

MARIA ROSARIO DE SANTOS, PETITIONER, VS. HON. ADORACION G. ANGELES, JUDGE, REGIONAL TRIAL COURT OF CALOOCAN CITY, BRANCH 121 AND CONCHITA TALAG DE SANTOS, RESPONDENTS.

G.R. No. 105619. December 12, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

Can natural children by legal fiction be legitimized?

There being no explicit provision of law in point, the Court is called upon to cast illumination in a gray area even as it fills up unintentional interstices in the fabric of Civil Law with overlays of philosophical, historical and sociological strands. For an understanding of how the issue arose, we now proceed to unravel the pertinent factual background.

On February 7, 1941, Dr. Antonio de Santos married Sofia Bona, which union was blessed with a daughter, herein petitioner Maria Rosario de Santos. After some time, their relationship became strained to the breaking point. Thereafter, Antonio fell in love with a fellow doctor, Conchita Talag, private respondent herein. Antonio sought a formal dissolution of his first marriage by obtaining a divorce decree from a Nevada court in 1949.

Obviously aware that said decree was a worthless scrap of paper in our jurisdiction which then, as now, did not recognize divorces, Antonio proceeded to Tokyo, Japan in 1951 to marry private respondent, with whom he had been cohabiting since his de facto separation from Sofia. This union produced eleven children. On March 30, 1967, Sofia died in Guatemala. Less than a month later, on April 23, 1967, Antonio and private respondent contracted a marriage in Tagaytay City celebrated under Philippine laws. On March 8, 1981, Antonio died intestate leaving properties with an estimated value of P15,000,000.00.

On May 15, 1981, private respondent went to court^[1] asking for the issuance of letters of administration in her favor in connection with the settlement of her late husband's estate. She alleged, among other things, that the decedent was survived by twelve legitimate heirs, namely, herself, their ten surviving children, and petitioner. There being no opposition, her petition was granted.

After six years of protracted intestate proceedings, however, petitioner decided to intervene. Thus, in a motion she filed sometime in November 1987, she argued inter alia that private respondent's children were illegitimate. This was challenged by private respondent although the latter admitted during the hearing that all her children were born prior to Sofia's death in 1967.

On November 14, 1991, after approval of private respondent's account of her administration, the court a quo passed upon petitioner's motion. The court, citing the case of Francisco H. Tongoy, et al. v. Court of Appeals, et al. (23 SCRA 99 [1983]), declared private respondent's ten children legitimated and thereupon instituted and declared them, along with petitioner and private respondent, as the heirs of Antonio de Santos.

Petitioner sought a reconsideration of said order but this was denied in the court's order dated January 9, 1992.

Hence, she filed the instant petition for certiorari on June 16, 1992, contending that since only natural children can be legitimized, the trial court mistakenly declared as legitimated her half brothers and sisters.

This argument is tenable.

Article 269 of the Civil Code expressly states:

"Art. 269. Only natural children can be legitimated. Children born outside wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other, are natural."

In other words, a child's parents should not have been disqualified to marry each other at the time of conception for him to qualify as a "natural child."

In the case at bench, there is no question that all the children born to private respondent and deceased Antonio de Santos were conceived and born when the latter's valid marriage to petitioner's mother was still subsisting. That private respondent and the decedent were married abroad after the latter obtained in Nevada, U.S.A. a decree of divorce from his legitimate wife does not change this fact, for a divorce granted abroad was not recognized in this jurisdiction at the time. Evidently, the decedent was aware of this fact, which is why he had to have the marriage solemnized in Tokyo, outside of the Philippines. It may be added here that he was likewise aware of the nullity of the Tokyo marriage for after his legitimate, though estranged wife died, he hastily contracted another marriage with private respondent, this time here in Tagaytay.

It must be noted that while Article 269, which falls under the general heading of "Paternity and Filiation," specifically deals with "Legitimated Children," Article 89, a provision subsumed under the general title on "Marriage," deals principally with void and voidable marriages and secondarily, on the effects of said marriages on their offspring. It creates another category of illegitimate children, those who are "conceived or born of marriages which are void from the beginning," but because there has been a semblance of marriage, they are classified as "acknowledged natural children" and, accordingly, enjoy the same status, rights and obligations as such kind of children. In the case at bench, the marriage under question is considered "void from the beginning" because bigamous, contracted when a prior valid marriage was still subsisting. It follows that the children begotten of such union cannot be considered natural children proper for at the time of their conception, their parents were disqualified from marrying each other due to the impediment of a prior subsisting marriage.

What term should then be coined to distinguish them from natural children proper (those "born outside of wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other")? A legal fiction had to be resorted to, that device contrived by law to simulate a fact or condition which, strictly and technically speaking, is not what it purports to be. In this case, the term "natural children by legal fiction" was invented, thus giving rise to another category of illegitimate children, clearly not to be confused with "natural children" as defined under Art. 269 but by fiction of law to be equated with acknowledged natural children and, consequently, enjoying the status, rights and obligations of the latter. Does this cluster of rights include the right to be legitimated?

Under the Civil Code, there exists a hierarchy of children classified on the basis of rights granted by law, which must be preserved by strictly construing the substantive provisions of the law in force.

Under the prevailing Civil Code (which may be considered "old" in light of the new provisions of the Family Code on "Persons"), much emphasis is laid on the classification of children vis-a-vis their parents, and the corresponding rights they are entitled to under the law. Thus, the title on "Paternity and Filiation" devotes two whole chapters to legitimate children alone, and one chapter on those deemed by law to be possessed of the rights of the former, such as legitimated children, because of their compliance with certain requisites laid down by law;

two other chapters deal with illegitimate children composed of recognized natural children, and those other than natural, or spurious, whether recognized or not. The well-ordered delineation of such distinctions among these groups demonstrates a clear intent on the part of the framers of the Civil Code to compartmentalize and separate one from the other, for legitimacy/illegitimacy determines the substantive rights accruing to the different categories of children.

It must be noted that before said Code was enacted, other classes of illegitimate children were recognized, such as, "manceres" or the offspring of prostitutes and the "sacrilegious" or children of those who had received Holy Orders. Subsequently, the Civil Code, in an effort to keep in step with modern times, limited illegitimate filiation to those which are incestuous, adulterous and illicit.

At the core of the institution of legitimacy held sacrosanct by Spanish tradition and culture, lies the "inviolable social institution" known as marriage. This union, absent any formal or substantial defect or of any vice of consent, is virtually adamant. On the whole, the status of a marriage determines in large part the filiation of its resultant issue. Thus, a child born within a valid marriage is legitimate, while one born outside of wedlock is illegitimate. If, however, the latter's parents were, at the time of the child's conception, not legally barred from marrying each other and subsequently do so, the child's filiation improves as he becomes legitimized and the "legitimated" child eventually enjoys all the privileges and rights associated with legitimacy. Without such marriage, the natural child's rights depend on whether he is acknowledged or recognized by his parents, but he does not rise to the level of a legitimate child in the manner that the legitimated child does.

