

SOTENIA GONO-JAVIER, TEBURCIO GONO, ANUNCIACION G. JAVIER, GERMANA G. GULAY, LUCIO GONO, RAMON GONO, ALFREDO GONO AND MANUEL GONO, PETITIONERS, VS. THE HON. COURT OF APPEALS, RE...*G.R. No. 111994. December 29, 1994*

Ponente: VITUG, J.

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Juan Casocot, the alleged natural grandfather of petitioners, was said to have owned during his lifetime five (5) parcels of land in Nasipit, Agusan, covered by Tax Declaration (“T.D.”) No. 2667, 3227, 1209, 738 and 2666.

On 13 February 1978, petitioners filed a case with the Regional Trial Court (“RTC”) of Butuan City for the recovery of ownership and possession of the above five (5) parcels which they claimed were merely held in trust for them by private respondents. Petitioners averred that they were the children of deceased Catalino Gono, an acknowledged natural child of Juan Casocot, who, by intestate succession, should thus be held to be the owners of the property. Additionally, they asserted that petitioner Anunciacion Gono-Javier purchased the parcels of land on 20 June 1956 from the Provincial Government of Agusan following the levy thereof (on 28 May 1956) for tax delinquency.

In their answer, private respondents, all nephews and nieces of Juan Casocot except for Carlos Monte de Ramos, a grandnephew, and Nonito Marave, a stranger, to whom a portion of one of the parcels of land had been sold, contended that since the complaint had failed to state that Catalino Gono had been recognized by Juan Casocot either in a record of birth or in a will, an independent action for voluntary recognition should have first been instituted to permit any intestate successional right to legally pass to petitioners. Also alleged in the answer was that, with the exception of the parcel covered by T.D. No. 738, the questioned property had been sold by Juan Casocot to private respondents Restituta and Fermin Casocot on 19 April 1960 and a portion to private respondent Marave. Private respondents belied the claim that petitioner Gono-Javier purchased the property from the Provincial Government of Agusan. Finally, the defense of prescription was raised on the ground that private respondents had been in possession of the disputed property in good faith and for value for more than 17 years before petitioners’ action was instituted.

After trial, the Butuan RTC rendered judgment for petitioners declaring them to be the lawful owners of the property. The court, in rejecting the claim of ownership made by private respondents, opined that the deed of sale executed by Juan Casocot on 19 April 1960, when he was already 80 years old, in favor of respondents Restituta and Fermin Casocot was absolutely simulated and void. It ruled that petitioners’ father, Catalino Gono, had been duly recognized by Juan Casocot since 1954 to be his natural child that thereby entitled petitioners to inherit the parcels of land in question. The trial court likewise held that the property had been sold to petitioner Anunciacion Gono-Javier on 05 and 20 June 1956 after it had been levied by the Provincial Government for non-payment of taxes.

The trial court thus nullified Transfer Certificate of Title (“TCT”) No. RT-349, issued in the names of Restituta and Fermin Casocot, with respect to the parcel of land covered by T.D. No. 1209, and all certificates of title issued in the names of transferees, Felipe Yonson, Alicia Yonson, Adriano Casocot, Carlos Monte de Ramos, Regina Duglas, Restituta, Fermin Casocot and Nonito Marave.

On appeal by private respondents, the Court of Appeals reversed the trial court’s decision, and ordered the dismissal of the complaint by petitioners for the recovery of title and possession of the disputed parcels. The appellate court ratiocinated and concluded:

“First. The trial court declared Catalino Gono to be the acknowledged natural child of Juan Casocot on the basis of a statement in a deed of donation which he made in favor of Eugenia Gonzales, widow of Catalino Gono, to the effect that among the reasons for making the donation was the fact that the donee ‘is the surviving spouse of my son had with my common law wife.’ (Exh. G)

“The deed of donation conveyed to Eugenia Gonzales the parcel of land covered by TD 738 (Exh. E). It was made on March 29, 1954, about 11 years after the death of Catalino Gono in 1942 or 1943. In the first place, the statement therein describing Eugenia Gonzales ‘the surviving spouse of my son had with my common law wife’ is only, if at all, an indirect acknowledgement of Catalino Gono as the son of Juan Casocot. This falls short of the requirement that the voluntary recognition of a natural child must be expressly made either in the record of birth, or in a will, or in a statement before the court of record or in any authentic writing. (Civil Code, art. 278)

