

**ADELAIDA TABOTABO, ET AL., PLAINTIFFS AND APPELLANTS, VS.
AGUEDO TABOTABO, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 10909. April 30, 1962*

Ponente: PAREDES, J.

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Appeal from the order of the Court of First Instance of Cebu, dated February 13, 1956, granting a motion to dismiss complaint upon the grounds of lack of cause of action, res judicata and prescription.

One Gaudencio Tabotabo, married to Rafaela Gallarde, died on September 2, 1908, leaving no issue with her. In his will executed on July 24, 1908, he bequeathed his conjugal share to his wife, and naming her as executrix. In said will, mention was made by the testator that he had a natural son named Vicente, then married to Basilia Maxilon, begotten with Anastacia Aligato; and a daughter named Juana, begotten with Candera Bagabaga.

In the course of the probate of the will (Special Proceedings No. 256), the ten legitimate children of Vicente Tabotabo, now plaintiffs-appellants, surnamed Tabotabo, who were then minors, filed a motion therein, asking that they be declared sole heirs of the deceased by reason of their father's having been acknowledged in the will as natural son of the testator. After due hearing, however, the court, in its order of September 10, 1909, denied their claim in the following language:

"El Juzgado ha oido la mocion pendiente presentada por el curador ad-litem de los menores hijos legitimos de Vicente Tabotabo, y despues de haber considerado todos los antecedentes del caso cometidos por los abogados de ambas partes, encuentra que el referido Vicente Tabotabo, no hasido reconocido solemnemente ni por modo expreso ni tacito ni de ninguna manera en ninguna de las clausulas del testamento de finado Gaudencio Tabotabo; encuentra por lo contrario el Juzgado en dichas clausulas, especialmente en la sexta, la voluntad firme y decidida del testador de no reconocer como hijo suyo natural a Vicente Tabotabo. Por tanto, y a menos que los hijos de Vicente Tabotabo representados por el Señor Franco que aquel ha sido reeonocido en otra forma, se debe desaestimar y se desestima la mocion."

No appeal was taken against this order, and in due time the probate proceedings were declared closed and terminated on September 19, 1910. Since then, the widow Rafaela Gallarde took possession of the properties through Daniel Tabotabo, a nephew of the deceased.

A good many years later, herein plaintiffs-appellants and their father allegedly renewed their claim to the inheritance by commencing Civil Case No. 7990, against Rafaela Gal. larde and Daniel Tabotabo, for partition, accounting and recovery of fruits, but the record was lost during the last war, and the same was never reconstituted.

After Rafaela's death sometime in 1939, Daniel Tabotabo, together with the heirs of Ismael Tabotabo, Fortunata Tabotabo and Serapia Tabotabo, distributed the properties among themselves, as heirs of Rafaela. In 1948, Daniel Tabotabo also died.

Thirteen years after the death of Vicente Tabotabo in August, 1941, his children (appellants), led by Nicanor Tabotabo, initiated Special Proceedings No. 1323-R in 1954, entitled "Intestate Estate of Gaudencio Tabotabo and Vicente Tabotabo", concealing the fact that the will of the elder Tabotabo had already been probated. At the hearing of that petition, however, the Presiding Judge, Hon. Clementino V. Diez, discovered that the will of Gaudencio Tabotabo had already been probated as far back as 1910, in Special Proceedings No. 256, his estate settled, and that Vicente Tabotabo had been disinherited. Hence, the court dismissed the petition in its order of August 15, 1955 (Exhibit F), ruling that there was no more estate of Gaudencio Tabotabo to be judicially settled and that the proceedings then had become purposeless. Reconsideration of the order was sought, but was denied, and no appeal taken.

