

SALUD DIVINAGRACIA, EMILIA DIVINAGRACIA, DOLORES DIVINAGRACIA, ROSARIO DIVINAGRACIA AND JUANITA DIVINAGRACIA, PETITIONERS, VS. JUDGE VALERIO V. ROVIRA, IN HIS CAPACITY AS PRESID...

G.R. No. L-42615. August 10, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

The question in this case is whether an intestate proceeding, which had already been closed, can still be reopened so as to allow a spurious child to present evidence on his filiation and to claim his share in the decedent's estate. The facts are as follows:

Feliciano Divinagracia died in Iloilo City on February 1, 1964. He was survived by his wife, Salud Bretaña, and their four daughters named Emilia, Dolores, Rosario and Juanita. The notice of his death was published in two local periodicals and in the Manila Times. Two days after his death, a petition was filed in the Court of First Instance of Iloilo for the settlement of his estate (Spec. Proc. No. 1752). The order setting the petition for hearing was published on April 22 and 29 and May 6, 1964 in the Yuhum, an English and Ilongo weekly circulating in Iloilo City and Western Visayas.

Emilia Divinagracia qualified as administratrix on May 22, 1964. She administered the estate for seven years. She paid the estate and inheritance taxes. In April, 1971 she submitted to the court a final accounting and project of partition with a prayer for the closure of the proceeding.

That pleading, which was signed by the widow and her four daughters, contains, aside from the accounting, (1) an inventory of the assets of the decedent's estate as of December 31, 1970 (par. 3); (2) a declaration as to who were the heirs of the decedent and their respective shares in the estate (par. 4); (3) a statement that the five heirs (the widow and four daughters) had received their respective shares, each consisting of a one-fifth proindiviso participation in the decedent's estate (pars. 5 and 6), and (4) an assumption by the heirs of the obligations of the estate (par. 8).

Judge Castrense C. Veloso in his order of April 17, 1971 approved the final accounting and project of partition and declared the proceeding "closed and terminated, subject to the condition that the heirs shall assume all the outstanding obligations of the estate". The partition was duly registered.

On June 8, 1971 or after the order closing the intestate proceeding had become final, Camilo Divinagracia filed a motion to reopen it and to set aside the order of closure. He alleged that he was an illegitimate child of the decedent; that he was born on November 9, 1930, and that he came to know of the intestate proceeding only when he was transferred as a government employee from Masbate to Iloilo a few days before June 8. He prayed for the determination of his share in the decedent's estate.

The administratrix in her opposition to the motion contended that the proceeding could no longer be reopened;

that its expediente had already been archived; that there is no allegation in the motion that Camilo's filiation was acknowledged by the decedent, and that the Juvenile and Domestic Relations Court of Iloilo has exclusive original jurisdiction to entertain Camilo's action for acknowledgment, as held in *Paterno vs. Paterno*, L-23060, June 30, 1967, 20 SCRA 585.

The motion remained unresolved for more than four years. Judge Veloso did not act on it before he retired in the early part of 1975. The case was re-raffled to respondent Judge Valerio V. Rovira who issued the questioned order dated October 18, 1975 reopening the intestate proceeding.

The probate court set aside its prior order of closure because it assumed that there was no liquidation of the conjugal partnership of the spouses Feliciano Divinagracia and Salud Bretaña, that there was no declaration of heirs, and that an interested party, who was left out in the partition, should be allowed to secure relief in the intestate proceeding by filing the proper motion within the reglementary period.

The probate court in its questioned order directed the administratrix to submit a complete liquidation of the conjugal partnership and an inventory of the decedent's estate after the payment of its debts. It further directed that the liquidation and the inventory should be set for hearing with notice to movant Camilo Divinagracia. Thereafter, another hearing should be held to determine the decedent's heirs. At that hearing, Camilo could present evidence to prove his claim that he was an "acknowledged spurious child of the deceased".

The lower court denied the administratrix's motion for re-consideration of its order reopening the intestate proceeding. A copy of the order of denial was received by the administratrix on January 7, 1976. She filed on January 31, 1976 the instant petition for certiorari and prohibition. It is really an appeal under Republic Act No. 5440.

