

**MARTINA RAMOS, ET AL., PLAINTIFFS AND APPELLANTS, VS.
CARIDAD ORTUZAR, ET AL., DEFENDANTS AND APPELLANTS.***G. R. No. L-3299. August 29, 1951*

Ponente: TUASON, J.

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Claiming to be the deceased Percy A. Hill's lawful wife and legitimate children, respectively, Martina Ramos and her sons Richard Hill and Marvin Hill brought this action in the Court of First Instance of Nueva Ecija to annul the judicial partition of the deceased's estate among his other children and last wife, and the sale by these of the bulk of the property to their co-defendant Maximo Bustos. After a lengthy trial, in which considerable testimony and documentary evidence were taken, the court found that Martina Ramos had not been married to Percy A. Hill but that Richard Hill and Marvin Hill were Percy A. Hill's acknowledged natural children, and that the purchase by Maximo Bustos was mala fide and null and void. The court then allotted undivided portions of the estate, including the lands bought by Maximo Bustos, among the plaintiffs Richard and Marvin Hill and Percy A. Hill's children by his first and second wives, and awarded to the plaintiffs damages in the amount of P35,000.

These facts may be laid down as uncontroverted. Percy A. Hill, an American and retired officer of the Philippine Constabulary, cohabited with Martina Ramos in Munoz, then a barrio of San Juan de Guimba, province of Nueva Ecija, from 1905 to 1914 and begot with her six children, two of whom are Richard Hill and Marvin Hill and the others died in infancy. He started acquiring lands by purchase or homestead and improving and cultivating them until at the time of his death on July 23, 1937, his holdings were worth over P100,000.

In 1914, Percy A. Hill canonically married an American woman by the name of Helen Livingstone and of that union three children were born, all of whom now reside in the United States. Helen Livingstone died in 1922, and in 1924, Hill married Caridad Ortuzar by whom he had one daughter. It is Caridad Ortuzar and all the children had by her and Helen Livingstone who, besides Maximo Bustos, have been made defendants.

On September 3, 1937, proceedings for the settlement of Percy A. Hill's estate were commenced and Caridad Ortuzar was appointed administratrix. By order of the court, the administratrix on April 2, 1940 submitted an accounting and a project of partition, and both of these having been approved, distribution of the estate was made accordingly and the estate was closed. On March 27, 1947, the declared heirs and distributees (Caridad Ortuzar, her daughter and the deceased's children by Helen Livingstone) sold six tracts of land left by Hill to Maximo Bustos for P120,000, this being the sale which the trial court would annul.

Both parties have appealed, the plaintiffs from the holding that Martina Ramos was not married to Percy A. Hill, and the defendants from the rest of the decision.

On Martina Ramos' purported marriage to Percy A. Hill, the trial Judge, after reciting in minute detail the evidence for all the parties, reached this conclusion:

"En el caso que nos ocupa, los demandados no solo han probado con pruebas primarias y directas los sucesivos

casamientos de Percy A. Hill con Helen Livingstone (Exh. 14) y con Caridad Ortuzar (Exh. 14) sino con pruebas secundarias e indirectas han probado que Percy A. Hill no se ha casado con Martina Ramos, presentando los Exhs. 25-C, 28, 29, 31-A.

"El Exh. 14 es el certificado de casamiento de Percy A. Hill con Helen Livingstone; el Exh. 19 es el certificado de casamiento del mismo Percy A. Hill con Caridad Ortuzar; el Exh. 25-C es la deposición de varios testigos que presenciaron el alegado casamiento de Martina Ramos con Teodoro Tablas; el Exh. 26 es el certificado de bautismo de Hermogenes Tobias como hijo legítimo de legítimo matrimonio de Teodoro Tobias y Martina Ramos; el Exh. 29 es un documento público otorgado por Martina Ramos donde hizo constar ser casada con Teodoro Tobias; el Exh. 31-A es otro documento público otorgado, a su vez, por Teodoro Tobias donde hizo constar ser casado con Martina Ramos.

