

**MACARIA A. TORRES, PETITIONER, VS. COURT OF APPEALS,
VICENTE SANTILLAN, ALFREDO NARCISO, TOMAS NARCISO, AMADO
NARCISO, SALUD NARCISO, DEMETRIA NARCISO AND ADELINA
NARCISO, RESPO...**

G.R. No. L-37420. July 31, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This Petition for Review on Certiorari, treated as a special civil action,[1] prays that the judgment rendered by the then Court of Appeals in the consolidated cases, CA-G.R. No. 34998-R entitled "Macaria A. Torres, plaintiff-appellee vs. Vicente Santillan, et al., defendants-appellants," and CA-G.R. No. 34999-R entitled "Vicente Santillan, et al., plaintiffs-appellants vs. Macaria A. Bautista, et al., defendants-appellees," and the Resolution denying the Motion for Reconsideration and Petition for New Trial, be set aside; and that, instead, the Order of the Court of First Instance of August 7, 1963 be affirmed, or, in the alternative, that the case be remanded to it for new trial.

Involved in this controversy are the respective claims of petitioner and private respondents over Lot No. 551 of the Sta. Cruz de Malabon Estate (part of the friar lands) in Tanza, Cavite, with an area of approximately 1,622 square meters, covered by Transfer Certificate of Title No. T-6804 issued in the name of the legal heirs of Margarita Torres.

The facts of the case cover three generations. The propositus, Margarita Torres, during the Spanish regime, was married to Claro Santillan. Vicente and Antonina were begotten of this union. Claro died leaving Margarita a widow. Antonina married and had six children, namely: Alfredo, Salud (married to Baldomero Buenaventura), Demetria (married to Leonardo Quinto), Adelina (married to Cesario Punzalan), Tomas and Amado all surnamed Narciso, who, together with Vicente Santillan, are the private respondents. Antonina died before the institution of the cases, while Vicente died on June 4, 1957,[2] during the pendency of the cases in the Trial Courts, without progeny.

After the death of her husband, Margarita Torres cohabited with Leon Arvisu Arbole, without benefit of marriage. Out of their cohabitation, petitioner Macaria Torres (later married to Francisco Bautista) was born on June 20, 1898, and baptized on June 26, 1898. In a certificate of Baptism issued by the Parish Priest of Tanza, Cavite, Leon Arvisu (Arbole) and Margarita Torres were named as father and mother of petitioner, whose name was listed as "Macaria Arvisu" (Exhibit "C"). Another Baptismal Certificate, however, listed her name as Macaria Torres, while her father's name was left blank (Exhibit "4"). Subsequently, on June 7, 1909, Leon Arbole and Margarita Torres were married (Exhibit "A"). Petitioner lived with and was reared by her parents. Margarita, the mother, died on December 20, 1931 (Exhibits "D"), while Leon, the father, passed away on September 14, 1933 (Exhibit "E").

Lot No. 551, an urban lot with an area of 1,622 sq. ms., more or less, had been leased temporarily by the

Government (Lease No. 17) to Margarita Torres who was the actual occupant of the lot. The date of the lease cannot be determined with exactitude from the records. On December 13, 1910, the Government, through the Director of Lands, issued to Margarita Torres, Sale Certificate No. 222 (Exhibit "B") over the said lot at the price of P428.80, payable in 20 annual installments of P20.00 each. The rental/s previously paid of P17.40 was credited to the purchase price. Testimonial evidence is to the effect the Leon Arbole paid the installments out of his earnings as a water tender at the Bureau of Lands, Tanza, Cavite, the last installment however, was paid on December 17, 1936, or three (3) years after his death.

On August 25, 1933, twenty (20) days before his death, Leon Arbole sold and transferred in a notarial deed all his rights and interest to the one-half (112) portion of Lot No. 551 in favor of petitioner, for the sum of P300.00.[3]

On June 6, 1953, Vicente Santillan executed an affidavit claiming possession of Lot No. 551 and asking for the issuance of title in his name, which he filed with the Bureau of Lands. Based thereon, the Bureau of Lands issued the corresponding patent in the name of the legal heirs of Margarita Torres. Transfer Certificate of Title No. T-6804 was eventually issued by the Register of Deeds of Cavite on November 7, 1957, also in lie of said heirs.

On June 3, 1954, private respondents filed a complaint against petitioner for Forcible Entry, with the Justice of the Peace Court of Tanza, Cavite, alleging that petitioner had entered a portion of Lot No. 551 without their consent, constructed a house, and refused to vacate upon demand. For her part, petitioner claimed that she is a co-owner of the lot in question, being one of the daughters of Margarita Torres. The ejectment case was decided against petitioner and the latter appealed to the then Court of First Instance of Cavite, where it was docketed as Civil Case No. 5547 (Ejectment Case).