We hold that the probate court erred in reopening the intestate proceeding, a proceeding in rem of which Camilo Divinagracia is deemed to have had constructive notice (*Varela vs. Villanueva*, 95 Phil. 248). The order closing it was already final and executory. The motion to reopen it was not filed within the thirty-day reglementary period counted from the date the order of closure was served on the administratrix. The closure order could not be disturbed anymore (*Imperial vs. Muñoz*, L-30787, August 29, 1974, 58 SCRA 678. Compare with *Ramos vs. Ortuzar*, 89 Phil. 730, 741; *Jerez vs. Nietes*, L-26876, December 27, 1969, 30 SCRA 904, 909; *Vda de Lopez vs. Lopez*, L-23915, September 28, 1970, 35 SCRA 80, 83, where the motion to reopen the intestate proceeding was filed within the reglementary period).

Moreover, the order for the reopening of the intestate proceeding was predicated on the false assumption that there had been no liquidation of the conjugal partnership and no declaration of heirs. The truth is that the project of partition and distribution, with final accounting, which was submitted by the administratrix and approved by the probate court, contained a liquidation of the conjugal partnership and a statement as to who were the decedent's heirs and what were their respective hereditary shares. That project of partition was a substantial compliance with articles 179 et sequentia of the Civil Code.

The probate court further erred in entertaining Camilo Divinagracia's motion to reopen the intestate proceeding. It erred because that motion involved the determination of his status as the decedent's spurious child. That question falls within the exclusive original jurisdiction of the Juvenile and Domestic Relations Court of Iloilo. Republic Act No. 4834, which took effect on June 18, 1966, provides:

"SECTION 1. The Juvenile and Domestic Relations Court. - There shall be a Juvenile and Domestic Relations Court in the Province of Iloilo, for which a judge who shall possess the same qualifications, enjoy the same privileges and receive the same salary as judges of courts of first instance, shall be appointed by the President of the Philippines, with the consent of the Commission on Appointments.

"Provisions of the Judiciary Act to the contrary notwithstanding, the court shall have exclusive original jurisdiction to hear and decide the following cases after the effectivity of this Act:

"xxx xxx xxx

"(b) Cases involving custody, guardianship, adoption, paternity and acknowledgment;

"xxx xxx xxx

"If any question involving any of the above matters (seven classes of cases) should arise as an incident in any case pending in the ordinary courts, said incident shall be determined in the main case."

The instant case is similar to the Paterno case, *supra*, and Bartolome vs. Bartolome, L-23661, December 20, 1967, 21 SCRA 1324, where it was held that cases involving paternity and acknowledgment fall within the exclusive original jurisdiction of the Juvenile and Domestic Relations Court.

The Paterno and Bartolome cases involve provisions of the Charter of Manila (inserted by Republic Act No. 1401 in Republic Act No. 409), which created its Juvenile and Domestic Relations Court. Those provisions are similar to the provisions of Republic Act No. 4834 which created the Juvenile and Domestic Relations Court of Iloilo.

It was clarified in the Paterno case that the rule prohibiting the splitting of a cause of action (Sec. 4, Rule 2, Rules of Court) is not violated by the holding that the action to establish plaintiff's filiation as an illegitimate child should be filed in the Juvenile and Domestic Relations Court and cannot be joined to the action of the illegitimate child for partition and recovery of his hereditary share in his putative father's estate, which is cognizable by the Court of First Instance.

It is true that under the aforequoted section 1 of Republic Act No. 4834 a case involving paternity and acknowledgment may be ventilated as an incident in the intestate or testate proceeding (See Baluyot vs. Ines Luciano, L-42215, July 13, 1976). But that legal provision presupposes that such an administration proceeding is pending or existing and has not been terminated.

There is a rule that the remedy of a natural child, who has not been voluntarily acknowledged (Art. 278, Civil Code) but who can justifiably compel recognition, is either (a) a separate action against his parent to compel recognition, or, if the parent is dead, against all the potential heirs who would be prejudiced by his re-cognition together with an action for the enforcement of his rights against his parent or the latter's heirs; or (b) he may intervene in the administration proceeding for the settlement of his deceased parent's estate and there ask for recognition and at the same time enforce his hereditary rights (*Briz vs. Briz and Remigio*, 43 Phil. 763; *Suarez vs. Suarez*, 43 Phil. 903; *Lopez vs. Lopez*, 68 Phil. 227; *Zalzarriaga vs. Mariño*, L-19566, May 25, 1964, 11 SCRA 48; *Uriarte vs. Court of First Instance of Negros Occidental*, L-21938, 33 SCRA 252).

This rule, which may be applied to the spurious child's action to establish his filiation and assert his hereditary rights, is good in provinces where there are no Juvenile and Domestic Relations Courts and where the administration proceeding has not been instituted or is already closed.

