

VICTORIA GABRINAO, ET AL., PLAINTIFFS AND APPELLANTS, VS. CLAUDIA LATORRE, DEFENDANT AND APPELLANT.

G.R. No. L-5825. February 27, 1953

Ponente: PARAS, C.J.

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PARAS, C.J.:

On May 21, 1949, the plaintiffs filed in the Court of First Instance of Samar a complaint against the defendant, Claudia Latorre, to compel the latter to recognize the plaintiffs as the natural daughters of Vicente Latorre, deceased brother of the defendant, and to secure a partition of the properties left by Vicente Latorre. In the answer filed by the defendant, it is alleged, as an affirmative defense, that plaintiffs' causes of action are barred by the statute of limitations. With respect to this defense, the parties submitted the following agreement of facts:

- "1. That the plaintiffs are not duly recognized daughters of Vicente Latorre as provided in Art. 131 of the Civil Code;
- "2. That the plaintiffs are not judicially recognized daughters of Vicente Latorre as provided in Arts. 135 and 137 of the Civil Code;
- "3. That the plaintiffs have been in the uninterrupted possession of the status of natural children of the deceased Vicente Latorre, brother of the defendant;
- "4. That Vicente Latorre died in the year 1933;
- "5. That the plaintiff Victorina Gabrinao became of age during the lifetime of Vicente Latorre, and the other plaintiff Trinidad Gabrinao became of age in the year 1934; and
- "6. That this action was brought for the first time in the year 1949."

In its order dated December 28, 1949, the Court of First Instance of Samar dismissed the complaint with costs against the plaintiffs, thereby sustaining the defendant's contention that plaintiffs' action for recognition as natural children had prescribed. The plaintiffs have appealed.

The applicable legal provision is Article 137 of the Civil Code which provides as follows:

"Actions for the acknowledgment of natural children may be commenced only during the lifetime of the putative parents except in the following cases —

- "1. 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 the attainment of its majority.
 - "2. 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."

An action to compel acknowledgment is thus to be brought within the lifetime of the supposed parents, unless the case comes within one of the two exceptions. (Capistrano vs. Gabino, 8 Phil. 135; Serrano vs. Aragon, 22 Phil. 10.) It being stipulated that the plaintiff, Victorina Gabrinao became of age during the lifetime of her natural father, Vicente Latorre, the action brought after the latter's death cannot as to her prosper. It being admitted that Vicente Latorre died in the year 1933, and the plaintiff Trinidad Gabrinao became of age in the year 1934, it also follows that as to her prescription had set in, because under the first exception, in relation to section 45 of the Code of Civil Procedure, the action for recognition must be brought within two years after majority. (Suarez vs. Suarez, 43 Phil. 903.) The second exception cannot be invoked by the plaintiffs, since it is neither pretended nor proved that, after the death of Vicente Latorre, some unknown document was discovered in which they are expressly acknowledged.

The plaintiffs-appellants, however, argue that the defense of prescription had been waived by the defendant-appellee by reason of the alleged fact that the latter, in recognition of their right to inherit from their natural father, continuously gave them their share in the products of the land and in the rentals for the use of the carabaos in question until November 1948 when the defendant for the first time desisted. Even assuming that the defense of prescription may be waived in this particular case, the contention is manifestly without basis, since there is nothing in the stipulation and there is no proof in the record to support plaintiffs' factual allegation.

Wherefore, the appealed order is affirmed without costs in both instances. So ordered.

Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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