved, His Honor's decision says:

"Are the Fortuses legitimate half-brothers and sisters of Victorino Fortus? The property involved in this proceeding came from Ciriaca Angelo, and passed to Victorino Fortus through his mother Crisanta Ilagan, daughter of the former. The Fortuses brothers and sisters are children of Fermin Fortus, father of Victorino Fortus, and a certain woman by the name of Jacoba Aguil. The Fortuses maintained that the petitioner not being an illegitimate daughter of Victorino Fortus, they are entitled to inherit the one-half portion of the property left by their deceased brother, Victorino Fortus. Their right is based upon their assertion that their father Fermin Fortus and Jacoba Aguil were legally married.

"The Fortuses brothers and sisters failed to present a valid document of marriage between Fermin Fortus and Jacoba Aguil. They maintained that it was lost during the last global war. In many cases it has been observed by this Court that a party who is claiming a right by virtue of a document usually finds it convenient to allege that the said document was lost during the last global war, when in fact and in truth there was no such document. The instant case is one of the many cases wherein a party allege to have lost a document which never existed.

"Attempts were made by the Fortuses brothers to lay the basis for the introduction of a secondary evidence as to the existence of a marriage contract and/or celebration thereof, but said evidence did not satisfy the requisites required by law. Section 51, Rule 123 of the Rules of Court, provides that when the original writing has been lost or destroyed, upon proof of its execution and loss or destruction, its contents may be proved by a copy or by a recital of its contents in some authentic document, or by collection of witnesses. The question at issue now is, were the oppositors Fortuses able to prove the due execution of the alleged marriage contract between Fermin Fortus and Jacoba Aguil or to present satisfactory secondary evidence to that effect.

"The testimony of David de Jesus, Jr., of the Division of Archives, National Library, Manila, who identified Exhibit '5' clearly established that there existed no records of such marriage. This statement was corroborated by Clemente Barbosa, a clerk in the Office of the Municipal Treasurer of Rosario, Batangas, that there were no records of such marriage from 1902 to 1922 of the Municipality of Rosario, Batangas. So that the conclusion is now inevitable that when the pre-war records were burned as per Exhibit '7', the imaginary record of marriage of Fermin Fortus and Jacoba Aguil could not have been included, as it never existed at all.

"The testimony of Jacoba Aguil which is purely self-serving and which was contradicted by a sincere witness, Felicidad Blay, cannot serve as a basis to establish the celebration of the marriage in question. Neither could said marriage be established by the contradicting statements of Clemente Fortus and Pio Fortus. Both claimed to have seen the marriage contract. Clemente Fortus said that it was written in Tagalog while Pio said it was written in Spanish.

"The Court was at a loss to understand who of them was really sincere. Considering that both Clemente and Pio were presented as material witness to prove the existence of the alleged marriage contract and the fact that they materially contradicted each other on the substantial contents of the said contract, the conclusion is imperative that neither one of them should be believed. Viewed from these findings, the Court could not sustain the fact that secondary evidence has been established by the Fortuses brothers and therefore there can be no basis for their claim of legitimacy.

"Disregarding the principle of primary or best and secondary evidence, still the Court believes that the other testimonial evidence as well as documentary evidence adduced do not establish their claim. Jacoba Aguil's testimony was replete with inconsistencies and impossibilities. She could not remember on what part of the page of the marriage contract she placed her thumbmark; that she placed her thumbmark only once, which is rather contrary to the practice that it should be more than one; that she could not state whether the alleged marriage contract was not in longhand or typewritten or printed; that she never went to Batangas, Batangas, and knew nobody there, contrary to the statement given by Felicidad Blay who has no false motive to tell a lie and also found to be a sincere witness; that she never saw again the marriage contract she allegedly thumbmarked since they were married, (Clemente and Pio declared though that they saw it in the aparador and also saw that the aparador together with the controversial marriage contract were burned during the Japanese occupation) and that it was lost only during the Japanese time. By all these testimonies Jacoba Aguil has failed to make this Court believe in the existence of her marriage.