In this connection, a review of the rules governing the filiation of a spurious child may be useful in ascertaining the remedy open to Camilo Divinagracia.

The so-called spurious children, or illegitimate children other than natural children, commonly known as bastards, include adulterous children or those born out of wedlock to a married woman cohabiting with a man other than her husband or to a married man cohabiting with a woman other than his wife. They are entitled to support and successional rights (Art. 287, Civil Code). But their filiation must be duly proven (*Ibid*, Art. 887).

How should their filiation be proven? Article 289 of the Civil Code allows the investigation of the paternity or maternity of spurious children under the circumstances specified in articles 283 and 284 of the Civil Code. The implication is that the rules on compulsory recognition of natural children are applicable to spurious children (*Pactor vs. Pestaño*, 107 Phil. 685; *Edades vs. Edades*, *infra*; *Reyes vs. Zuzuarregui*, 102 Phil. 346, 354).

Spurious children should not be in a better position than natural children. The rules on proof of filiation of natural children or the rules on voluntary and compulsory acknowledgment for natural children may be applied to spurious children (*Paulino and Nieto vs. Paulino*, 113 Phil. 697, 700).

That does not mean that spurious children should be acknowledged, as that term is used with respect to natural children. What is simply meant is that the grounds or instances for the acknowledgment of natural children are utilized to establish the filiation of spurious children (*Barles vs. Ponce Enrile*, 109 Phil. 522).

A spurious child may prove his filiation by means of a record of birth, a will, a statement before a court of record, or in any authentic writing. These are the modes of voluntary recognition of natural children (Art. 278, Civil Code).

In case there is no evidence on the voluntary recognition of the spurious child, then his filiation may be established by means of the circumstances or grounds for compulsory recognition prescribed in the aforementioned articles 283 and 284 (*Noble vs. Noble*, 64 O.G. 1753; *Edades vs. Edades*, 99 Phil. 675; *Sotto vs. Sotto*, L-20921, May 24, 1966, 17 SCRA 243; *Republic vs. Workmen's Compensation Commission*, L-19946, February 26, 1965, 13 SCRA 272; *Galeon vs. Galeon*, L-30380, February 28, 1973, 49 SCRA 516; *Paterno vs. Paterno*, *supra*).

The prescriptive period for filing the action for compulsory recognition in the case of natural children, as provided for in article 285 of the Civil Code, applies to spurious children (*Vda. de Clemeña vs. Clemeña*, L-24845, August 22, 1968, 24 SCRA 720; *Velez vs. Velez*, L-28873, July 31, 1973, 52 SCRA 190; *Barles vs. Ponce Enrile*, *supra*).

In the instant case, Camilo Divinagracia did not disclose whether he has any evidence of voluntary recognition of his filiation. There is no allegation in his motion that would sustain his claim for compulsory acknowledgment of his filiation. (Cf. *Pactor vs. Pestaño*, 107 Phil. 685).

In view of the foregoing considerations, the probate court's order of October 18, 1975, reopening the intestate proceeding for the settlement of the estate of Feliciano Divinagracia, is set aside. Costs against private respondent.

SO ORDERED.

Concepcion, Jr., J., concurs.

Fernando, Acting C.J., concurs and takes note of the reservations of Justice Barredo in his separate opinion.

Barredo, J., concurs in separate opinion.

Antonio, J., in the result.

QUALIFIED CONCURRING VOTE

BARREDO, J.:

I concur in the scholarly and comprehensive opinion of Mr. Justice Aquino resolving the issues of jurisdiction and procedure raised in the petition and in the resulting judgment rendered by him.

However, I do not feel prepared at this time to share his views as to the modes open to spurious children to establish their illegitimate paternity as basis for entitling them to the successional and other rights granted to them by the Civil Code. I have yet to be convinced that allowing spurious children to prove such paternity by means other than those indispensably prescribed for natural children places the former "in a better position" than the latter. Presently, I feel that spurious children who are certainly without fault, as also are natural children, in their being born as such are more unfortunate than the latter, if only because there is bound to be more antagonism against them from the legitimates and naturals and it is an unusual philanderer who openly and formally acknowledges spurious children. And if without such direct acknowledgment, a spurious child can no longer prove his paternity otherwise, no matter how convincing his evidence may be, would that not amount to practically diluting, if not nullifying indirectly, the commendable objective of the Civil Code of giving to all innocent children more in law than what their indiscreet and perhaps inconsiderate parents care to bestow on them, for obvious reasons of convenience?

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