Undaunted by their successive failures in the span of almost half a century, these grandchildren of Gaudencio Tabotabo, lastly renewed their claim in November, 1955, by filing the complaint the dismissal of which is now the subject of this appeal. Their complaint, as amended, avers, in the first and principal among six causes of action, that their father Vicente was a natural son of Gaudencio, duly acknowledged in the latter's will; that the testator left no heirs except their father Vicente from whom they are entitled to inherit as legitimate children; that before Gaudencio's marriage to Rafaela, he acquired properties, through inheritance or otherwise, consisting of forty-six parcels of unregistered lands; that upon the death of Gaudencio, Rafaela took possession of said properties through Daniel Tahotabo, a nephew of the deceased, first as usufructuary of one-half of said properties; that they, as well as their father Vicente demanded from Rafaela and Daniel the delivery of said properties plus the fruits thereof, but that the latter refused so to do, only giving them, however, their share in the products; that these demands were made from year to year until they and their father Vicente were compelled to commence Civil Case No. 7990, entitled Vicente Tabotabo, et al., vs. Rafaela Gallarde, et al., for partition, accounting and recovery of fruits; that after Liberation, Daniel continued to give them their share in the products until he died in 1948; that after the death of Rafaela in 1939, Daniel with the heirs of Ismael, Fortunata and Serapia, all surnamed Tabotabo, distributed the properties among themselves; that after Daniel's death in 1948, his widow and his children Aguedo, Josefina, Alejandrino, Gloria and Gaudencio, all surnamed Tabotabo, took possession of the 13 parcels which corresponded to Daniel; and that it was only when Nicanor Tabotabo was appointed special administrator of the estate of Gaudencio and Vicente Tabotabo, Sp. No. 1323-R, that they knew that the properties were declared, for taxation purposes, in the names of defendants-appellees.

It is evident from the foregoing that the case of plaintiffs-appellants is rested primarily upon the fact that their father Vicente had been acknowledged as natural child in the will of Gaudencio. Their claim, therefore, must cling or crumble in its entirety upon such acknowledgment. This being the case, it becomes necessary to quote the pertinent portions of the will, which is worded as follows:

"5. Que he tenido un hijo con Anastasia Aligato, ya difunta, cuyo nombre es Vicente, casado actualmente con Basilia Maxilon, natural y vecina de este municipio de Tuburan, Cebu, I. F., cuyo matrimonio cuenta ahora con varios hijos, entre hombres y hembras; y una hija con Candra Bagabaga llamada Juana.

"6. Quo los referidos Vicente y Juana, caso de que reclames ser reconocidos como hijos naturales y caso tambien de que consigan ser reconocidos por el Juzgado como hijos mios, tales quedan por este testamento desheredados por los fundamentos siguientes: 1. que en el ano 1898 varias veces Vicente en union del marido de Juana (intento) matarme llevandome bolo en la cintura para efectuar su intento, y tambien, porque Vicente y el marido de Juana que se liana Benito de la Cruz me han injuriado gravemente de palabra.

"Y, ademas, porque Vicente en compaña de Benito de la Cruz en el ano 1898 en la Insurrección contra el Gobierno de España entro en mi ganaderia de carabaos en el sitio de Magaope, de la jurisdicción de este municipio de Tuburan, Cebu, I. F., y sacaron por fuerza muchas cabezas de carabaos sin mi consentimiento, contra mi voluntad, y los carabaos sacados por ellos importan Cinco Mil Pesos segun mi calculo por haber

sacado mas de ciento de eabezas de carabaos.

"Y cuando querian matarme llevaron 'puniti' para ser utilizados en el lugar o sitio donde me encontraba.

"Ordeno y mando que los referidos hijos sean desheredados completamente de mis bienes."

As already stated at the outset, in interpreting the purpose and intent as well as the meaning of the foregoing provisions, the Judge in his order of September 10, 1909, found that "Vicente Tabotabo has not been solemnly acknowledged in any of the provisions of the will, either expressly or impliedly, or in any other manner;" on the contrary, His honor found that "it was the steadfast and resolute will of the testator not to recognize Vicente Tabotabo as his natural son." It should be borne in mind that herein appellants were the very ones, through their then guardian ad litem, who prompted the probate court to rule, as it did, upon their motion that they be declared sole heirs of the testator, based precisely upon "such "acknowledgment." The order became final in 1909 since no appeal was taken against it.

