

INTESTATE ESTATE OF CLARO BUSTAMANTE, DECEASED. JOSEFA MENDOZA, PETITIONER AND APPELLANT, VS. TEODORA CAYAS, OPPOSITOR AND APPELLEE.*G.R. Nos. L-8562-8563. December 17, 1955*

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

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Appeal from an order of the Court of First Instance of Manila dismissing the petition of Josefa Mendoza to be declared the acknowledged natural daughter of the late Claro Bustamante and seeking the appointment of an administrator of his estate.

Born in 1893, allegedly begotten out of wedlock by Claro Bustamante, widower, and Paula Mendoza, single, the claimant Josefa Mendoza was supported and reared by said Claro Bustamante and was openly introduced as his daughter to his acquaintances. Shortly before his death in March 1929, Claro delivered to Josefa a private document (Exhibit G) signed by him and attesting that she was his natural daughter. This document Josefa kept until the outbreak of the second world war in 1941; then, in the confusion caused by the hostilities, she lost the paper, and did not find it again until 1953. In the meantime, Claro Bustamante's widow by a second marriage, Teodora Cayas, and his legitimate son, Nicasio Bustamante, had extrajudicially partitioned his estate, composed of lots 1776, 1777, 1778 and 1806 of the Naic Friai Lands.

On May 6, 1953, the natural child, Josefa Mendoza, instituted these proceedings against Teodora Cayas and Monica Nazareno (heir of the late Nicasio Bustamante), for the judicial administration and settlement of the estate of her natural father, Claro Bustamante, and for the recovery of her corresponding share therein as his acknowledged natural child; but the defendants-oppositors resisted her claims, alleging that she was never duly acknowledged, and that her action for acknowledgment was instituted too late. The court below having sustained the defense, Josefa Mendoza appealed to the Court of Appeals. The latter certified the case to us because only questions of law are involved.

The first question to be decided is whether appellant Josefa Mendoza was properly recognized by Claro Bustamante as his natural daughter. The Court below correctly ruled that she was not. Having been born 1893, her recognition had to be governed by the Spanish Civil Code of 1889, which abolished the, implied recognitions permitted by the Law XI of Toro.[1] Under the Code of 1889 (Arts. 131, 135, 136), an acknowledgment or recognition, in order to confer any rights to the natural child, must indispensably appear either in a record of birth, in a will (testament), in a public document, or in a final judgment rendered in an action brought to compel recognition. Appellant Josefa has none of these in her favor; all that she was able to show was a private (not public) document (Exhibit G) and evidence of acts indicating possession of status of a natural child of Claro Bustamante. These document and acts do not per se constitute a legal and operative acknowledgment, and do not confer upon appellant any of the rights (to paternal surname, support and succession) granted by Article 134 of the Code. At most, they constituted grounds upon which Josefa might have based an action to ask

the Court to compel her father (or his heirs) to grant her recognition.[1]

But, and here lies the second issue in this appeal, the action to compel recognition is expressly conditioned by law upon its being commenced during the lifetime of the natural parent, unless the latter dies while the claimant was a minor, or unless a document of recognition, previously unknown, is discovered after the" parent's death (Art. 137).

"Articulo 137. Las acciones para el reconocimiento de hijos naturales solo podran ejercitarse en vida de los presuntos padres, salvo en los casos siguientes:

1." Si el padre o la madre hubiesen fallecido durante la menor edad del hijo, en cuyo caso este podra deducir la accion antes de que transcurran los primeros cuatro años de su mayor edad.

2." Si despues de la muerte del padre o de la madre apareciere algun documento de que antes no se hubiese tenido noticia, en el que' reconozcan expresamente al hijo.

En este caso, la accion dobera deducirse dentro de los seis meses siguientes al hallazgo del documento."

Has appellant brought herself within the rule thus expressed? The trial Court decided that she has not, and the record amply sustains the ruling.

In the first place, there is no doubt that appellant Josefa Mendoza never brought action against the late Claro Bus-tamante to compel her recognition as his natural child. Hence, she now is debarred from instituting such proceedings against his successors in interest, unless she comes under any of the two exceptions declared in Article 137 of the Civil Code of 1889. Josefa Mendoza does not "come under the first exception, because she was already 36 years old when her father died in 1929 (she was admittedly born in 1893). She avers coming under the second exception, because the lost document of recognition was only rediscovered in 1953. Even so, she had full knowledge of its existence for 12 years, from 1929, when her father delivered it to her, down to 1941, when she first mislaid it. The second exception of Article 137 requires, that the document of recognition should be previously unknown ("de que antes no se hubiese tenido noticia"); and such terms do not include documents that the claimant once possessed and subsequently lost or mislaid.

Assuming that the limitation of actions set by the last paragraph of Article 137 was repealed by the old Code of Civil Procedure (Act 190) in force in 1929, still, ten years being the maximum period of limitation of actions fixed by said Act, Josefa Mendoza's time limit to institute proceedings for her recognition expired in 1939, at the latest. During all these ten years she had the document (Exhibit G) in her hands, but she made no move to sue upon it. Her laches and delay can lead to only one conclusion: her action is. now barred. It has been barred at least since 1939; and the new Civil Code of 1950 cannot be retroactively applied to disturb the vested rights of jfche appellees who have held the property as owners for the'fast fifteen years (Art. 2253). Once mdre, vigilantibus sed non dormientibus jura subveniunt: the laws aid the vigilant, not those who slumber on their rights.

Wherefore, the judgment appealed from is affirmed. Costs against appellant. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, and Concepcion, JJ.. concur.

[1] Ramirez vs. Gmur, 42 Phil., 885; Larena vs. Kubio, 48 Phil., 101T; . Allarde vs. Abaya,"57 Phil., 909.

[2] Gitt vs. Gitt, 68 Phil., 385, 389-890; Celis vs. Crisostomo (C. App.), 46 Off. Gaz., Civil Code of 1889, Article 135.

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