On June 8, 1954, petitioner instituted an action for partition of Lot No. 551 before the then Court of First Instance of Cavite, docketed as Civil Case No. 5505 (Partition Case), alleging that said lot was conjugal property of the spouses Margarita Torres and Leon Arbole, and that she is their legitimated child. Private respondents filed an Answer alleging that the lot belonged exclusively to Margarita Torres; that they are her only heirs, and that the complaint for partition should be dismissed.

The Ejectment Case and the Partition Case were jointly tried and decided on November 20, 1958 with a finding that Lot No. 551 is the paraphernal property of Margarita Torres, and adjudicating to private respondents two-thirds (2/3) of the property in equal shares, and to petitioner a one third (1/3) portion.[4] Petitioner moved for reconsideration, which private respondents opposed. Pending its resolution, the Provincial Capitol of Cavite was burned, resulting in the complete destruction of the records of the two cases, which, however were later partially reconstituted.

On August 7, 1963, the then Court of First Instance of Cavite, Branch I, issued an Order granting reconsideration and amending the Decision of November 20, 1958. The dispositive portion thereof reads as follows:

"Wherefore, judgment is hereby rendered in Civil Case No. 5505:

- (1) Declaring Macaria A. Torres as the legitimated child of the spouses Leon Arbole and Margarita Tones;
- (2) Declaring that Lot No. 551 of the Sta. Cruz de Malabon Estate is a conjugal partnership property of the spouses Leon Arbole and Margarita Torres;
- (3) Adjudicating four-sixths (4/6th) of Lot No. 551 of S.C. de Malabori Estate to Macaria Torres, and two-sixth (2/6th) in equal shares to Alfredo, Tomas, Amado, Salud, Demetria and Adelina, all sumamed Narciso, legitimate children and heirs of the deceased Antonina Santillan, since Vicente Santillan is already dead. The parties may make the partition among themselves by proper instruments of conveyance, subject to confirmation by the Court. In fairness, however, to the parties, each party should be allotted that portion of the

lot where his or her house has been constructed, as far as this is possible. In case the parties are unable to agree upon the partition, the Court shall appoint three commissioners to make the partition.

As to Civil Case No. 5547, the same is hereby dismissed.

Without costs in both cases."[5]

In concluding that petitioner is legitimated child, the Trial Court opined:

"It is undisputed that when Macaria A. Torres was born on June 20, 1898, her parents, Leon Arbole and Margarita Torres, had the capacity to marry each other. There was no legal impediment for them to marry. It has also been established that Macaria A. Torres had been taken care of, brought up and reared by her parents until they died. The certificate of baptism (Exh. 'G') also shows that Macaria Torres was given the family name of Arvisu, which is also the family name of her father, Leon Arbole, and that her father is Leon Arvisu and her mother is Margarita Torres. Such being the case, Macaria A. Torres possessed the status of an acknowledged natural child. And when her parents were married on June 7, 1909, she became the legitimated daughter of Leon Arbole and Margarita Torres."[6]

Private respondents appealed. On April 2, 1973, the then Court of Appeals[7] rendered the judgment sought to be set aside herein, the decretal part of which states:

"Wherefore, judgment is hereby rendered in Civil Case No. 5505:

(1) Declaring that Macaria A. Torres is not the legitimated child of the spouses Leon Arbole and Margarita Torres;

(2) Declaring that Lot No. 551 of the Sta. Cruz de Malabon Estate is a conjugal partnership property of the spouses Leon Arbole and Margarita Torres; and

(3) Adjudicating one-half (1/2) of Lot No. 551 of S.C. de Malabon Estate to Macaria Torres, and the other half (1/2) in equal shares to Alfredo, Tomas, Amado, Salud, Demetria and Adelina, all surnamed Narciso, legitimate children and heirs of Antonina Santillan, since Vicente Santillan is already dead. The parties may make the partition among themselves by proper instruments of conveyance, subject to confirmation by the Court. In fairness, however, to the parties, each party should be allotted that portion of the lot where his or her house has been constructed, as far as this is possible. In case the parties are unable to agree upon the partition, the Court shall appoint three commissioners to make the partition.

As to Civil Case No. 5547, the same is hereby dismissed.

Without costs in both cases."[8]

The Appellate Court was of the opinion that:

"Macaria A. Torres is not a legitimated daughter of Leon Arvisu Arbole and Margarita Torres, the former not having been legally acknowledged before or after the marriage of her parents. As correctly pointed out by the appellants in their brief, the fact that she was taken care of, brought up and reared by her parents until they died, and that the certificate of baptism (Exhibit 'C') shows that she was given the family name of Arvisu did not bestow upon her the status of an acknowledged natural child.

