

INTESTATE ESTATE OF THE DECEASED ANTONIO ESCOBAR. THE BANK OF THE PHILIPPINE ISLANDS, ADMINISTRATOR. ESTATE OF THE DECEASED LUCIANA DE LOS SANTOS, REPRESENTED BY THE EXECUTOR JO...

G .R. No. 40958. August 10, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the claimant Maria Luciano from the order of the Court of First Instance of Manila, the dispositive part of which reads as follows:

"Wherefore, the court declares that the only heir of the deceased Antonio Escobar was his wife Luciana de los Santos, now deceased, whom her heirs succeeded and whose testamentary proceedings are likewise pending in this court, as above stated, and that neither Maria Luciano nor Petrona Esguerra is entitled to participate in the estate of the deceased Antonio Escobar.

"After this judgment becomes final, the entire estate of the deceased Antonio Escobar shall, by operation of law, pass to the testamentary estate of the deceased Luciana de los Santos. Let a copy of this resolution be attached to the record of the testamentary proceedings of the deceased Luciana de los Santos, civil case No. 43599. So ordered."

In support of her appeal, the appellant assigns the following sole alleged error as committed by the court a quo in its order to wit:

"The lower court erred in not recognizing and declaring Maria Luciano as the sole legal heir of the deceased Antonio Escobar and therefore entitled to the entire intestate estate of the latter."

The following facts proven at the trial, some by stipulation of the parties and others by a preponderance of the evidence, are necessary and pertinent to the resolution of the questions raised in this appeal, to wit:

On January 1, 1837, a girl four days old, alleged to be a natural daughter of Leon Escobar and Josefa Esguerra, was baptized in the Ermita church and given the name of Tomasa Escobar (Exhibit 1-Maria Luciano).

Leon Escobar and Josefa Esguerra were married on August 2, 1838 (Exhibit 1), and subsequently had legitimate children named Antonio and Fortunato Escobar. With said spouses and their two legitimate children lived Tomasa, Guia and Nicolas Escobar. All of them called said spouses "tatay" (father) and "nanay" (mother), respectively. Tomasa was called by the other children "manang" (a term accorded in certain regions to the elder sister). Tomasa Escobar grew up and lived under the care of the spouses Leon and Josefa Escobar until she married. Said spouses supported her, treated and presented her as their daughter, and she was publicly known as such. When Tomasa Escobar became a widow, she went back to live with said spouses, together with her only daughter, the herein claimant-appellant Maria Luciano who was born on December 17, 1864 (Exhibit 4). Leon

Escobar built a house for Tomasa Escobar and her daughter and the two lived there. Leon Escobar visited them in said house almost every day and sent his sons Antonio and Fortunato to keep them company at night. Upon Tomasa Escobar's death, Leon Escobar took said Maria Luciano into his home until she married and was taken by her husband to the province. Leon Escobar died on February 12, 1887 (Exhibit 2-Luciana de los Santos). When Fortunato Escobar became ill, his brother Antonio Escobar asked Maria Luciano to come to Manila to nurse him, sending her money for passage. Upon Fortunato Escobar's death, Antonio Escobar took Maria Luciano into his home where she lived until Antonio's death.

The claimant-appellant Maria Luciano claims to be the legitimate niece of the deceased Antonio Escobar, alleging that she is the legitimate daughter of Tomasa Escobar, a legitimated sister of said deceased Antonio Escobar by the subsequent marriage of their parents, and therefore the only heir to the estate of her said uncle.

First of all, it is necessary to determine whether or not Tomasa Escobar was a natural daughter of the spouses Leon Escobar and Josefa Esguerra, legitimated by subsequent marriage of the latter.

We have seen that Tomasa Escobar was born on December 29, 1836, and her alleged parents Leon Escobar and Josefa Esguerra were married on August 2, 1838, that is under the prior legislation which is Law I, Title XIII* Partida IV. Her status as a legitimated daughter should therefore be determined by said law which reads as follows:

"Law I, Title XIII, Partida IV.—Moreover, the children which a man has by a woman whom he keeps as a concubine will be legitimate, if he marries her afterwards; for although children of this kind are not legitimate when they are born, marriage has such force that, as soon as the father and mother are married, the children become for that reason, legitimate. This same rule applies where a man has a child by his female slave and afterwards marries her; for marriage has such extraordinary power that, as soon as this is done, the mother becomes free, and the children legitimate, for this reason."

It is a well-established doctrine, both in Spain and in the Philippines, interpreting Law 11 of Toro, that a child is considered natural when at the time of its conception or birth its parents could have married without dispensation and when the father has expressly or tacitly acknowledged it. (*Mijares vs. Nery*, 3 Phil., 195; *Llorente vs. Rodriguez*, 3 Phil., 697; *Capistrano vs. Estate of Gabino*, 8 Phil., 135; *De Gala vs. De Gala*, 42 Phil., 771; *Larena and Larena vs. Rubio*, 43 Phil., 1017; *Donado vs. Menendez Donado*, 55 Phil., 861.)