"Contrapesadas las pruebas de los demandados con las presentadas por los demandantes, sobre si Martina Ramos estuvo casada con Percy A. Hill, en terminos legales, el Juzgado cree que la preponderancia de las pruebas esta al lado de los demandados o que Percy A. Hill no se ha casado con Martina Ramos.

"Si el engaño a ella no tenemos duda moral ni legal, pero esta duda no es barrera legal para que de acuerdo con las pruebas se decida, como decidimos que la preponderancia de las pruebas esta en que Percy A. Hill no se ha casado legalmente con Martina Ramos."

This finding rests largely on the veracity of Martina Ramos and her witnesses and could very well be disposed of without any comment beyond that no circumstances of weight have been overlooked by the court, and that no certificate of marriage or entry thereof in the Civil registry has been presented, nor has satisfactory explanation of the absence been offered. Nevertheless, in view of the fact that the alleged marriage is the sole foundation of the plaintiff's action, although the Court departed from that issue, as hereafter will be shown, it will not be amiss to cite additional circumstances which, in our opinion, bear out the appealed decision on this point.

Martina Ramos stated in her deposition that after their marriage in 1905, she and Percy A. Hill lived in Munoz, first in a small house and later in a big house; that about November, 1941, her husband broke to her the news "that he was going to get a woman helper * * * to assist me in my work;" that "afterwards he came back with a woman * * * who did not look like a maid" at all, and took the newcomer to the Central Agricultural School to live; that later Hill begged her (Martina) to forgive him, and "because of the intervention of some prominent people in the community," she "yielded to let the woman stay." But, she added, "in order not to see them often" she told her "husband" that she "preferred to have a house in front of the big house where to run a big store" and continued "managing and helping in the supervision of the tenants and the cultivation of the lands in question."

The only part of this testimony which has a ring of truth is that which says that a house or store was built for this plaintiff across the street from the big house and that she moved to the new house with her children. Far from sustaining the existence of marriage, this conduct only confirms that Martina Ramos was not Percy A. Hill's wife. Common observations and human psychology reject the thoughts that this woman could have consented with complete resignation, let alone proposed herself, that she be banished for good from the conjugal home with her children in order that her husband might live in peace with other women, raise children, and enjoy the home and fortune which, according to her, she had helped build and earn. And no intelligent and responsible man that Percy A. Hill undoubtedly was would likely have been so unmindful of social conventions and so reckless of penal consequences as publicly to marry twice while his first wife was alive, and live with his new wife in plain and constant sight of his former and legitimate wife and children.

Other circumstances, some of them recited in the appealed decision, tending to refute the basis of Hill and Ramos' marriage are that soon after the couple was separated, Ramos and Teodoro Tobias began living together and were still living together when this case was tried. Although they denied that they are legally married, several persons

made depositions to the effect that they had witnessed Tobias' and Ramos' wedding. As to the documentary evidence, it appears that in a Torrens certificate of title issued in the name of Teodoro Tobias, Martina Ramos was described as Tobias' wife; in a mortgage deed executed by Tobias and a deed of sale jointly executed by Martina' Ramos and Teodoro Tobias, it was stated that these two were man and wife; and the birth certificates of two of fcheir children state that the latter were their legitimate sons.

Again, as heretofore noted, Martina Ramos never entered an appearance, personally or through counsel, in Percy A. Hill's intestate proceedings to claim a share in the decedent's estate. She came forward claiming to be Hill's wife for the first time six years after the partition and adjudication of the estate and after the record of the case had disappeared during or following the confusion brought about by the military operations for liberation. And it is indeed strange that living in Nueva Ecija and making no showing that she could not personally come to court, she gave her evidence by deposition as though ashamed or embarrassed to testify in open court or to face crossexamination.