"Under Article 121 of the old Civil Code, the governing law on the matter, children shall be considered legitimated by subsequent marriage only when they have been acknowledged by the parents before or after the celebration thereof, and Article 131 of the same code provides that the acknowledgement of a natural child must be in the record of birth, in a will or in some public document. Article 131 then prescribed the form in which the acknowledgement of a natural child should be made. The certificate of baptism of Macaria A. Torres (Exhibit 'C') is not the record of birth referred to in Article 131. This article of the old Civil Code requires that

unless the acknowledgement is made in a will or other public document, it must be made in the record of birth, or in other words, in the civil register' (Samson vs. Corrales Tan 48 Phil. 405)."[9]

A motion for Reconsideration and for New Trial, dated April 16, 1973, was filed by petitioner. In support thereof, petitioner submitted a typewritten Sworn Statement, dated March 5, 1930, of spouses Leon Arvisu (Arbole) and Margarita Torres,[10] reading in full as follows:

"SWORN STATEMENT"

"We, Leon Arvisu and Margarita Torres husband and wife respectively, of majority age, and residents of the Municipality of Tanza, Province of Cavite, P.I., after being duly sworn to according to law depose and say:

"That Macaria de Torres is our legitimized daughter she being born out of wedlock on the 26th of June 1898 at Tanza, Cavite, but as stated she was legitimized by our subsequent marriage.

"That at the time of her birth or conception, we, her parents could have married without dispensation had we desired.

"That as natural child our aforesaid daughter was surnamed de Torres after that of her mother's at the time she was baptized as per record on file in the Church.

"That as legitimized daughter she should now be surnamed Arvisu after her father's family name.

"Wherefore, it is respectfully requested to anybody concerned that proper remedy be made for the change of the surname of said Macaria de Torres as desired.

"In testimony hereof, we hereunto signed our names at Tanza, Cavite, this 5th day of March 1930.

(Thumbmarked) (Thumbmarked)

LEON ARVISU MARGARITA TORRES

Signed in the presence of:

(Sgd.) Illegible (Sgd.) Macaria de Bautista

X-----X

"UNITED STATES OF AMERICA)
PHILIPPINE ISLANDS) ss
MUNICIPALITY OF TANZA)
PROVINCE OF CAVITE)

"Subscribed and sworn to before me this 5th day of March 1930. The affiant Leon Arvisu exhibited to me no cedula certificate being exempt on account of going over 60 years of age and Margarita Torres having exhibited no cedula certificate being exempt on account of her sex.

"Witness my hand and seal of office on the date and place aforesaid.

CONTANCIO T. VELASCO
Notary Public, Cavite Province

Until Dec. 31, 1930.

Not. Reg. No. 56

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Book No. III Series of 1930."[11]

The reason given for the non-production of the notarial document during trial was that the same was only found by petitioner's daughter, Nemensia A. Bautista, among the personal belongings of private respondent, Vicente Santillan, an adverse party, after his death and who may have attempted to suppress it. Private respondents, for their part, argued against new trial, and contended that it is not newly discovered evidence which could not have been produced during the trial by the exercise of due diligence.

The decision of the Appellate Court was rendered by a Division of three, composed of Justices Jesus Y. Perez, Jose N. Leuterio and Luis B. Reyes, ponente. When the Motion for Reconsideration and New Trial was considered, there was disagreement possibly as to whether or not new trial should be granted in respect of the sworn statement of March 5, 1930. A Special Division of five was then formed, composed of Justices Antonio Lucero, Magno S. Gatmaitan, Lourdes P. San Diego, Jose N. Leuterio and Luis B. Reyes (Justice Perez having retired or having disqualified himself). In a minute resolution of August 24, 1973, the Division of five, by a vote of three to two, denied both reconsideration and new trial.

