

[WITH RESOLUTION OF OCTOBER 12, 1960]*G.R. No. L-13353. August 31, 1960*

Ponente: PADILLA, J.

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Appeal from an order entered by the Court of First Instance of Camarines Sur dismissing a complaint wherein the plaintiff Dolores Narag prayed that she be declared to be an acknowledged natural child of the late Jose Cecilio and owner of two parcels of land donated mortis causa by her father.

In her complaint the plaintiff alleges that she is a natural child of Juana Narag and the late Jose Cecilio who, at the time of her conception, were both free to marry; that in a public instrument entitled, "donacion mortis-causa" executed on 26 July 1924 by the late Jose Cecilio he acknowledged her to be his natural child and donated to her two parcels of land, one agricultural and the other residential, together with the improvements thereon; that in the agricultural land coconuts and palay valued P1,760 were harvested yearly, and from the residential an annual rent of P360 was collected, or a total of P12,710 from 1950 to the filing of the complaint; that subsequently the two parcels of land were declared in her name for tax purposes; that upon the demise of Jose Cecilio on 10 February 1950 the defendants Salvador and Antonio surnamed Cecilio, two legitimate children of the deceased, entered upon, took possession of, and claimed ownership over, the parcels of land; and that since then they refused and still refuse to deliver or return to her the two parcels of land. In addition to her two prayers stated at the beginning of this opinion, the plaintiff prayed that jointly and severally the defendants be ordered to pay her the sum of P12,710 representing the value of the natural and civil fruits of the parcels of land. On 24 August 1956 the defendants filed an answer setting up affirmative defenses and counterclaim for P5,000 as actual and moral damages arising from the false and frivolous complaint of the plaintiff and praying for the dismissal of the complaint. On 27 August, the plaintiff answered the counterclaim. Without filing any formal motion to dismiss, on 13 September 1957 the defendants served notice on the plaintiff that they would submit on 14 September 1957 at 8:30 o'clock in the morning, or as soon as they may be heard, their prayer for the dismissal of her complaint. In an order dated 16 September, the Court declared submitted the motion for the dismissal of the complaint and granted each party ten days within which to file a memorandum. On 20 September, the plaintiff filed an objection to the motion for dismissal which may be considered her memorandum. On 24 September the defendants filed their memorandum followed on 25 September by a supplemental memorandum. On 13 November, the Court entered an order dismissing the complaint, from which dismissal, as heretofore stated, the plaintiff appealed.

The five errors assigned by the appellant claimed to have been committed by the trial court narrow down to two main issues, namely; (1) has the action of the plaintiff Dolores Narag to be declared natural child or daughter of the late Jose Cecilio already prescribed? and (2) is the donation mortis causa executed not in accordance with the formalities of a will invalid?

There is no doubt that the plaintiff's action to be declared natural child of the late Jose Cecilio has already prescribed, because it was not brought during the lifetime of the putative or presumed father. And her case does not fall within the exceptions provided for in article 137 of the old Civil Code, now article 285 of the new Civil

Code, which allows the filing of such action even after the death of the alleged parents, to wit:

- If the father or mother died during the minority of the child, in which case the latter may commence the action within the four year's next following the attainment of its majority.
- If, after the death of the father or mother, some document, before unknown, should be discovered in which the child is expressly acknowledged.

In this case the action must be commenced within six months next following the discovery of such document.[1]

When the presumed or putative father Jose Cecilio died on 10 February 1950, the plaintiff was already far above the age of majority, it appearing in her baptismal certificate issued on 12 April 1953 by the parish priest of Saint John the Evangelist of Naga City that she was born on 5 January 1899. The document entitled "donacion mortis-causa" was known to, and in possession of, the appellant since 26 July 1924, the date of its execution, because on that date she signed the document. Counted from 26 July 1924 to the filing of the complaint on 6 August 1956, about 32 years had elapsed. It is, therefore, clear that whether under the provisions of the old or of the new Civil Code the appellants action for acknowledgment as natural child of the late Jose Cecilio is barred by the statute.