It is no less significant that under date of May 16, 1941, Richard Hill and Marvin Hiil brought an action in the Court of First Instance of Manila against the same defendants herein, except Maximo Bustos, alleging that they were Percy A. Hill's acknowledged natural children and praying that the court "order the collection of inheritance which defendants have received and to redistribute the same to plaintiffs and defendants in their respective portions as provided for by law." This action was docketed as case No. 59405 and summons was served on the defendants. The record of the case was destroyed along with the courthouse but it seems that the suit was dismissed before it came to trial.

Other proofs, direct and circumstantial, tending to show that Percy A. Hill never married Martina Ramos according to law might be mentioned, but those set forth above are believed more than enough to destroy whatever presumption of marriage may have been created and engendered by the cohabitation of the deceased and Martina Ramos from 1905 to 1914.

But it is said that "granting without admitting that Martina Ramos was not legally married with the deceased, Percy A. Hill, she nevertheless was entitled to be deemed as having entered into a lawful partnership with Percy A, Hill and therefore is entitled to at least one-half of the properties in question together with the concomitant fruits of the same."

The evidence falls short of sustaining the contention that Martina Ramos had a hand in the acquisition of the properties in question. What the evidence does show is that it was between 1916 and 1930 when these properties were registered, some in Percy A. Hill's name, married to Helen Livingstone, and some in Helen Livingstone's name as her paraphernal property bought with her own money. The proceedings for the registration of these properties must have been public, as all such proceedings by law are, and yet no opposition was ever registered against any of the applications. Coming at such a late date when Percy A. Hill's and Helen Livingstone's lips have been sealed, all this claim of co-ownership in the properties sought to be recovered is both unfair and very highly suspicious.

At the very least, Percy A. Hill and Helen Livingstone possessed these properties since 1914 adversely; exclusively, publicly and in the concept of owners, and from this viewpoint whatever right Martina Ramos might have had in the said properties has been lost by prescription. She slept over her alleged right for more than 30 years and woke up only after the properties had been partitioned and distributed by final judgments and changed hands, all of which she knew or could have known with the exercise of reasonable diligence, living as she did all that time in the province where the properties are situated. There existed no fiduciary or any other relation between Hill and Helen Livingstone on the one hand and Martina Ramos on the other which prevented Helen and

Livingstone's exclusive, continuous and peaceful possession for more than three decades from ripening into title as against this plaintiff.

So much for the alleged marriage between Percy A. Hill and Martina Ramos. In appealing from the finding that Richard Hill and Marvin Hill were Percy A. Hill's recognized natural children and hence entitled to inherit along with Percy A. Hill's legitimate children, the defendants have adduced various legal and procedural objections: (1) That the court had no jurisdiction and should have dismissed the action; (2) that the question of plaintiffs' civil status is *res adjudicata*; (3) that the plaintiffs are . in estoppel and guilty of laches; (4) that the plaintiffs' action has prescribed; (5) that there were no allegations that Richard Hill and Marvin Hill were Percy A. Hill's acknowledged natural children and they could not under the pleadings be so declared.

We need only consider some of these assignments of error to dispose of this branch of the case.

As to *res adjudicata*. It has been seen that Percy A. Hill died on July 23, 1937, after which, on September 3 of the same year, intestate proceedings for the settlement of his estate (Civil Case No. 7686) were begun. And as also stated, the record of these proceedings have disappeared from the files of the court. Fortunately, however, the the court "docket for special proceedings cases", judicial form No. 43, was not lost or destroyed. The entries on pages 204, 205 and 207 of this book, pieced together, reveal these facts: In Percy A. Hill's intestate proceedings, Richard and Marvin Hill intervened, or sought to intervene, on the allegation that they were the deceased's legitimate sons entitled to share in the inheritance. Before intervention was allowed, the Hill brothers were required to establish their right and interest in the estate, and to this end formal hearing was held and testimony, consisting of 18 pages, was taken. After the hearing, the petition to intervene was denied, whereupon the would be intervenors took steps to appeal but the appeal was disapproved. (Although the reason for the disapproval is not shown in the entries, extraneous evidence states that the record on appeal was filed out of time.) There being no other matters to attend to, the administratrix submitted a final accounting and a project of partition by order of the court, both were in due time approved, the partition was carried out, and the expediente was closed.