To warrant review, petitioner has summarized her submission based on two assignments of error. The first was expressed as follows:

"Although the Court of Appeals is correct in declaring that Macaria A. Torres is not the legitimated child of the spouses Leon Arbole and Margarita Torres, it has overlooked to include in its findings of facts the admission made by Vicente Santillan and the heirs of Antonina Santillan (herein respondents) that Macaria A. Torres and Vicente Santillan and Antonina Santillan are brother and sisters with a common mother Margarita Torres and they are the legal heirs and nearest of relatives of Margarita Torres, and as a consequence thereof, the Court of Appeals had drawn an incorrect conclusion in adjudicating the entire share of Margarita Torres in the conjugal property solely to Vicente Santillan and the heirs of Antonina Santillan." (Italics ours)

As we understand it, petitioner has conceded, with which we concur, that, without taking account of the sworn statement of March 5, 1930, she cannot be considered a legitimated child of her parents. Continuous possession of the status of a natural child, fact of delivery by the mother, etc. will not amount to automatic recognition, but an action for compulsory recognition is still necessary, which action may be commenced only during the lifetime of the putative parents, subject to certain exceptions.[12]

The admission adverted to appears in paragraph 3 of private respondents' original complaint in the Ejectment Case reading:

"the plaintiffs and the defendant Macaria A. Bautista are the legal heirs and nearest of kins of Margarita Torres, who died in Tanza, Cavite on December 20, 1931." (Italics supplied).

The statement, according to petitioner, is an admission of her legitimation and is controlling in the determination of her participation in the disputed property.

We are not persuaded. In the Amended Complaint filed by private respondents in the same Ejectment Case, the underlined portion was deleted so that the statement simply read:

"That the plaintiffs are the legal heirs and nearest of kin of Margarita Torres, who died at Tanza Cavite, on December 20, 1931";

In virtue thereof, the Amended Complaint takes the place of the original. The latter is regarded as abandoned and ceases to perform any further function as a pleading. The original complaint no longer forms part of the record.[13]

If petitioner had desired to utilize the original complaint she should have offered it in evidence. Having been amended, the original complaint lost its character as a judicial admission, which would have required no proof,

and became merely an extrajudicial admission, the admissibility of which, as evidence, required its formal offer. Contrary to petitioner's submission, therefore, there can be no estoppel by extrajudicial admission made in the original complaint, for failure to offer it in evidence.[14]

It should also be noted that in the Partition Case private respondents, in their Answer (par. 4), denied the legitimacy of petitioner.

The second error attributed to the Appellate Court has been pleaded as follows:

"Also, the Court of Appeals has gravely abused its discretion when it denied the petition for new trial, knowing as it does that the judgment is clearly erroneous in view of the evidence which is offered and no amount of diligence on the part of the petitioner could it be produced in court at any time before it was offered as it was found from the personal belongings of Vicente Santillan, an adverse party, after his death."

It is our considered opinion that new trial was warranted to prevent a possible miscarriage of justice. Assuming that the genuineness and due execution of the Sworn Statement of March 5, 1930 is established in accordance with procedural due process, a new trial would resolved such vital considerations as (1) whether or. not said Sworn Statement qualifies as the public document prescribed in Article 131 of the old Civil Code[15]; (2) whether or not it conforms to an act of acknowledgment by the parents after the celebration of their marriage as required by Article 121 of the same code[16]; and (3) whether or not petitioner's signature as a witness to said document was the equivalent of the consent necessary for acknowledgment of an adult person under Article 133 of that Code.[17] Affirmative answers would confer upon petitioner the status of a legitimated child of her parents, and would entitle her to enjoy hereditary rights to her mother's estate.

Private respondents stress that since petitioner signed as a witness to the document, she should be chargeable with knowledge of its existence, and, therefore, the Sworn Statement was not newly discovered evidence. In our view, the document can reasonably qualify as newly discovered evidence, which could not have been produced during the trial even with the exercise of due diligence; specially if it really had been in the possession of Vicente Santillan, an adverse party who, it was alleged, suppressed the document.

In the interest of judicial expediency, the new trial can be conducted by respondent Appellate Court, now empowered to do so under Section 9 of Batas Pambansa Blg. 129.

WHEREFORE, this case is hereby remanded to the now Intermediate Appellate Court for new trial, and depending on its outcome, said Court shall also resolve the respective participation of the parties in the disputed property, inclusive of the estate of the deceased Vicente Santillan. No costs.

SO ORDERED.

Plana, Relova, Gutierrez, Jr., and de la Fuente, JJ., concur.
Teehankee (Chairman), J., concurs in a separate opinion.

[1] p. 79, Rollo.

[2] p. 77, *ibid*.

[3] CA Decision, pp. 9 & 10, Rollo, pp. 33 & 34.

[4] p. 68, Original Record.

[5] pp. 123 & 124, *ibid*.

[6] pp. 115 & 116, *ibid.*

[7] Former Fifth Division composed of Justices Jesus Y. Perez, Jose N. Leuterio, and Luis B. Reyes (ponente).

[8] p. 42, *Rollo*,

[9] pp. 34 & 35, *ibid.*

[10] Annex "A", Petition for New Trial.