A child conceived or born of a marriage which is void ab initio or one which is declared a nullity is illegitimate since there is no marriage to speak of, but it is the law which accords him the rights of an acknowledged natural child.

Finally, there are illegitimate children who are referred to as "spurious" or derisively denominated as "bastards" because of their doubtful origins. There is no marriage — valid or otherwise — which would give any semblance of legality to the child's existence. Nothing links child to parent aside from the information appearing in the birth certificate. When such child is recognized by one or both parents, he acquires certain rights nowhere approaching those of his legitimate counterparts.

The Civil Code provides three rights which, in varying degrees, are enjoyed by children, depending on their filiation: use of surname, succession, and support.

Legitimate children and legitimated children are entitled to all three.[2] Thus, they "shall principally use the surname of the father,"[3] and shall be entitled to support from their legitimate ascendants and descendants,[4] as well as to a legitime consisting of one-half of the hereditary estate of both parents,[5] and to other successional rights, such as the right of representation. "These rights as effects of legitimacy cannot be renounced." [6]

Natural children recognized by both parents and natural children by legal fiction shall principally use the surname of the father.[7] If a natural child is recognized by only one parent, the child shall follow the surname of such recognizing parent.[8] Both types of children are entitled to receive support from the parent recognizing them.[9] They also cannot be deprived of their legitime equivalent to one-half of that pertaining to each of the legitimate children or descendants of the recognizing parent, to be taken from the free disposable portion of the latter's estate.[10]

Recognized illegitimate children other than natural, or spurious issues, are, in their minority, under the parental authority of their mothers and, naturally, take the latter's surname.[11] The only support which they are entitled to is from the recognizing parent,[12] and their legitime, also to be taken from the free portion, consists of four-fifths

of the legitime of an acknowledged natural child or two-fifths that of each legitimate child.[13]

It must also be observed that while the legitime of a legitimate child is fairly secured by law,[14] the legitime of any recognized illegitimate child, taken as it is from the free portion of the hereditary estate which the child shares with the surviving spouse, may be reduced if it should exceed said portion.[15]

Unrecognized illegitimate children are not entitled to any of the rights above mentioned.[16]

These distinctions gain more relevance if we were to consider that while a legitimated child may enjoy the same successional rights granted to legitimate children, a natural child by legal fiction cannot rise beyond that to which an acknowledged natural child is entitled, insofar as his hereditary rights are concerned.

It is thus incongruous to conclude, as private respondent maintains, that petitioner's half siblings can rise to her level by the fact of being legitimized, for two reasons: First, they failed to meet the most important requisite of legitimation, that is, that they be natural children within the meaning of Article 269; second, natural children by legal fiction cannot demand that they be legitimized simply because it is one of the rights enjoyed by acknowledged natural children.

It may be argued that legitimation is a right vouchsafed to acknowledged natural children and, therefore, by the same token, to natural children by legal fiction. This conclusion is arrived at through a syllogism as simple as it is deceptive, which runs as follows:

The respondent's children are natural children by legal fiction.

Therefore, they have the same status, rights and obligations as acknowledged natural children.

Acknowledged natural children have the right to be legitimated.

Ergo, respondent's children have the right to be legitimated (as in fact they were "deemed legitimated" by the subsequent valid marriage of their parents in the Philippines in 1967).

The above line of reasoning follows the Euclidian geometric proposition that things equal to the same thing are equal to each other. This may hold true in the realm of instructional, as opposed to descriptive science, where the former calls for the application of absolute, mathematical rules with precision but not to the latter, particularly those which deal with the social sciences where human relationships are central to a study whose main concern is not to leave out anything of significance. The former deals with inanimate things, those which a scientist has described as the "dead aspect of nature," excluding all factors regarded as superfluous to obtaining absolute results and nothing more. It does not concern itself so much with the whole truth as with those aspects or parts only through which the inexorable result can be obtained. To apply the strict rules of syllogism, where the basic premise is defective, to the arena of paternity and filiation, especially in the determination of the status and rights of the different kinds of illegitimate children vis-a-vis the legitimate ones, is bound to spawn mischief and results never intended by the framers of the provisions of the law under review.

Pursued to its logical, undeviating conclusion, it may eventually be postulated that "adulterous children shall enjoy the status, rights and obligations of legitimate children," a doctrine which no moral philosophy under our social and cultural milieu can countenance.

This conclusion not only presumes that children other than those who are "natural" can be legitimized in the first place, but also grants acknowledged natural children (and, consequently, natural children by legal fiction) a "right" to be legitimized when no such right exists. Legitimation is not a "right" which is demandable by a child. It is a privilege, available only to natural children proper, as defined under Art. 269. Although natural children by legal fiction have the same rights as acknowledged natural children, it is a quantum leap in the syllogism to

conclude that, therefore, they likewise have the right to be legitimated, which is not necessarily so, especially, as in this case, when the legally existing marriage between the children's father and his estranged first wife effectively barred a "subsequent marriage" between their parents.

The question that must be confronted next is: How are the offspring of the second union affected by the first wife's death and the ensuing celebration of a valid marriage between her widower and his ostensible second wife?

Natural children by legal fiction cannot be legitimized in this fashion. Our archaic law on family relations, patterned as it is after Spanish Civil Law, frowns upon illegal relations such that the benefits of legitimation under Chapter 3 of Title VIII do not extend, nor were they intended to extend, to natural children by legal fiction. Article 269 itself clearly limits the privilege of legitimation to natural children as defined thereunder. There was, therefore, from the outset, an intent to exclude children conceived or born out of illicit relations from the purview of the law.

Another point to be considered is that although natural children can be legitimized, and natural children by legal fiction enjoy the rights of acknowledged natural children, this does not necessarily lead to the conclusion that natural children by legal fiction can likewise be legitimized. As has been pointed out, much more is involved here than the mere privilege to be legitimized. The rights of other children, like the petitioner in the case at bench, may be adversely affected as her testamentary share may well be reduced in the event that her ten surviving half siblings should be placed on par with her, when each of them is rightfully entitled to only half of her share.

The provisions of law invoked by private respondent are couched in simple and unmistakable language, not at all subject to interpretation, and they all point to the correctness of petitioner's claim. If it should be asserted that we now trench on a gray area of law that calls for interpretation, or a lacuna that cries for filling up, then we have to pierce the shroud unintentionally created by the letter of the law and expose its spirit as evincing intent, in this case one which decidedly favors legitimacy over illegitimacy. The hierarchy of children so painstakingly erected by law and the corresponding gradation of their rights may conceivably be shattered by elevating natural children by legal fiction who are incontestably illegitimate children to the level of natural children proper, whose filiation would otherwise be legitimate had their parents blessed their union with a valid marriage.

Finally, attention must be drawn to the fact that this case has been decided under the provisions of the Civil Code, not the Family Code which now recognizes only two classes of children: legitimate and illegitimate. "Natural children by legal fiction" are nothing if not pure fiction.