Supplementing the entries aforesaid are two other documents : Exhibit "3", the project of partition, dated April 2, 1940, and Exhibit "4", the order, dated April 30, 1940, approving the partition. The project of partition stated that Percy A. Hill had married twice, included all the properties of which Hill died seized, designated as Hill's sole heirs all the defendants in the present action, and assigned to them the residue of the estate after all the expenses and obligations were paid.

It thus appears beyond doubt that all the facts raised in the present suit were alleged, discussed, and definitely adjudicated in the expediente of Hill's intestate. True, Richard Hill's and Marvin Hill's attempted intervention was premised on the allegation that they were Percy A. Hill's legitimate sons. But the question actually litigated and decided in connection with that intervention was broader than the brothers' exact filial status; it wa3 whether the intervenors were the deceased's forced heirs. A proceeding for the "declaracion de herederos", as it was correctly denominated in the minutes, it necessarily embraced inquiry into any kind of relationship by reason of which Richard Hill and Marvin Hill might be of right called to succeed to their father's estate, exclusively or in conjunction with others.

It is a clear mistake, contrary to the evidence of record, to say that Richard Hill and Marvin Hill were mere witnesses in the proceeding to determine their civil status. They were the ones who set the court in motion, and they were active parties to the point of attempting to appeal albeit their attempt was frustrated by the tardiness with which the record on appeal was presented. Had they been pronounced as heirs, whether as legitimate or acknowledged natural children, the order would have bound the other heirs and they, Richard and Marvin Hill, would have received their corresponding shares in the distribution. Repudiation of the decision or order now that

they have lost, on the tenuous ground that they were only witnesses, is both unfair and contrary to the principles of orderly procedure, estoppel, laches and prescription and the expressed policy of putting an end at the earliest possible date to all litigations, especially probate cases.

If we are to assume that Richard Hill and Marvin Hill did not formally intervene, still they would be concluded by the result of the proceedings, not only as to their civil status but as the distribution of the estate as well. As this Court has held in *Manolo vs. Paredes*, 47 Phil. 938, "The proceeding for probate is one in rem (40 Cyc, 1265) and the court acquires jurisdiction over all persons interested, through the publication of the notice prescribed by sec. 630 C. P. C.; and any order that may be entered therein is binding against all of them." (See also in re *Estate of Johnson*, 39 Phil. 156.) "A final order of distribution of the estate of a deceased person vests the title to the land of the estate in the distributees." (*Santos vs. Roman Catholic Bishop of Nueva Caceres*, 45 Phil. 895.) There is no reason why, by analogy, these salutary doctrines should not apply to intestate proceedings.

The only instance that we can think of in which a party interested in a probate proceeding may have a final liquidation set aside is when he is left out by reason of circumstances beyond his control or through mistake or inadvertence not imputable to negligence. Even then, the better practice to secure relief is reopening of the same case by proper motion within the reglementary period, instead of an independent action the effect of which, if successful, would be, as in the instant case, for another court or judge to throw out a decision or order already final and executed and reshuffle properties long ago distributed and disposed of.

There likewise could be no serious disagreement that the court went out of its way in adjudging that Richard Hill and Marvin Hill were Percy A. Hill's acknowledged natural children, when the action was predicated on the proposition that they were the deceased's legitimate sons as a necessary consequence of the allegation that their parents had been lawfully married. It is a fundamental principle that judgments must conform to both the pleadings and the proof, and must be in accordance with the theory of action upon which the pleadings were framed and the case was tried. A party can no more succeed upon a case proved but not alleged than upon a case alleged but not proved. (*Ramirez vs. Orientalist Co. and Fernandez*, 38 Phil. 646, 647; *Gotamco vs. Chan Leng and Razon*, 46 Phil. 550.)