"The deposition of Victoriana Guerro was presented. Victoriana Guerro was a relative of Jacoba Aguil and she could not be expected to be unbiased. Her description of the celebration of marriage between Fermin and Jacoba was contrary to the existing procedure prescribed by the then existing marriage law. The marriage law which was then in existence was general orders No. 68 which took effect on December 24, 1929. The

formalities mentioned by Victoriana Guerro and Jacoba Aguil were the formalities prescribed in the present law, Act No. 3613, and therefore the conclusion is inevitable that these witnesses were telling a lie. In the year 1902 or 1903 when the alleged marriage of Fermin Fortus and Jacoba Aguil was celebrated General Orders No. 68 which was then the law on marriage did not require the contracting parties or the so called witnesses or padrinos to sign the marriage contract. What the law then required only as to the proof of the celebration of marriage was a certificate of the parish priest or the justice of the peace or judge contain-ing the full names of the parties, their residence, ages and the consent of the father and mother or guardian and nothing else. It was only the father who signed a form giving consent to his or her child of minor age to the contract of marriage. Nothing more was necessary. On this score that Court believes that the witnesses for the Fortuses brothers and sisters and the Fortuses themselves made a story which was of their own concoction. In the light of these findings and observations the Court was of the considered opinion that Fermin Fortus and Jacoba Aguil were not legally married. And if they were not legally married, the Fortuses brothers and sisters were illegitimate children and have no right to succeed to the properties of either Ciriaca Angelo or that of Vic-torino Fortus. Article 992 of the New Civil Code provides that an illegitimate child has no right to inherit ab intestato from the legitimate children and relative of his father and mother, nor such children or relative inherit in the same manner from the illegitimate children.

Exhibit '2' is not an evidence of legitimacy much less of marriage between Fermin Fortus And Jacoba Aguil. It is a baptismal certificate and it does not serve as proof of relationship of or filiation of the child baptized. 'The record of baptism as a general rule, in all documents, attest to the fact which give rise to its issue, and the date thereof, to wit, the fact of the adminis-tration of the sacrament on the date stated, but not the truth of the statements therein made as to the parentage of the child bap-tized.' (Basa, et al., vs. Arquiza, et al., 5 Phil. 187) 'The aforementioned canonical certificate is conclusive proof only of the baptism administered, in conformity with the rites of the Catholic Church by the priest who baptized the child but it does not prove the veracity of the declarations and statements contained in the said cer-tificate that concern the relationship of the person baptized. Such declarations and statements, in order that their truth may be admitted, must indispensably be shown by some of the kinds of proof recognized by law.' (Adriano vs. de Jesus, 23 Phil. 353)

"Exhibit '4' likewise is not a proof of marriage nor could it be a prima facie evidence of legitimacy of Roman Fortus, the eight child of Jacoba Aguil had with Fermin Fortus. The authority cited by the Fortuses brothers and sisters to wit: Crisolo vs. Judge Macadaeg, L-7017, pro-mulgated April 29, 1954, is not square on the point, because while that case was decided under the authority of Act 3753 which took effect on February 26, 1931, Roman Fortus was born on February 28, 1922, long before the effectivity of the subsequent law. Even assuming that Act No. 3753 is applicable to Roman Fortus, it was only a prima facie proof which oppo-sitor Julia T. Fortus had overcome by satis-factory evidence to the effect that Fermin Fortus and Jacoba Aguil were never married and hence all of their children are not legitimate brothers or half-brothers and therefore have no right to inherit from Victorino Fortus under Article No. 992 of the New Civil Code. Likewise, Exhibit '9-B' and '9-C' could not support the claim that Fermin Fortus was married to Jacoba Aguil, because even granting that Fermin Fortus got married, the name of Jacoba Aguil was not mentioned as the name of the woman who became his wife. Of all the children of Jacoba Aguil, it was only the baptism and/or birth certificate of Roman Fortus that was presented. The status of Catalino, Demetria, Clemente, Zoilo, Pio and Fran-cisco Fortus were left out."

The brief filed by the Fortuses in the Court of Appeals makes the following assignment of errors:

"The trial court erred in finding that petitioners' parents, Fermin Fortus and Jacoba Aguil, were not legally married:

- (1) By holding that the legal pre-sumption of marriage was overcome by Exhibit 5 and by the testimony of Cle-mente Barbosa;
- (2) By construing the certification Exhibit 5 without reference to Act No. 3022 and the explanatory testimony

of David de Jesus, Jr. of the Bureau of Public Libraries;

(3) By holding that Exhibits 2, 4, 9-B and 9-C did not constitute a proof of marriage between Fermin Fortus and Jacoba Aguil, much less a proof of the legitimacy of the oppositors Fortuses; and

(4) By not applying the law and applicable decisions of the Supreme Court to the undisputed facts of this case.

The above assignment of errors makes it obvious that the only issues submitted to the Court of Appeals were factual, namely, whether or not Fermin Fortus and Jacoba Aguil were ever married, and whether or not the Fortuses had established their contention by at least preponderance of evidence. That the first question is one of fact need not be demonstrated - the same being obvious. It is likewise beyond doubt that the second issue is factual, because it involves evaluation of the conflicting evidence presented by the contending parties.