WHEREFORE, the instant petition is hereby GRANTED. The assailed orders of the court a quo dated November 14, 1991 and January 9, 1992, are NULLIFIED and SET ASIDE. Petitioner Maria Rosario de Santos is hereby declared the SOLE LEGITIMATE CHILD of the decedent Antonio de Santos and, as such, entitled to all the rights accorded to her by law.

SO ORDERED.

Feliciano, Regalado, Davide, Jr., Melo, Puno, and Mendoza, JJ., concur.

Hermosisima, Jr., J., with concurring opinion.

Vitug and Kapunan, JJ., see dissenting opinions.

Narvasa, C.J., Padilla, Bellosillo, and Francisco, JJ., join J.

[1] Special Proceeding Case No. C-851 filed before Branch 121 of the Regional Trial Court of Caloocan City.

[2] Civil Code, Articles 264 and 272.

[3] Ibid, Article 364.

[4] Id., Article 291(2).

[5] Id., Article 888(1st par.).

[6] J.B.L. Reyes and R.C. Puno, *An Outline of Philippine Civil Law*, Vol. I, 1965, p. 248, citing Arts. 301, 905, and 1347.

[7] Civil Code, Article 366-367.

[8] Ibid, Article 366.

[9] Id., Article 291(3) and (4), in relation to Article 89.

[10] Id., Article 895, in relation to Article 282.

[11] Id., Articles 288 and 368.

[12] Id., Article 291(5).

[13] Id., Article 895(2nd and 3rd pars.).

[14] Id., Article 886.

[15] Id., Article 895 (3rd par.).

[16] *Reyes v. Court of Appeals*, No. L-39537, March 19, 1985, citing *Alabat v. Alabat*, 21 SCRA 1479 (1967); *Mise v. Rodriguez*, 95 Phil. 396 (1954); *Magallanes v. Court of Appeals*, 95 Phil. 797 (1954); *Canales v. Ugarte*, 91 Phil. 6 (1952); *Malonda v. Malonda*, 81 Phil 149 (1948); *Buenaventura v. Urbano*, 5 Phil. 1 (1905).

SEPARATE AND CONCURRING OPINION

HERMOSISIMA, JR., J.:

Do children born out of adulterous relationships have the right to be legitimated under the New Civil Code? This I believe is the resultant issue in this case.

In declaring what the law is on this matter, we could not be so unmindful of the highest regard that our society places on the institution of marriage and the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society. Without it there could be neither civilization nor progress.[1] No less than the Constitution, of which we should be the staunchest vanguard as we are its ablest defender, marshals us to protect marriage as an inviolable social institution and the foundation of the family,[2] for it cannot be denied that the welfare of society is served and nurtured by a court that exercises its judicial prerogatives not in a vacuum of cold logic but in the context of the loftiest and most enduring social values which the citizens, albeit struggling and fumbling in their daily living, try to approximate in their own lives. The citizens, after all, are our constituents[3] and so their best interests, embodied in the scale of values which they extol, are an integral part of the great flux that is the law. As we are concerned with its exposition, we must strive to continuously refurbish the image of the law vis-a-vis the welfare of society, to keep it bright, and to subject it to constant re-analysis so as to keep it in touch with what has always been right, what is just and fair under present circumstances, and what is most beneficial for the future generations.[4]

It is in this light that we appreciate this case with the following antecedent facts:

Dr. Antonio de Santos married Sofia Bona on February 7, 1941. Out of this union was born in 1942 petitioner Maria Rosario de Santos. However, Antonio and Sofia subsequently parted ways. While separated de facto from Sofia, Antonio, in 1949, secured a divorce decree against her in Nevada, U.S.A. He then married private respondent Dr. Conchita Talag in Tokyo, Japan, in 1951. Antonio and Conchita had eleven children who were all born between the years 1951 to 1967.

On March 30, 1967, Sofia died in Guatemala. Thereafter, Antonio married private respondent, for the second time, in Tagaytay City. Antonio then died on March 8, 1981 at the Capitol Medical Center.

In special proceedings filed by private respondent on May 15, 1981, before the Regional Trial Court of Caloocan City, the court granted her petition for letters of administration since such petition was unopposed. In the course of the proceedings, however, petitioner intervened alleging, among others, that the ten surviving children of private respondent were illegitimate.

After the approval of the Income and Expenses Statement of the decedent's estate pursuant to Sec. 1, Rule 90 of the Revised Rules of Court on May 6, 1991, the trial court issued an order on November 14, 1991 declaring that the ten children of the deceased and private respondent must be deemed legitimated and therefore entitled to inherit as legitimate heirs.

Consequently, the sole issue raised in the instant petition for certiorari is whether or not said children can be legitimated.

A logical cold deduction based on some pertinent laws would appear to answer this issue in the affirmative, in this wise:

Article 80 of the New Civil Code considers as marriages void from the beginning, bigamous marriages not falling under Art. 83 (2). Article 89 of the same Code, in turn, bestows upon children conceived or born of marriages void from the beginning, referred to as natural children by legal fiction, the status, rights and obligations of acknowledged natural children. Among the rights of acknowledged natural children is the right of legitimation granted to them under Article 269 in relation to 271 of the same Code. Since private respondent's children were all born after her marriage to the deceased in Tokyo in 1951, which marriage is considered bigamous, hence, void from the beginning, because of its celebration while the marriage between the deceased and his first wife, Sofia Bona, still subsisted, said children are natural children by legal fiction who have the rights of acknowledged natural children, including the right to be legitimated, and they may now be considered legitimated since the deceased and private respondent validly married for the second time after Sofia's demise.

It happens that the law may lose its character of being a law by an excess of caprice in its administration, but it could hardly cease to be law because of its rigid logical application according to its tenor. When its rigid logical application, however, amounts to absurdity, the law not only becomes incapable of just administration but may also become an instrument of legal injustice. Clearly for us to read the law in the foregoing manner is to dangerously teeter on the fulcrum of legal folly for there is no scaling down its unacceptable implications.

If children born out of an extramarital relationship, but whose parents contracted a bigamous marriage and still another marriage subsequent thereto upon the death of the first spouse of the adulterous parent, may eventually be legitimated, then children of adulterous spouses, by the expedient contrivance of a bigamous marriage, may later on be legitimated. The adulterous spouse may still prove himself virtuous and heroic by risking prosecution for bigamy if only to give his child out of wedlock the chance, that slim chance, to be legitimated, that is, if he prays enough that his first spouse dies ahead of him so he could eventually validly marry his paramour. As such, in the mildest terms, the law would seem to condone extramarital relationships by providing the seemingly confessant

adulterer a way to be a conscientious parent to his illegitimate children without having to give up his illicit relations with their mother. At its worst, such a reading of the law amounts to a mockery of the institution of marriage, which is, under our Constitution and family laws, an inviolable social institution imbued with public interest and traditionally and constantly held to be a priority in our culture's scale of values, for nothing stops the public from concluding that marriage and a bigamous marriage at that (with its accompanying criminal consequences), is actually a backdoor to legitimating adulterous children.