The donation of the two parcels of land is a donation mortis causa as admitted by the appellant herself. Nevertheless, she contends that while article 620 of the old Civil Code, now article 728 of the new, provides that donation mortis causa is governed by the rules established for testamentary succession, yet such provision refers to property disposition as governed by the law on succession and not to solemnities or formalities of a will—to substance, not to form. The contention cannot be accepted. In the case of *Carino vs. Abaya*, 70 Phil., 182, this Court held that donations mortis causa can only be made with the formalities of a will. And as to the donation mortis causa in the present case appears not to have the formal requisites of a will such as the attestation clause, the signatures of three instrumental witnesses and that of the donor, which must appear on every page of the document, the donation is invalid.

The contention that the complaint may not be dismissed upon the grounds pleaded as affirmative defenses in the answer without any formal or separate motion to dismiss is untenable, for the reason that section 5, Rule 8, allows such dismissal.

The order appealed from is affirmed, with costs against the appellant.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

[1]Save the change of the period from six months to four years, article 285 of the new Civil Code substantially provides for the same.

R E S O L U T I O N

12 October 1960

PADILLA, J.:

This is a motion for reconsideration of a judgment rendered on 31 August 1960 in G. R. No. L-13353 (Dolores Narag vs. Salvador Cecilio et al.) affirming an order dated 13 November 1957 entered by the Court of First Instance of Camarines Sur that dismissed the complaint, upon the ground that the action is not to compel acknowledgment of a natural child but just to secure judicial approval of such acknowledgment already accomplished in an authentic writing and that the document by which Jose Cecilio conveyed and transferred to his acknowledged natural daughter, the plaintiff, is a donation inter vivos for services rendered and not mortis causa.

There was no alternative but to affirm the order of dismissal, because in her complaint she prayed that the defendants Salvador and Antonio surnamed Cecilio be ordered "to recognize the plaintiff as acknowledged natural child or daughter of their late father Jose Cecilio," and because of her admission that the document where her acknowledgment as natural daughter of Jose Cecilio and the donation by him to her of the two parcels of land appear, is a mortis causa donation.

Judicial approval of an acknowledgment of a natural child is required when the latter is a minor. As the plaintiff was born on 5 January 1899, she was not a minor when the acknowledgment was made on 26 July 1924 in a public or notarial document.

Nevertheless, it appearing from the facts alleged in the complaint and in the document entitled "Donacion Mortis Causa" attached to it that since 1924 Jose Cecilio gave the two parcels of land to her, the plaintiff, who declared in her name for assessment and realty taxation purposes (paragraphs 4 and 5 of the complaint and the penult paragraph of the document of donation attached to the complaint) and that since then she had been in possession thereof—a fact which may be inferred from her allegation in paragraph six of her complaint where she alleges that, upon the death of her natural father in 1950, the defendants through force, stealth and strategy took possession of the two parcels of land; and, disregarding the prayer for acknowledgment of a natural child, the action may be deemed one for ejectment not only to recover the possession of the two parcels of land purportedly donated to her by her acknowledged natural father but also to quiet title and remove clouds from the title to the parcels of land, predicated upon acquisitive title by prescription, for she claims and alleges that she had been in possession thereof as owner from 1924 until 1950 when her natural brothers, the defendants, took away from her and deprived her of the possession of the parcels of land, or for more, than 20 years that she had been in possession of the parcels of land, regardless of whether the document which gave her possession of the two parcels of land is a mortis causa donation. Her possession of the parcels of land for such a period of time, if established by competent evidence, would entitle her to recover them from the defendants.

Accordingly, the decision promulgated by this Court in this case on 31 August 1960 and the order appealed from are set aside and the case is remanded to the Court from whence it came for further proceedings in accordance with this resolution, without pronouncement as to costs.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

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