Appellants insist, however, that inasmuch as the express and formal acknowledgment of their father Vicente was made in paragraph 5 of the will, this provision alone, and no other, should be isolatedly and independently taken and considered in this appeal, as the actual and factual acknowledgment, and that the order of the trial court on September 10, 1909 ignoring the same, "was rendered with a serious abuse of discretion, contrary to law, and public policy." The latter proposition came almost half a century too late and irretrievably unavailable. This should have been invoked in a seasonable appeal.

True, the law governing acknowledgment of natural children at the time the will was executed was the Old Civil Code, providing that a voluntary acknowledgment must be made, among other writings, in a will of the putative parent (Art. 131, old Civ. Code), and this is selfexecuting without the necessity of subsequent judicial sanction or confirmation, unlike in compulsory acknowledgments which have to be pronounced by the courts upon petition of the interested parties. In voluntary acknowledgments, however, the old Civil Code equally provides that an adult natural child cannot be acknowledged without his consent, or, if such child is a minor, he may contest such acknowledgment within four years following his majority (Art. 133, old Civ. Code). The record shows that Vicente Tabotabo had already ten children at the time and was, therefore, well of age, but there is no showing nor inkling, however scanty, that he has ever consented to such acknowledgment. On the contrary, in the recital made by Judge Diez in Special Proceedings No. 1323-R, of the record appearing in Special Proceedings No. 256, mention was made that Vicente Tabotabo even opposed the probate of the will (Exh. F, p. 3).

A cursory perusal of paragraph 6 of the will above quoted, indicates unmistakably that the same is intimately connected with and related to paragraph 5 and both must be read together, as the latter merely serves as a premise to the disinheritance provision of the former, so that, read and considered as a whole, the testator never intended to acknowledge Vicente and Juana as his natural children. On the contrary, his reference to them, incidentally at that, was intended to forestall any attempt on their part to seek recognition or acknowledgment.

It is clear, therefore, that Vicente Tabotabo had no successional rights to the properties of Gaudencio Tabotabo for not being acknowledged by the latter; consequently, herein plaintiffs-appellants as legitimate children of Vicente Tabotabo cannot inherit from Gaudencio Tabotabo as they are complete strangers to the latter. Hence, they have no cause of action against defendants-appellees.

It is alleged that the question as to whether Vicente Tabotabo was a duly acknowledged natural child of Gaudencio Tabotabo was not in issue in special proceedings No. 256, and that the action is not barred by a prior judgment. The record of the case, however, shows that the herein plaintiffs-appellants on August 19, 1909, filed a motion in said Sp. Proc. No. 256, praying that they be declared the only heirs of Gaudencio, on the ground that their father Vicente, was an acknowledged natural child of Gaudencio. In August 1909, Rafaela, as the executrix

of Gaudencio's will, filed an opposition thereto. On September 10, 1909, the probate court issued the order earlier reproduced. It is, thus, seen from the aforementioned pleading and the order of September 10, 1909, that the question of the legal status of Vicente Tabotabo was directly in issue and was squarely passed upon in Sp. Proc. No. 256, adversely to the herein appellants Tabotabo. The defense of res adjudicata seems, therefore, to be well taken (*Vda. de Ursua vs. Pelayo*, 107 Phil., 622).

From the complaint itself, it appears that upon the death of Gaudencio on September 2, 1908, Daniel and Rafaela took possession of the properties described in paragraph VI thereof, and that upon the death of Rafaela sometime in 1939, Daniel and the heirs of Ismael, Fortunato and Serapia have distributed, among themselves the same properties. The present complaint having been filed on September 11, 1955, it becomes evident that the right, if any, of the plaintiffs to recover the properties are long barred by the statute of limitations (Sees. 40 and 41, Code of Civ. Procedure; *Tagarao vs. Garcia*, 61 Phil., 5). The filing of Civil Case No. 7990, before Rafaela's death in 1939 and/or the so-called extra judicial demands, made by plaintiffs for the delivery to them of the possession of the lands in question, did not interrupt the prescriptive period for the filing of the instant action (*Osorio vs. Jongco*, 98 Phil., 55; 51 Off. Gaz. [No. 12], p. 6221; *Peralta vs. Alipio*, 97 Phil., 719).

The appeal, therefore, is dismissed, and the order appealed from is affirmed. Costs against the appellants.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., and Barrera, JJ., concur.

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