The letter of Article 89 of the New Civil Code must be transcended and the absurd and sheepishly grotesque consequences of its application in the instant case, rejected. It is not enough that the law exists to be administered justly; in addition and more importantly, the law needs to possess a just content. The law must by itself aim at and endeavor to conform to, some criteria of rightness which repose on values espoused by the very society it seeks to serve. As it is our duty to declare the law as it is, there is no escaping the task of revealing the justness of the law in accordance with society's avowed values. Consequently, it has been called a golden rule of statutory interpretation that unreasonableness of the result produced by one possible interpretation of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result.[5]

In resolving the issue at hand, I believe the emphasis should be on Article 269 which is, after all, the law squarely in point under the premises of this case. Taking the letter of Article 269 as it is, it clearly prescribes the limits of its applicability upon only natural children. Surely there is no canon against using both common sense and common weal in construing the law as saying what it obviously means:

"Chapter 3

Art. 269. Only natural children can be legitimated. Children born outside wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other, are natural.

x x x x x x x x

Art. 271. Only natural children who have been recognized by the parents before or after the celebration of the marriage, or have been declared natural children by final judgment, may be considered legitimated by subsequent marriage." (Italics ours)

Legitimation is a right granted by law only to natural children who, because their parents could have legally married at the time they were conceived, cannot be substantially differentiated from legitimate children once their parents do marry after their birth. This is because said parents can marry any time, there being no legal impediment preventing them from validly contracting marriage. The situation obtaining respecting legitimate children and legitimated natural children is certainly distinct from that respecting adulterous children because the parents of adulterous children are admittedly incapacitated to marry each other at the time said children were conceived. It may easily be said, thus, that to interpret the law as allowing adulterous children to be put on equal footing with the legitimate children, would be putting a premium on adulterous relationships, which is frowned upon by the society itself. Even the law on succession under the New Civil Code distinguishes the respective hereditary rights of the different kinds of children and significantly assigns a diminishing share in accordance with the degree of illegitimacy of the child concerned. Thus, Article 895 provides that the legitime of each of the acknowledged natural children and each of the natural children by legal fiction shall consist of one-half of the legitime of each of the legitimate children or descendants and that of illegitimate children who is neither of the above, four-fifths of the legitime of an acknowledged natural child. It is, therefore, evident that the treatment accorded children under the New Civil Code is determined by the circumstances under which they have been conceived and born, particularly, the capacity to marry of their parents at the time that they were conceived.

Private respondent's children were precisely born when their deceased father was still legally married to Sofia

Bona. The marriage of the deceased and private respondent in Tokyo, Japan, in 1951 could not have given a semblance of legitimacy to their subsequent cohabitation and their issues since such marriage was contracted during the subsistence of the deceased's marriage with Sofia Bona. The relationship between the deceased and private respondent, therefore, was no less adulterous notwithstanding an attempt to legitimize the same through a bigamous marriage. There is no other way to put it but that the deceased and private respondent were having illicit relations; they were fully aware of the legal and moral consequences of their actions, and they seemingly, in bad faith, attempted to circumvent the law in their favor by contracting a bigamous marriage to the prejudice of the legitimate issue in the person of the petitioner. There is no quibbling that private respondent's children are adulterous children whose status, by the simple expedient of a bigamous marriage contracted by parties fully aware of their incapacity to marry, could never have been intended by the law to be equated to that of petitioner who is the legitimate child of the deceased in view of the public policy involved in preserving the sanctity of marriage and preventing the proliferation of illegitimate issues. As the earlier interpretation has been shown to lead to unreasonable results with socially virulent implications, and the same originates from two provisions, namely, Article 89 and Article 269 of the New Civil Code, we are wont to state that they are irreconcilable provisions. And the applicable statutory rule is that where there is an irreconcilable conflict between the different provisions of a statute, the provision last in order of position will prevail, since it is the latest expression of the legislative will.[6] More than that Article 269 is the latest expression of the legislative will, however, Article 269 on its face specifically states the law on legitimation, limits its applicability to natural children, and is resonantly silent on the right of adulterous children to be legitimated in the same way as children born to parents who, at the time of their conception, were legally capable to marry each other.

All told, the law tenders to us in no unpretentious terms the basis to rule that private respondent's children, being adulterous children, have no right to be legitimated under the New Civil Code. Such a ruling is not only in accord with the explicit, unequivocal language of Article 269 but more importantly animates and upholds the public policy as regards the institution of marriage as the foundation of society.

Needless to say, such ruling sits well with the need to obviate any legal injustice and social absurdity that may result if we were to rule otherwise.

"The final cause of law is the welfare of society. The rule that misses its aim cannot permanently justify its existence. 'Ethical considerations can no more be excluded from the administration of justice which is the end and purpose of all civil laws than one can exclude the vital air from his room and live.'"[7]

The final rendering of the meaning of a statute is an act of judgment.[8] This court has so judged this case at bench, and so we will perhaps be judged thereby.

I, therefore, vote to grant the petition, set aside the assailed order of the Regional Trial Court, and remand thereto the case for further proceedings.

[1] Ramirez vs. Gmur, 42 Phil. 855, 864.

[2] Sec. 2, Art. XV, 1987 Constitution.

[3] Davies, Jack, Legislative Law and Process, 1986 Edition, p. 324.

[4] Lloyd, Dennis, The Idea of Law, 1981 Edition, p. 327.

[5] Sands, C. Dallas, Sutherland Statutory Construction, 1972 Edition, p. 37.

[6] Crawford, Earl T., The Construction of Statutes, 1940 Edition, p. 263.

[7] Cardozo, Benjamin, *The Nature of the Judicial Process*, 1921 Edition, p. 66, citing Dillon.

[8] Frankfurter, Felix, "Some Reflections on the Reading of Statutes," in *Statutes and Statutory Construction* by C. Dallas Sands, Vol. 3, 1973 Edition, p. 414.

DISSENTING OPINION

VITUG, J.:

I vote to resolve the controversy in favor of the child. I take it to be the legislative intent that the pertinent provisions of the Civil Code on children in the book on persons and family relations are meant to enhance the child's interest and welfare. This intent finds exemplification in Article 89 of the Civil Code by explicitly providing that natural children by legal fiction (among them those conceived or born of void marriages because the parents suffer from an impediment to marry) shall have the same status, rights and obligations as acknowledged natural children. If then under Article 269, in relation to Article 270, of the Civil Code, acknowledged natural children are given the right to be legitimated by the subsequent marriage of the parents, the law must, by virtue of Article 89 aforesaid, likewise extend unqualifiedly to natural children by legal fiction.

No matter how well legal calisthenics are played, there is, I must point out, not a single provision of the Code that limits or circumscribes the scope and application of Article 89. The law, I respectfully submit, should be so construed as to attain congruity, rather than a division, among its several provisions. The rule is expressed in the maxim *interpretare et concordare legibus est optimus interpretendi* upon the theory that the legislature is presumed not to have enacted conflicting provisions of law but that, on the contrary, it must have meant to give them such parity and consequence as a uniform jurisprudential system.