The fact that before and after their marriage the spouses Leon Escobar and Josefa Esguerra had Tomasa Escobar with them and their legitimate children; the fact that they supported her, took care of her, and treated and presented her to society as their daughter, and the fact that they built a house for her and her daughter, all show that said spouses Leon Escobar and Josefa Esguerra acknowledged her as their daughter. Pursuant to the provisions of Law 11 of Toro, cited above, such acknowledgment, in addition to the freedom of her parents to marry without dispensation at the time of her conception or birth, gave Tomasa Escobar the status of a natural child of Leon Escobar and Josefa Esguerra (*Requejo vs. Rabalo*, 34 Phil., 14), and according to Law I, Title XIII, Partida IV, quoted above, the subsequent marriage of the latter legitimated her- (*Cosio vs. Pili*, 10 Phil., 72; *Requejo vs. Rabalo*, supra.)

The question now arises whether or not the claimant-appellant Maria Luciano, as legitimate daughter, born under the prior legislation, of Tomasa Escobar, a child legitimated by subsequent marriage, is entitled to inherit from the intestate estate of a brother of her mother who is a legitimate son of said Tomasa Escobar's parents, and who died on July 21, 1932, under the present law.

The twelfth transitory provision of the Civil Code reads as follows:

"12. Rights to the inheritance of a person who may have died, with or without a will, before this Code was in force, shall be governed by the prior legislation. The inheritance Of those who died after that time, with or without a will, shall be allotted and divided in accordance with this Code, but in harmony, in so far as the latter permits it, with the testamentary dispositions, therefore the legitimes, betterments, and legacies shall be respected; but their amounts shall be reduced when it is not possible in any other manner to give to each participant in the inheritance the share pertaining to him, according to this Code"

According to the above quoted transitory provision, in-asmuch as Antonio Escobar died after the Civil Code took effect, his inheritance should be allotted and divided in accordance with said Code.

Article 953 of the Civil Code provides that should children of brothers or sisters exist, the surviving spouse shall, concurrently with said children, be entitled to receive the part of the inheritance in usufruct assigned him or her in article 837, that is, one-half of the estate in usufruct. When Antonio Escobar died intestate on July 21, 1932, his niece, the herein claimant-appellant Maria Luciano, daughter of his sister legitimated by subsequent marriage of their parents, was entitled to inherit the full ownership of one-half of his estate and the naked ownership of the other half, the usufruct of which belonged to the surviving spouse. However, the usufructuary right of the widow Luciana de los Santos was extinguished upon her death which took place on December 27, 1932 (article 513 of the Civil Code)-? thereby consolidating the naked ownership with the usufruct of the other half in the herein claimant-appellant Maria Luciano.

The court a quo, in rejecting the claim of the claimant-appellant Maria Luciano to the estate of her uncle Antonio Escobar, based its opinion on article 943 of the Civil Code which provides that "a natural or legitimated child has no right to succeed ab intestate the legitimate children and relatives of the father or mother who has acknowledged it; nor shall such children or relatives so inherit from the natural or legitimated child," interpreting the word "legitimated" to mean a child legitimated by royal concession as well as one legitimated by subsequent marriage. Such interpretation could not have been the intention of the legislator, inasmuch as article 122 of said Code considers a child legitimated by subsequent marriage to be in parity with a legitimate child and grants the former the same rights as those of the latter, while article 127 of the same Code grants a child legitimated by royal concession only those rights conferred upon acknowledged natural children by article 134. If children legitimated by subsequent marriage have the same rights as legitimate children, and those legitimated by royal concession only have the same rights as acknowledged natural children, the word "legitimated" employed in article 943 et seq. of Section III, Chapter IV of Book Three of the Civil Code, alternately with the word "natural", with reference to the hereditary portion to which the child of one class or another is entitled, refers only to a child legitimated by royal concession and not to one legitimated by subsequent marriage. Therefore, the provisions of the above cited article 943 of the Civil Code are not applicable to the herein claimant-appellant Maria Luciano, and the provisions of article, 953 of the same Code are the ones applicable to her.

In view of the foregoing considerations, we are of the opinion and so hold: (1) That the continuous possession of the status of a natural child, justified by direct acts of its parents and their family under the legislation prior to the Civil Code, constitutes tacit recognition of paternity (Law 11 of Toro); (2) that a child, who has enjoyed the continuous possession of the status of natural child, justified by direct acts of its parents and their family both before and after their marriage which was celebrated under the prior legislation, is considered as legitimated by subsequent marriage (Law I, Title XIII, Partida IV); (3) that the legitimate daughter of a daughter legitimated by subsequent marriage, now deceased, is entitled to inherit from a brother of her mother who is a legitimate son of the same parents who legitimated her mother by subsequent marriage, and who died after the Civil Code took effect; and (4) that the word "legitimated" employed in Section III, Chapter IV of Book Three of the Civil Code, refers to children legitimated by royal concession and not to those legitimated by subsequent marriage.

Wherefore, the order appealed from is reversed and the claimant-appellant Maria Luciano is declared to be the sole heir to the intestate estate of Antonio Escobar, with the costs against the appellee. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

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