Considering the nature of the issues before it, the Court of Appeals made a thorough review of the evidence in the light of the respective contentions of the parties, and thereafter said the following:

"The Fortuses brothers and sisters, who are one of the oppositors in this case, claimed that they were all the legitimate half-brothers and sisters of the deceased Victorino Fortus as they were the legitimate children of Fermin Fortus - who is also the father of Victorino Fortus - and Jacoba Aguil who were legally married between 1902 and 1905 before Isabelo Beleños, then the Justice of the Peace in the poblacion of Rosario, Batangas, in the house of Victoriana Guerro; that after the solemnization of the marriage the couple was issued marriage contract but the same was burned during the Japanese occupation. For this purpose, to prove the existence of marriage between Fermin Fortus and Jacoba Aguil as well as the unavailability of the record of births of their children - the Fortuses - a certification to the effect that all pre-war public documents in the municipality of Rosario, Batangas, were burned (Exhibit 7) was offered as evidence. Thus, these oppositors tried to establish by secondary evidence - the weight and credence of which we shall discuss later on - the existence of the marriage between Fermin Fortus and Jacoba Aguil whom they alleged lived together as husband and wife for almost 30 years and were never separated during their marital union."

"We now come to the Fortuses brothers and sisters who all claim to be the half-brothers and sisters of Victorino Fortus. There seems to be no dispute on the evidence on record that the Fortuses were the children of Fermin Fortus and Jacoba Aguil. The only question to be passed upon in this instance is whether or not the spouses Fermin Fortus and Jacoba Aguil were legally married to entitle their children to successional rights and inherit from their alleged brother Victorino Fortus. This is so because Article 992 of the New Civil Code provides that an illegitimate child has no right to inherit ab intestato from the legitimate children and relative of his father and mother nor such children or relative inherit in the same manner from the illegitimate children. The Fortuses maintained that their parents were legally married, but that the marriage certificate issued to said couple was burned during the second global war. Thus, they tried to establish by secondary evidence the existence of said marriage contract or the solemnization of said marriage. At this instance the oppositors Fortuses invoked that since for the past 30 years their parents had deported themselves in public as husband and wife and had been living under the same roof, the legal presumption is that they had entered into a lawful marriage. This presumption, however, is only applicable where there is no clear and concrete evidence showing otherwise. In this case, however, there is a certificate from the Division of Archives (Exhibit '5') to the effect that 'no copy of the marriage record of spouses Fermin Fortus and Jacoba Aguil supposed to have been solemnized in the year 1902 and 1905 in the Municipality of Rosario, Batangas had been received by said office for file', and this certification is further strengthened by the affirmation of Clemente Barbosa, a clerk in the office of the municipal treasurer of Rosario, Batangas, that there was no record of such marriage supposedly contracted between the spouses Fermin Fortus and Jacoba Aguil from 1902 and 1922 of the Municipality of Rosario, Batangas. Such being the case, if it were true that the parents of the Fortuses contracted marriage sometime in the year 1902 to 1905 said marriage should have been recorded and a copy thereof should have been filed either in the Civil Registrar's Office of said municipality or in our Archives Division where public records are officially kept intact. It is true that Jacoba Aguil on the witness stand

categorically stated that they were legally married before Isabelo Beleños, who was then the Justice of the Peace of poblacion Rosario, Batangas, in the house of Victoriano Guerro; that during the solemnization of the marriage, they were even required to raise their hands after Jacoba Aguil was required to thumbmark only once the marriage contract; and that after the solemnization of the marriage, a marriage contract was issued in their favor but which unfortunately was burned during the Japanese occupation. In corroboration to the testimony of Jacoba Aguil who resolutely averred her marriage with her husband, a deposition of Victoriana Guerro was presented. We find, however, the versions of Jacoba Aguil and Victoriano Guerro to be replete of inconsistencies and improbabilities after painstakingly examining their entire testimonies and/or versions. It is noteworthy to observe that at the time when said spouses allegedly contracted marriage, the law which was then in force to those who would contract marriage was General Orders No. 68. Under this law, neither the contracting parties, witnesses or padrinos were required to sign the marriage contract. What the law required then was only for the father to sign a form giving his consent to his son or his daughter of minor age to the contract of marriage, as to the proof of the celebration of marriage, no marriage certificate was issued to the contracting parties, but merely a certification of the Parish Priest or Justice of the Peace or Judge, containing the full names of the parties, their residence, ages, and the consent of the father and mother or guardian, attesting to the celebration of marriage. Accordingly, therefore, the formalities mentioned by Jacoba Aguil as well as her witness Victoriana Guerra were the formalities required under the present law. And for this matter, it is clear that the pretension of Jacoba Aguil as to the existence of her marriage with Fermin Fortus is highly improbable and incredible, which do not deserve even a scant consideration. Analyzing further the credibility of Jacoba Aguil, the lower court had keenly observed that-