Most regrettably, I still perceive coolness, if not outright hostility, towards illegitimate children who have not been fortunate enough to be conceived or born under a better family circumstance. It is not enough that they are unjustly ostracized by a segment in society; they are also called names — bastards, outcasts, adulterous, spurious — that certainly they do not deserve. If at all, their situation needs sympathy, not hatred or condemnation.

Any conflict of view, however, would soon be a thing of the past, for as so keenly observed by Mme. Justice Flerida Ruth P. Romero, the Family Code, which became effective on 03 August 1988, has deleted any reference to natural children by legal fiction. The Family Code presently categorizes children of void marriages into two kinds — the legitimates which include those conceived or born of void marriages under Article 36 and Article 52 of the Family Code before the judicial declaration of nullity of such void marriages and the illegitimates or children conceived or born of all other void marriages (but evidently maintaining, for legitimation purposes, the distinction between those whose parents, at the time of conception, were not disqualified to marry and those whose parents were disqualified).

DISSENTING OPINION

KAPUNAN, J.:

The principal issue in the case at bench may be capsulized as to whether or not the trial court committed grave abuse of discretion amounting to a lack or excess of jurisdiction in considering the private respondent's children legitimated under the facts established herein, and in declaring and instituting said children as heirs of the decedent. As the law unequivocally gives them such a right, I respectfully dissent from the majority.

I begin by observing that, taking their cue from the lower court's inappropriate lifting of an editor's precis or statement from the syllabus of the case of *Tongoy vs Court of Appeals*,^[1] both parties in the case at bench have placed too much emphasis and reliance on the case of *Tongoy*,^[2] the facts and circumstances of which are not exactly on all fours with those obtaining in the case at bench. The italicized portion of the syllabus of cases appearing in official or unofficial reports of Supreme Court Decisions or Resolutions^[3] generally reflect the editor's summary of a discussion of an issue or a specific point in a case, and, taken out of context, could be misleading and inappropriate for citation. Judges should strive to read cases which might have a bearing on cases before them in their entirety, and quote or obtain their citations from the body of the decision, not the syllabus.

The principal issue in *Tongoy*,^[4] hinged "on the absence of an acknowledgment (by the father prior to his death of his illegitimate children) through any of the modes recognized by the Old Civil Code."^[5] It is not, however clear from the Court's discussion of the facts of the case, whether the illegitimate children were sired during the subsistence of the first marriage or after the death of the first wife. On the sole issue of the father's acknowledgment, the Court therein took a liberal view, recognizing the fact that the children "were in continuous possession of the status of natural, or even legitimated, children"^[6] and that they were "treated as legitimate children not only by their parents but also by the entire clan,"^[7] in declaring, on equitable grounds, that the children therein were legitimate heirs.

For better appreciation of our ruling in *Tongoy*, let me quote the following:

The remaining assignment of error dwells on the question of whether or not respondents Amado, Ricardo, Cresenciano and Norberto, all surnamed *Tongoy*, may be considered legitimated by virtue of the marriage of their parents, Francisco *Tongoy* and Antonina Pabello, subsequent to their births and shortly before Francisco died on September 15, 1926. Petitioners maintain that since the said respondents were never acknowledged by their father, they could not have been legitimated by the subsequent marriage of their parents, much less could they inherit from the estate of their father, the predecessor-in-interest of Luis D. *Tongoy*, who is admittedly the half brother of the said respondents.

Both the trial court and the respondent appellate court have found overwhelming evidence to sustain the following conclusions: that Amado P. *Tongoy*, Ricardo P. *Tongoy*, Cresenciano P. *Tongoy* and Norberto P. *Tongoy* were born illegitimate to Antonina Pabello on August 19, 1910 (Exh. A), August 12, 1922 (Exh. B), December 1, 1915 (Exhs. C and C-1) and August 4, 1922 (Exh. D), respectively; that Francisco *Tongoy* was their father; that said Francisco *Tongoy* had before them and Antonina Pabello two legitimate children by his first wife, namely, Luis D. *Tongoy* and Patricio D. *Tongoy*; that Francisco *Tongoy* and Antonina Pabello were married sometime before his death on September 15, 1926 (Exh. H); that shortly thereafter, Luis D. *Tongoy* and Patricio D. *Tongoy* executed an Extra-Judicial Declaration of Heirs, leaving out their half-brothers Amado, Ricardo, Cresenciano, and Norberto, who were then still minors; that respondents Amado, Ricardo, Cresenciano and Norberto were known and accepted by the whole clan as children of Francisco; that they had lived in Hacienda Pulo with their parents, but when they went to school, they stayed in the old family home at Washington Street, Bacolod, together with their grandmother, Agatona *Tongoy*; that everybody in Bacolod knew them to be part of the *Tongoy-Sonora* clan; and that Luis D. *Tongoy* as administrator of Hacienda Pulo, also spent for the education of Ricardo *Tongoy* until he became a lawyer; and that even petitioners admit the fact that they were half-brothers of the late Luis D. *Tongoy*.

The bone of contention, however, hinges on the absence of an acknowledgment through any of the modes recognized by the Old Civil Code (please see Articles 131 and 135 of the Old Civil Code), such that legitimation could not have taken place in view of the provisions of Art. 121 of the same Code which states that 'children shall be considered legitimated by a subsequent marriage only when they have been acknowledged by the parents

before or after the celebration thereof.'

Of course, the overwhelming evidence found by respondent Court of Appeals conclusively shows that respondents Amado, Ricardo, Cresenciano and Norberto have been in continuous possession of the status of natural, or even legitimated children. Still, it recognizes the fact that such continuous possession of status is not, per se, a sufficient acknowledgment but only a ground to compel recognition (*Alabat vs. Alabat*, 21 SCRA 1379; *Pua vs. Chan*, 21 SCRA 753; *Larena vs. Rubio*, 43 Phil. 1017).