[11] p. 50, *Rollo*,

[12] Articles 135, 136, and 137, Spanish Civil Code; *Gitt vs. Gitt*, 68 Phil. 385, 390 (1939); *Canales vs. Anogante*, 91 Phil. 6 (1952).

[13] *Reynes vs. Compania General de Tabacos*, 21 Phil. 416 (1912).

[14] *Javellana vs. D.O. Plaza Enterprises, Inc.*, 32 SCRA 261 (1970).

[15] "ARTICLE 131. The, acknowledgment of a natural child must be made in the record of birth, in a will, or in some other public document"

[16] "ARTICLE 121. Children shall be considered as legitimated by a subsequent marriage only when they have been acknowledged by the parents before or after the celebration thereof."

[17] "ARTICLE 133. An adult person may not be acknowledged as a natural child without his consent.

"The approval of the court, to be granted after hearing the prosecuting officer, shall be necessary to the acknowledgment of a minor, unless such acknowledgment be made in a certificate of birth or in a will.

"The minor may in any case contest the acknowledgment within the four years next following the attainment of his or her majority."

CONCURRING

TEEHANKEE, J.:

I concur with the judgment of the Court remanding the case to the Intermediate Appellate Court for new trial, specifically for the admission of newly discovered evidence consisting of the sworn statement of March 5, 1930, wherein petitioner Macaria A. Torres' parents, Leon Arbole and Margarita Torres, expressly recognized Macaria as their "legitimized daughter" who was born out of wedlock to them (although neither of them was under any impediment to marry at the time of her conception), and was afterwards legitimated by their subsequent marriage. The admission of such sworn statement as stated in the Court's decision penned by Madame Justice Herrera, would prevent a possible miscarriage of justice and upon the establishment of vital considerations therein stated, would establish Macaria's status as legitimated child, which would entitle her to enjoy hereditary rights to her mother's estate (one-half [1/2] of the property in question, Lot 551 of the Sta. Cruz de Malabon estate), as awarded by the trial court, but reversed by the appellate court's split 3 to 2 decision.

I write this brief concurrence just to underscore the following:

1. Both the trial and appellate courts are in agreement that the property in question is conjugal partnership property of the spouses Leon Arbole and Margarita Torres. Both of them are likewise in agreement that Macaria is entitled to one-half (1/2) of the said property corresponding to her father Leon Arbole by virtue of her being the

sole child and heir of the said Leon Arbole (not to mention that he had during his lifetime transferred the same to her in full ownership).

What is remanded to the appellate court for resolution is the claim of Macaria that as a legitimated child, she is entitled to an additional one-third ($\frac{1}{3}$) share in the other half of the disputed property corresponding to her mother Margarita Torres or an additional one-sixth ($\frac{1}{6}$) of the enure property with the remaining two-sixths ($\frac{2}{6}$) share corresponding to the heirs, namely, Vicente and Antonina, both surnamed Santillan, who were born of Margarita Torres' first marriage with Claro Santillan. Thus, the trial court adjudicated four-sixths ($\frac{4}{6}$) of the entire property to Macaria and she asks for the reinstatement of such verdict of the trial court. On the other hand, the appellate court recognized only Macaria Torres' right to one-half ($\frac{1}{2}$) or three-sixths ($\frac{3}{6}$) of the disputed property and gave her no share in the other one-half ($\frac{1}{2}$) or three-sixths ($\frac{3}{6}$) pertaining to the conjugal share of her mother Margarita.

2. I do not concur with the statement in the Court's main opinion that the admission by respondent in their original complaint for ejectment against Macaria that they and Macaria are the legal heirs of their deceased common mother Margarita Torres can no longer be invoked by Macaria as a judicial admission against said respondents, simply because said respondents had thereafter filed an amended complaint deleting the admission. Such admission did not cease to be a judicial admission simply because respondents subsequently deleted the same in their amended complaint. The original complaint, although replaced by an amended complaint, does not cease to be a part of the judicial record, not having been expunged therefrom. The precedents cited for not considering this admission against respondents, since Macaria did not formally offer in evidence the original complaint, do not appear to be applicable and are based on pure technicality.

As far as Macaria's mother Margarita Torres is concerned, there can be no denying their maternity and filiation. Macaria's being a duly acknowledged natural child of Margarita is established in the record of birth, as well as by the very undisputed fact of Margarita having given birth to her. Macaria would, therefore, be entitled to the full enjoyment of the status of a legitimated child of Margarita by virtue of Margarita's subsequent marriage with her father Leon Arbole.

The question of admissibility of the original complaint for ejectment as a judicial admission against respondents remains open, in my view, for proper determination and resolution by the appellate court with the remand of this case to it for further proceedings.

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