'She could not even remember on what part of the marriage contract she placed her thumbmark; that she placed her thumbmark only once which is rather contrary to the practice that it should be more than one; that she could not state whether the alleged marriage contract was in long hand or typewritten or printed; that she never went to Batangas, Batangas, and knew nobody there contrary to the statement given by Felicidad Blay who has no false motive to tell a lie and was found to be a sincere witness; that she never saw the marriage contract she allegedly thumbmarked since they were married, (Clemente and Pio declared though that they saw it in the aparador and also saw the aparador together with the controversial marriage contract were burned during the Japanese occupation).'

Finding this observation of the trial court to be in accordance with the evidence obtaining in this case, we do not feel justified to disturb its findings in not giving credence to the versions of Jacoba Aguil, there being no circumstance of weight or influence that was misinterested or overlooked upon by the court below in appreciating her credibility.

"Further, in their vain attempt to prove the contractual marriage between Fermin Fortus and Jacoba Aguil, the Fortuses adduced secondary evidence consisting of Exhibits '2', 4 9-B and 9-C. All these exhibits, however, do not clearly show nor the same constitute as a proof of marriage between Fermin Fortus and Jacoba Aguil, much less a proof of the legitimacy of the oppositors Fortuses. The court below correctly ruled that Exhibit '2' is not an evidence of legitimacy much less of marriage between Fortus and Jacoba Aguil. For it is merely a true copy of a baptismal certificate of oppositor appellant Roman Fortus. The rule is settled that the record of baptism attests to the fact of the administration of the sacrament on the date stated therein, but certainly not the truth of the statements therein made as to the parentage of the child baptized. As held by the Supreme Court: '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 not proof of relationship or filiation of the child baptized.' (Adriano vs. de Jesus, 23 Phil. 353; Pareja vs. Paraiso, et al., G.R. No. L-5624, May 31, 1954). As regards Exhibit '4', the court below in declaring the same not a proof of marriage nor could it be a prima facie evidence of legitimacy of Roman Fortus, who is the eighth child of Jacoba Aguil which she had with Fermin Fortus reasoned out, to which we subscribe, that:

'The authority cited by the Fortuses brothers and sisters to wit: *Crisolo vs. Judge Macadaeg* L-7017,

pro-mulgated April 29, 1954, is not square on the point, because while that case was decided under the authority of Act 3753 which took effect on February 26, 1921, Roman Fortus was born on February 28, 1922, long before the effectivity of the subsequent law. Even assuming that Act No. 3753 is applicable to Roman Fortus, it was only a prima facie proof which oppositor Julia T. Fortus had overcome by satisfactory evidence to the effect that Fermin Fortus and Jacoba Aguil were never married and hence all of their children are not legitimate brothers or half brothers and therefore have no right to inherit from Victorino Fortus under Article No. 922 of the New Civil Code.'

With respect to Exhibits 9-B and 9-C which was a 'Escritura de Compra y Venta' executed by Fermin Fortus; and wherein Fermin Fortus was reflected as a married man, the same does not clearly establish the claim of the oppositors Fortuses that their parents were legally married, for the name Jacoba Aguil was not mentioned therein as the spouse of Fermin Fortus. On the contrary, this piece of evidence is obviously the reflection of his actual being married with his lawful wife Julia Fortus."

It is obvious from the foregoing quotations that the trial court and the Court of Appeals, relying upon similar if not identical reasons, found that Victorino Fortus and Jacoba Aguil were never married. We do not believe anyone can say that "reasonable men (will) readily agree" that such finding of fact is "manifestly mistaken, absurd or impossible" (De Luna vs. Linatoc, supra). To the contrary, We are of the opinion that fair minded men may differ on whether or not such finding of fact is right, or "is rightly drawn from the undisputed evidence" (idem). Consequently, the present case is not one calling for the exercise of either our appellate or supervisory jurisdiction for the purpose of reversing the finding of fact aforesaid made by the Court of Appeals and, before it, by the trial court.

WHEREFORE, the appealed decision is hereby affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

Makalintal, J., took no part.

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