Be that as it may, WE cannot but agree with the liberal view taken by respondent Court of Appeals when it said:

x x x It does not seem equally manifest, however, that defendants-appellants stand on a purely technical point in the light of overwhelming evidence that appellees were natural children of Francisco Tongoy and Antonina Pabello, and were treated as legitimate children not only by their parents but only by the entire clan. Indeed, it does not make much sense that appellees should be deprived of their hereditary rights as undoubted natural children of their father, when the only plausible reason that the latter could have had in mind when he married his second wife Antonina Pabello just over a month before his death was to give legitimate status to their children. It is not in keeping with the more liberal attitude taken by the New Civil Code towards illegitimate children and the more compassionate trend of the New Society to insist on a very literal application of the law in requiring the formalities of compulsory acknowledgment, when the only result is to unjustly deprive children who are otherwise entitled to hereditary rights. From the very nature of things, it is hardly to be expected of appellees, having been reared as legitimate children by their parents and treated as such by everybody, to bring an action to compel their parents to acknowledge them. In the hitherto cited case of *Ramos vs. Ramos*, supra, the Supreme Court showed the way out of patent injustice and inequity that might result in some cases simply because of the implacable insistence on the technical amenities for acknowledgment. Thus, it held —

Unacknowledged natural children have no rights whatsoever (*Buenaventura vs. Urbano*, 5 Phil. 1; *Siguiong vs. Siguiong*, 8 Phil. 5, 11; *Infante vs. Figueras*, 4 Phil. 738; *Crisolo vs. Macadaeg*, 94 Phil. 862). The fact that the plaintiffs, as natural children of Martin Ramos, received shares in his estate implied that they were acknowledged. Obviously, defendants Agustin Ramos and Granada Ramos and the late Jose Ramos and members of his family had treated them as his children. Presumably, that fact was well-known in the community. Under the circumstances, Agustin Ramos and Granada Ramos and the heirs of Jose Ramos, are estopped from attacking plaintiffs' status as acknowledged natural children (See Arts. 283 [4] and 2666 [3], New Civil Code). [*Ramos vs. Ramos*, supra].

With the same logic, estoppel should also operate in this case in favor of appellees, considering, as already explained in detail, that they have always been treated as acknowledged and legitimated children of the second marriage of Francisco Tongoy, not only by their presumed parents who raised them as their children, but also by the entire Tongoy-Sonora clan, including Luis D. Tongoy himself who had furnished sustenance to the clan in his capacity as administrator of Hacienda Pulo and had in fact supported the law studies of appellee Ricardo P. Tongoy in Manila, the same way he did with Jesus T. Sonora in his medical studies. As already pointed out, even defendants-appellants have not questioned the fact that appellees are half-brothers of Luis D. Tongoy. As a matter of fact, they are really children of Francisco Tongoy and Antonina Pabello, and only the technicality that their acknowledgment as natural children has not been formalized in any of the modes prescribed by law appears to stand in the way of granting them their hereditary rights. But estoppel, as already indicated, precludes defendants-appellants from attacking appellees' status as acknowledged natural or legitimated children of Francisco Tongoy. In addition to estoppel, this is decidedly one instance when technicality should give way to conscience, equity and justice (cf. *Vda. de Sta. Ana vs. Rivera*, L-22070, October 29, 1966, 18 SCRA 588) [pp. 196-198, Vol. I, rec.].

It is time that WE, too, take a liberal view in favor of natural children who, because they enjoy the blessings and privileges of an acknowledged natural child and even of a legitimated child, found it rather awkward, if not unnecessary, to institute an action for recognition against their natural parents, who, without their asking, have been showering them with the same love, care and material support as are accorded to legitimate children. The right to participate in their father's inheritance should necessarily follow.[8]

However, acknowledgment is clearly not at issue here. Petitioner makes no pretense that private respondent's children are not entitled to hereditary rights.[9] She herself admits that the decedent acknowledged his paternity of the private respondent's children and that they are indeed her brothers and sisters.[10] What herein petitioner claims she opposes "is their being judicially declared legitimated (by the respondent court) so as to entitle them to enjoy the same rights as a legitimate heir,"[11] to her prejudice. Citing Article 269 of the New Civil Code as "the law in point" in the case at bench, she contends that the trial court erred in declaring her half brothers and sisters legitimated because under the New Civil Code only natural children could be legitimated. I find this contention, to which the majority of this divided Court agrees, absolutely untenable.

The New Civil Code appears to limit the right to legitimation only to those children conceived by parents not disqualified by any impediment to marry each other, bestowing upon them, prior to such legitimation, the status of natural children. Article 269 which provides the cornerstone for the majority's holding today states that:

Art. 269. Only natural children can be legitimated. Children born outside wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other, are natural.

The rule is, however, not absolute because even children conceived or born out of marriages void from the very beginning under the Civil Code possess the status of natural children by legal fiction and enjoy the same rights as acknowledged natural children. Article 89 provides:

Art. 89. Children conceived or born out of marriages which are void from the beginning shall have the same status, rights and obligations as acknowledged natural children, and are called natural children by legal fiction.

Children conceived of voidable marriages before the decree of annulment shall be considered legitimate; and children conceived thereafter shall have the same status, rights and obligations as acknowledged natural children, and are also called natural children by legal fiction.

Article 89, a creature of legislation (through the Code Commission) which has remained unmolested since 1950 I must stress, is not an accidental provision. The Civil Code Commission clearly intended Article 89, notwithstanding its location in the Code, as a piece of reform, an exception to the rule furnished by Article 269. More importantly, Article 89 (unlike Article 269 which came from the Spanish Civil Code of 1889) was a new provision deliberately introduced by the Code Commission as one of its revolutionary reforms thirty five years ago. Any doubt about the intention of this piece of legislation should have been laid to rest by the following explanation from the Code Commission's Report:

This proposed reform is based on the fact that such children have been brought into this world through no fault of their own, but through that of their parents. To visit punishment upon them is most unjust. Moreover, though the marriage is void, or voidable, at least there was a semblance of legality to the relationship between the parents. This circumstance should cast a mantle of protection over the children, who by legal fiction should be treated as acknowledged natural children.[12]

Since the decedent's 1951 marriage in Tokyo with the private respondent was invalid,[13] being one of those marriages classified as void from the very beginning under the Civil Code[14], the status of her children clearly falls under Article 89 which puts them on par, at least in terms of rights and obligations, with acknowledged

natural children. Since the rights of acknowledged natural children include the right of legitimation- under Article 270 of the Civil Code - by the subsequent valid marriage of their parents,[15] it therefore plainly follows that by virtue of Article 89, in relation to Article 270, the private respondent's children were deemed legitimated by the subsequent valid marriage of their parents in the Philippines in 1967.

This position is hardly an isolated one. Virtually all Civil and Family Code commentators are united in the belief that Article 89 furnishes an escape valve for children found under the circumstances existing in the case at bench. Dr. Arturo Tolentino, in his commentary on the Civil Code, for example, writes:

Under Article 89, natural children by legal fiction "shall have the same status, rights and obligations as acknowledged natural children." Theoretically therefore, natural children by legal fiction can be legitimated. xxx.