The reason for this rule is too readily appreciated to need a restatement. It suffices to say that, in the present case, the defendants were challenged to disapprove the simple averment that Martina Ramos and Percy A. Hill were lawful husband and wife. The question whether Richard Hill and Marvin Hill were acknowledged natural children as distinguished from purely illegitimate ones, was foreign to that averment and involved distinct, delicate elements that had to be proved in a mode different from the mode known in ordinary practice and followed to satisfy the judge's mind.

While material variances between allegations and proof may be corrected by amendment so as to bring the former into conformity with the latter (*Ramirez vs. Orientalist Co. and Fernandez*, supra), the plaintiffs neither amended the complaint nor were required to do so. In fact, appealing from the pronouncement that they were only recognized natural children, they now insist vehemently both as appellants and appellees that they were begotten of lawful wedlock. They are not content with anything less.

Even if the plaintiffs had amended their allegations to adapt them to the evidence, amendment in this case would hardly do away with the unfairness of granting them a relief on a theory not put in issue by the pleadings. For one thing, the evidence on which the court based its judgment that Richard Hill and Marvin were recognized natural children, was adduced solely to show the alleged marriage between their parents; the matter of acknowledgment of the plaintiffs by their father was far from the parties' minds, and that judgment appears to have been a surprise to the plaintiffs themselves, to judge from their appeal, as well as to the defendants. There could have been no

serious objection to the admission in evidence, as possible indication of the alleged marriage, the fact that Richard and Marvin Hill were Percy's children and treated by their father as such. But the defendants had good reason to object, and in all probability they would have objected, if they had been forewarned that the father's conduct would be used as proof of acknowledgment and not of marriage; at least they would have prepared and introduced evidence to counteract the plaintiffs' theory on this score. For sure, the defendants would have set up the statute of limitations, which they now invoke, and this plea would have attained a fair chance of success.

There are two forms of acknowledgment—voluntary and compulsory. None of the requirements of Art. 131 of the Spanish Civil Code, which deals with voluntary recognition, have been shown; namely, "acknowledgment in a will, or in some other public documents." Although the civil registry of Marvin Hill's birth, which states that this plaintiff was Percy A. Hill's legitimate child, is in evidence, an acknowledgment in the record of birth is not recognized in this country for the reason that Art. 326, which defines the record of birth mentioned in Art. 131, had never been put into effect in the Philippines. (*Samson vs. Corrales*, 48 Phil., 401.)

From its context it would seem that the decision is predicated on Article 135, by which "the father may be compelled to acknowledge his natural child * * * when an indubitable writing of his exists in which he expressly acknowledges his paternity," or "when the child is in the uninterrupted possession of the status of a natural child of the defendant father, judged by the conduct of the father himself or that of his family."

Supposing the latter to be the rationale of the decision, the action was barred by Percy A. Hill's death. By Article 137 "action for the acknowledgment of natural child may be commenced only during the lifetime of the supposed parents," except when the parents' death occurred during the minority of the child, in which case the latter may commence the action within certain period after the attainment of his or her majority. Being of age when their father died, Richard Hill and Marvin Hill do not come within the saving clause.

The record is voluminous. The decision occupies 77 pages of the printed record on appeal, and many other proofs, oral and documentary, questions and subquestions, have been brought to our attention. With the conclusions already reached, it would be superfluous to extend this decision any further than to remark that, at best, none of the evidence and points left out from consideration in this decision would supply the plaintiffs' case any leg to stand on.

The appealed decision is affirmed in so far as it declares that Percy A. Hill and Martina Ramos were not legally married and reversed as to the rest of the findings and pronouncements with costs against the plaintiffs as appellants and appellees.

Paras, C. J., Feria, Bengzon, Padilla, Reyes, Jugo and Bautista Angelo, JJ., concur.

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