

**SILVESTRA COQUIA AND LUIS CARANDANG, PETITIONERS, VS.
RODOLFO BALTASAR, JUDGE OF THE COURT OF FIRST INSTANCE
OF LEYTE, AND GASPARA, FRANCISCA, DIONISIO,, ALFREDO, AND
SALVADOR, ...***G.R. No. L-2942. December 29, 1949*

Ponente: OZAETA, J.

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Respondents Gaspara, Francisca, Dionisio, Alfredo, and Salvador Coquia, assisted by their mother and guardian ad litem Maria Dalori, filed an action in the Court of First Instance of Leyte against the spouses Silvestra Coquia and Luis Carandang to recover the possession as owner of four parcels of land, of which three belong pro indiviso to Alfredo Coquia and his sister, the petitioner Silvestra Coquia, and the fourth parcel is alleged to belong exclusively to Alfredo Coquia, now deceased, upon the allegation that they are acknowledged natural children and the sole heirs of the latter. The petitioners (defendants below) in their answer denied that the respondents are acknowledged natural children of the deceased Alfredo Coquia.

Pending the trial of the case said respondents (plaintiffs below) filed a petition for alimony pendente lite which Judge Edmundo S. Piccio granted in the sum of P200 a month (subsequently reduced to P100 a month), "considering the legal and equitable rights of said plaintiffs in the land in question in which they have interests and their actual destitute situation while the defendants are possessed of considerable real properties," the judge said.

The respondent judge, Honorable Rodolfo Baltasar, denied petitioners' motion for reconsideration, holding that the order of Judge Piccio for alimony pendente lite was well founded; and, on February 26, 1949, ordered the issuance of a writ of execution against the herein petitioners to collect the sum of P400 corresponding to four months of unpaid alimony.

We find the present petition for certiorari to annul the above-mentioned orders to be well founded.

Rule 63 of the Rules of Court, which authorizes the granting of alimony pendente lite "at the commencement of the proper action, or at any time afterwards but prior to final judgment," is not applicable to this case. The action commenced before the respondent judge was not for support but for the recovery of the ownership and possession of real property. Manifestly such an action is not "the proper action" contemplated by said rule. The mere fact that the plaintiffs have legal and equitable rights in the property they seek to recover (Q.E.D.) does not authorize the court to compel the defendants to support the plaintiffs pending the determination of the suit.

Moreover, the petitioners, who are sister and Isotherm-law, respectively, of the deceased Alfredo Coquia, are not bound to support the alleged natural children of the latter. Under article 143 of the Civil Code only the following are bound to support each other: (1) husband and wife; (2) legitimate ascendants and descendants; and (3) parents and acknowledged natural children, and the legitimate descendants of the latter.

Even in an action for divorce and alimony, it has been held that the court has no jurisdiction to grant alimony pendente lite where the answer to the complaint alleging marriage and praying for divorce denies the fact of marriage, because the right of a wife to support depends upon her status as such, and where the existence of such status is put in issue by the pleading, it cannot be presumed to exist for the purpose of granting alimony. (Yangco vs. Rohde, 1 Phil., 404.)

The petition is granted and the orders complained of are hereby set aside, without any finding as to costs in view of the fact that the individual respondents are litigating as paupers.

Moran, C.J., Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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