The following children by legal fiction ... can be legitimated: xxx (2) those born of a bigamous marriage, for the parents can marry each other again upon the widowhood of the parent who married twice.xxx.[16]

In the same token, Prof. Ernesto L. Pineda, a member of the Family Code Revision Committee acknowledges this exception the rule, stating that:

By way of exception, some natural children by legal fiction (Art. 89, NCC) can be legitimated such as- (a) those born of couples who married while below the allowable marrying age but who contracted a new marriage after reaching the proper age; (b) those born of bigamous marriages but where the parents married each other upon the widowhood of the disqualified parent; (c) those born of parents who got married before an unauthorized officer and the parents contracted a new marriage before an authorized one; (d) those born of parents who got married without a marriage license (where license was required) and the parents contracted a subsequent valid marriage; and (e) children conceived after (not before) the decree of annulment of a voidable marriage.[17]

Justice Alicia V. Sempio-Diy, writing on the New Family Code[18] underscores the difference in treatment of the subject of legitimation between the Family Code and the Civil Code thus:

Under the Civil Code, children of bigamous marriages, who are natural children by legal fiction, can be legitimated, since the parents can marry each other upon the death of the first husband or wife of the parent who married twice. Unfortunately for such children, they can no longer be legitimated under the Family Code, which has limited the kind of children to legitimate and illegitimate and abolished the category of natural children by legal fiction.[19]

"Parenthetically," another commentator on the Family Code, Prof.. Melencio Sta. Maria writes, "under the Civil Code provisions of legitimation which were repealed by the Family Code," there can be an instances where such children could be legitimated.[20] Elaborating on these provisions in his 1995 commentary, he states:

This is so because according to the repealed Article 271 of the Civil Code only acknowledged natural children can be legitimated, and also according to the repealed Article 89 of the Civil Code, a child born inside a void marriage was considered a natural child by legal fiction with all the rights of an acknowledged natural child. Since a natural child by legal fiction has all the rights of an acknowledged natural child and the statutory right to be legitimated was one of the rights of an acknowledged natural child, the subject child therefore can be legitimated if the parents subsequently validly remarried.[21]

Clearly, the weight of authority in this country recognizes that under the Civil Code, Article 89 unequivocally furnishes an exception to the rule that only acknowledged natural children or those who by law have been declared natural children by final judgment can be legitimated. This exception was, in fact, acknowledged by the Family Code Revision Committee in its Meeting of August 24, 1985, when it decided not to accord the same

privilege extended by Article 89 to similarly situated illegitimate children (under the Family Code's simplified classification) in the provisions of the new code. However, for children born under the Civil Code, the exception is a legal fact which could not be ignored. If under Article 269, in relation to Article 270 of the Civil Code, acknowledged natural children are given the right to be legitimated by the subsequent marriage of the parents, the law must, by virtue of Article 89, also extend unqualifiedly to natural children by legal fiction. This not only harmonizes Article 89 with the Civil Code articles on the rights of acknowledged natural children and the articles on legitimation but also leads to a result which enhances the welfare and interest of the child. As Justice Vitug in his 1993 Compendium of Civil Law and Jurisprudence writes:

The provisions of Art. 269 and 271 of the Civil Code, in a literal sense appear to limit legitimation in favor of acknowledged natural children or those who by law have been declared natural children by final judgment. Considering, however, that natural children by legal fiction (such as those born of void marriages because the parents suffer from an impediment to marry) are expressly given the same status, rights and obligations as acknowledged natural children (Art. 89 Civil Code), and because all doubts should be resolved in favor of the child, it is submitted that the rules on legitimation should likewise extend to such children.[22]

Indeed, it hardly makes sense that the children of private respondent should be deprived of their full hereditary rights as legitimated children when the facts and circumstances of the case at bench clearly show the decedent's intention to remove, once and for all, all manner of legal and moral obstacles to his second and apparently blissful union with the private respondent. For immediately after the death of his first wife in Guatemala in 1967, the decedent wasted no time in obtaining a Philippine marriage in Tagaytay with his second wife. With a fairly considerable estate, it was not entirely remote that the decedent had in mind not only the intention to legitimize his union with the private respondent but also the intention to accord legitimate status to his children with his second wife. Given the nature of their relationship and the clear intendment of the Civil Code under Article 89 to place natural children by legal fiction on equal standing with acknowledged natural children, a patent injustice and inequity will result if we uphold herein petitioner's implacable position. Given the clear intendment of the legislature in enacting the new provision (Article 89) over thirty years ago when many of the members of this Court were still law students, the majority's holding in the case at bench amounts to a belated judicial veto of a valid piece of legislation.

I vote to DENY the instant petition.

[1] 123 SCRA 99 (1989). The lower court partly based its decision on the following statement, quoted from the syllabus of the decision, which does not appear in the body of the decision itself: "The Supreme Court now takes a liberal attitude on the status of children born out of wedlock such that if a person while married begets children with another woman whom he later marries after he becomes a widower, and during his lifetime he showered such children with all paternal affections and favors, then they should be deemed as legitimated, even in the absence of an action for recognition.

[2] Id.

[3] For e.g., Philippine Reports and the Supreme Court Reports Annotated.

[4] Id.

[5] Id, at 125.

[6] Id, at 126.

[7] Id.

[8] Supra, note 3.

[9] Rollo, p. 79.

[10] Id.

[11] Id.

[12] REPORT OF THE CODE COMMISSION, 81.

[13] The third paragraph of Article 17 in relation to Article 15 (on personal status and capacity) of the Civil Code provides:

"Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated or by determinations or conventions agreed upon in a foreign country."

[14] Civil Code, art. 80(4).

[15] Civil Code, art. 270, provides: "Legitimation shall take place by the subsequent marriage of the parents."

[16] TOLENTINO, I COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 570 (1987).

[17] ERNESTO L. PINEDA, THE FAMILY CODE OF THE PHILIPPINES ANNOTATED, 271 (1992).

[18] ALICIA V. SEMPIO DIY, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES, 251(1991 ED.).

[19] Id.

[20] MELENCIO S. STA MARIA, JR., PERSONS AND FAMILY RELATIONS LAW 485 (1995).

[21] Id, at 485-486.

[22] JOSE C. VITUG, COMPENDIUM OF CIVIL LAW AND JURISPRUDENCE, 86 (1993).

DISSENTING OPINION

PANGANIBAN, J.:

With all due respect, I dissent from the well-written ponencia of Mme. Justice Flerida Ruth P. Romero.

The pertinent portions of Arts. 89, 269, 270 and 271 of the New Civil Code which are the codal provisions in point, read as follows:

Art. 89. Children conceived or born of marriages which are void from the beginning shall have the same status, rights and obligations as acknowledged natural children, and are called natural children by legal fiction.

x x x x x x x x

Art. 269. Only natural children can be legitimated. Children born outside wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other, are natural.

Art. 270. Legitimation shall take place by the subsequent marriage of the parents.

Art. 271. Only natural children who have been recognized by the parents before or after the celebration of the marriage, or have been declared natural children by final judgment, may be considered legitimated by subsequent marriage. x x x

Art. 89 has been repealed by the Family Code (Executive Order No. 209) which took effect on August 3, 1988 (Uyguangco vs. Court of Appeals, 178 SCRA 684 [1989]; Atienza vs. Bril lantes, A.M. No. MTJ-92-706, March 29, 1995). It was one of the provisions under Title III, Book I of the New Civil Code which have been omitted from the text of the present Family Code. But it was the law in force at the time the legitimation in the case at bench took place and should, consequently, govern the present controversy.

