

JOSE CABAUTAN, PETITIONER, VS. COURT OF FIRST INSTANCE OF ISABELA, CHUA SUYA, ET AL., RESPONDENTS.*G.R. No. L-31493. May 31, 1973*

Ponente: MAKALINTAL, ACTING CJ.

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The present case is before this Court on petition for review of the order of the respondent Court of First Instance of Isabela in its Civil Case No. 2027, dismissing the complaint which the plaintiff, now petitioner, had filed against the defendants, now respondents. The petition was filed on January 20, 1970 and thereafter considered submitted for decision upon the petitioner's brief alone in view of the respondents' failure to file their own brief in reply.

The case below was an action for compulsory recognition of the petitioner as a natural child and for partition of real property, commenced against herein respondents, who are allegedly the surviving brothers and sister of the petitioner's putative father Chua Chian, who died in 1945, when the petitioner was still an infant. The material allegations in the complaint, which was filed in 1968, are: (1) that the petitioner was born in March 1945 and therefore was 23 years of age when he commenced the action; (2) that he is the child of parents who, at the time of his conception, were free of any legal impediment to marry each other; (3) that he had always been publicly and continuously treated, regarded and acknowledged as the natural child of the putative father Chua Chian by the direct acts of the latter (sic) and by those of his brothers and sister; and (4) that the defendants, representing the estate of the deceased father of petitioner, refused to acknowledge him as the latter's natural child.

The respondents moved to dismiss the complaint on the ground that it failed to state a cause of action since under the old Civil Code illegitimate children (other than natural) had no right to inherit from their ascendants. Respondent court granted the motion and dismissed the complaint on June 27, 1969, on the theory that since there is no allegation therein that the petitioner had been acknowledged as a natural child by his father in the record of birth, in a will, or in some other public document, pursuant to Article 131 of the old Civil Code, the action to compel recognition could only be brought during the lifetime of the putative father.

The respondent Judge was in error. Article 131 of the old Civil Code refers to voluntary recognition of a natural child, which must be made in a manner therein prescribed. There need be no action filed for purposes of such recognition. On the other hand, under Article 135 of the same Code the father is obliged to acknowledge a natural child "x x x (2) when the child is in the continuous possession of the status of the natural child of the defendant father, justified by the direct acts of the father himself or of his family." It is true that as a general rule actions for acknowledgment may be commenced only during the lifetime of the supposed parents, according to Article 137, but the same provision makes certain exceptions, one of which is "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 its majority." The case of the petitioner, as far as the allegations in his complaint show, falls within this particular exception. The complaint was filed within four years after he reached the age of majority. The sense of the exception is that since the parents or one of them died before the action could be commenced the same should be filed against the

heirs of the deceased who necessarily would be prejudiced by the recognition of the child — in the present case the brothers and sister of the alleged father of the petitioner.[1]

Pertinent to the present case from both substantive and procedural standpoint is the provision of Article 225 of the new Civil Code, which states that "Actions and rights which came into being but were not exercised before the effectivity of this Code, shall remain in full force in conformity with the old legislation; but their exercise, duration and the procedure to enforce them shall be regulated by this Code and by the Rules of Court." In this connection it should be noted that Article 137 of the old Civil Code is carried over in the new Civil Code as Article 285.

The order complained of is set aside and the case is remanded for further proceedings, with costs.

Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

[1] Briz vs. Briz, 43 Phil. 763; Serrano vs. Aragon, 22 Phil. 10; Mardridejo vs. De Leon, 55 Phil. 1.

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