Art. 89 was a new provision in the sense that, unlike Articles 269 to 271, aforementioned, which all came from the Spanish Civil Code of 1889, Art. 89 was one of the reforms instituted by the Code Commission that drafted the New Civil Code. The Code Commission justified this new article in this wise:

"This proposed reform is based on the fact that such children have been brought into the world through no fault of their own, but through that of their parents. To visit punishment upon them is most unjust. Moreover, though the marriage was void, or voidable, at least there was a semblance of legality of the relationship between the par-ents. This circumstance should cast the mantle of protection over the children, who by legal fiction should be treated as acknowledged natural children." (Report of the Code Commission, at p. 81.)

In conferring upon natural children by legal fiction the same status, rights and obligations of acknowledged natural children, the clear intention of the law was to put them at par with the latter although in fact they are not. They are not in fact natural because they were conceived in the presence, not absence, of an impediment between the parents. They are natural only by figment of law. Thus, the name natural children by legal fiction.

But this legal fiction precisely operates to exempt them from the requirement under Art. 269 that there be no impediment between the parents at the time of the conception as well as from the requirement of recognition by both parents under Art. 271. Plainly, this is the conclusion that can rationally be given to the express, unequivocal declaration in Art. 89 that natural children by legal fiction "shall have the same status, rights and obligations as acknowledged natural children" -- neither imposing any condition nor subjecting the grant of status to any qualification or exception of any kind. Had the intention been to deprive them of the right of legitimation, the law would have said so. Or it would have inserted a condition that they could be legitimated only if they can show compliance with Arts. 269 and 271 of the Code. The fact that these insertions were not made can only mean that the law intended to exempt this special class of natural children from the strict requirements normally imposed on ordinary natural children.

Under the provisions of the New Civil Code, legitimation takes place when three requisites are met: (a) that the child be a natural child; (b) that he be recognized by both parents either before or after a valid marriage; and (c) that there be a subsequent valid marriage of the parents (cf. Paras, Civil Code of the Philippines Annotated, 1984 Ed., Vol. I, p. 651). A natural child by legal fiction possesses the first two requisites from inception by virtue of Art. 89, which places him on the same plane as an acknowledged natural child. In that sense, he has an advantage over a natural child as defined by Art. 269, for the latter would still need to be recognized by both parents in order to have the status and rights of an acknowledged natural child. Thus, for the purpose of legitimation, the natural child by legal fiction needs to fulfill only the third requisite: a valid subsequent marriage between his parents (cf. Paras, op. cit., p. 651; Tolentino, Civil Code of the Philippines, 1987 Reprinting, Vol. I, p. 570). Where the impediment is permanent or perpetual, such as incest or the fact that one or both of the parties have been found guilty of killing the spouse of one of them, no legitimation can ever take place as no valid marriage can ever be

made between the parents (Tolentino, op. cit., p. 570). But the bigamous character of a marriage is terminable by, among other causes, the death of the first spouse, making a subsequent marriage valid. And that simply was what happened in the case at bench.

Prior to the repeal of Art. 89 by the Family Code, it was suggested by some civil law scholars that a distinction should be made between natural children by legal fiction who were conceived during the existence of an impediment, on the one hand, and those who were conceived after the disappearance of such impediment, on the other. Their theory was that only the latter would qualify for legitimation. Such a stance would have been juridically sound were it not for the fact that Art. 89 does not classify natural children by legal fiction into the two suggested categories based on the presence or absence of impediment at the time of conception of the child. *Ubi lex non distinguit nec nos distinguere debemus*; where the law does not distinguish, we should not (*Gesolgon vs. Lacson*, 2 SCRA 553, 556 [1961]; *Libudan vs. Gil*, 45 SCRA 17, 33 [1972]; *Guevarra vs. Inocentes*, 16 SCRA 379, 385 [1966]; *Robles vs. Chromite Mining Co.*, 104 Phil. 688, 690 [1958]). Besides, as already pointed out, the conferment on natural children by legal fiction of the same status, rights and obligations as those of acknowledged natural children under Art. 89, New Civil Code, evidently exempted the former from the requirements imposed upon ordinary natural children by Arts. 269 and 271 of said Code. And, finally, Art. 220 of said Code fortifies this conclusion, because said provision declares that in case of doubt, every intendment of law or fact leans toward, among other things, "the legitimacy of children". The doubt -- if there be such at all — should therefore be resolved in favor of sustaining the right to legitimation of the eleven (11) offsprings of the decedent with private respondent Conchita Talag, regardless of the presence or absence of an impediment to marry on the part of their parents at the time of the conception of each of them.

Indeed, it is hardly fair to stigmatize and create social and successional prejudice against children who had no fault in nor control over the marital impediments which bedeviled their parents. They are the victims, not the perpetrators, of these vagaries of life. Why then should they suffer their consequences? In the final analysis, there are really no illegitimate children; there are only illegitimate parents. And this dissent finds its philosophy in this: that children, unarguably born and reared innocent in this world, should benefit by every intendment of the law, particularly where — as in this case — their parents, who originally suffered from a marital impediment, would now want to overcome the improvident social and successional consequences of such condition. Therefore, it is most unfair that these innocent children should be condemned to continue suffering the consequences of the impediment they did not cause, when the very impediment itself has disappeared.

The mere fact that such legitimation would impact adversely upon the petitioner's successional rights as the lone legitimate child of the first marriage is no reason to deny the children of the second marriage of their own legal right to be deemed legitimated. Precisely, legitimation produces such an effect — i.e., diminution of successional rights of the legitimate children. Art. 272 of the New Civil Code provides in fact that "(c)hildren who are legitimated by subsequent marriage shall enjoy the same rights as legitimate children." When the legislature decided to grant to children of void marriages the same status, rights, and obligations as those of acknowledged natural children, it is presumed to have carefully weighed precisely these consequences upon the rights of the other children in the family. The policy then was to cast a mantle of protection upon children of void marriages. That policy is evidently enforced by enabling them to get legitimated in the same manner as acknowledged natural children — namely, by the subsequent valid marriage of their parents. If the Family Code, by repealing Art. 89 of the New Civil Code, is to be viewed as having reversed or denigrated that policy (although, by and large, it appears to have maintained the policy in many other areas of family law), such reversal or denigration should not, and cannot, in any case impair rights already acquired by and thus vested in the private respondents.

One last point. Both petitioner and private respondent admit that the eleven (11) children of the decedent with

private respondent Conchita Talag were born after the celebration of the bigamous marriage on July 25, 1951. (See Petition, item 6, page 5; Rollo p. 6.) If any one of them was born prior thereto, such child, not being a natural child by legal fiction but spurious, cannot claim the special benefit granted under Art. 89 of the New Civil Code. Unlike his brothers and sisters who are natural children by legal fiction, he can only inherit by showing that he has been recognized by the decedent as the latter's illegitimate child either voluntarily or by final judgment in a proper paternity suit (Paterno vs. Paterno, 20 SCRA 585; Noble vs. Noble, 18 SCRA 1104; Clemena vs. Clemena, 24 SCRA 720; Divinagracia vs. Rovira, 72 SCRA 307; Tolentino, The Civil Code of the Philippines, 1987 Reprinting, Vol. I, pp. 616-617.)

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