“In the second place, according to the testimony of plaintiff-appellee Sotenia Gono herself, Catalino Gono died in 1942 or 1943. (TSN, p. 24, Dec. 10, 1980) On the other hand, his supposed acknowledgment was made only in 1954. Now, art. 281 requires that if the child is of age, his recognition must be with his consent. Obviously, therefore, it was not possible for Catalino Gono to have given his consent, even if the indirect reference to him in the deed of donation as the son of Juan Casocot were considered a sufficient acknowledgment.

“For these reasons, it was error for the trial court to declare the plaintiff-appellees, the children of Catalino Gono, to be the owners of the four parcels of land covered by TD No. 2667 (Exh. B), TD No. 3227 (Exh. C), TD No. 1209 (Exh. D), and TD No. 2666 (Exh. F) by right of inheritance.

“Second. Nor may the plaintiff-appellees base their claim of ownership on the fact that one of them (Anunciacion Gono-Javier) allegedly repurchased the lands in question after they had been forfeited to the Province of Agusan for nonpayment of taxes. The records show that while it is true that Anunciacion Gono-Javier was issued a Certificate of Repurchase of Real Property after Sale (Exh. N) on June 20, 1956, it is equally true that on February 3, 1959, she was refunded the amount she had paid. This is evidenced by a municipal voucher issued on February 3, 1959 (Exh. P) by which she acknowledged receipt of P850.00 from Eduardo V. Amber, Treasurer of Nasipit, Agusan, from the partial payment previously made by Juan Casocot for taxes covering the period May 29, 1956 to February 2, 1959. Indeed, the Final Bill of Sale (Exh. M) to her, dated February 3, 1959, which had been prepared, was never executed as the Provincial Treasurer of Agusan never signed it, apparently because the day (February 2, 1959), Juan Casocot had repurchased the properties. That is the reason why on February 3, 1959 a municipal voucher (Exh. P) for the payment of P850.00 to Anunciacion G. Javier was made and Anunciacion G. Javier was actually refunded what she had paid. The trial court, therefore, erred in holding that, in the alternative, plaintiff-appellees are owners of the lands in question by virtue of a right of repurchase from the Provincial Government of Agusan.

“Third. The four parcels of land covered by TD No. 2667 (Exh. B), TD No. 3227 (Exh. C), TD No. 1209 (Exh. D), and TD No. 2666 (Exh. F) were sold to Restituta and Fermin Casocot by virtue of a deed of sale made by Juan Casocot on April 19, 1960. However, the trial court declared the sale to be simulated and therefore void based on its finding that Juan Casocot was already in his 80’s when he signed the contract in 1960. There is, however, no proof that he did not know the contents of the documents or that he did not intend

the deed of sale at all. The trial court unwarrantedly theorized that because the properties were valuable properties, Juan Casocot could not have intended to sell them.

“Indeed, the fact is that the deed of sale was duly notarized and the notary public, Atty. Noli G. Cortel, testified that from his observation, there was nothing either in the mental or physical condition of Juan Casocot to indicate that he was not in the full possession of his mental faculties when he executed the deed of sale in favor of Restituta and Fermin Casocot. Moreover, Atty. Cortel testified that he interpreted the contents of the document in the Visayan dialect to Juan Casocot and that afterward Juan Casocot voluntarily affixed his signature to the document. (TSN, pp. 9, 11-12, Sept. 6, 1991) Needless to say, a public document, which is executed with all the solemnities of the law, should not be set aside on such slender grounds as those cited by the trial court.

“Fourth. The trial court also erred in not ruling that the present action is barred by the order of Court of First Instance of Agusan in Civil Case No. 896 (Juan Casocot v. Restituta Casocot and Fermin Casocot), dismissing a complaint for the nullification of the deed of sale. (Exh. U) That order, issued on August 10, 1965, became final and it constitutes *res judicata* in this case, as no appeal appears to have been taken from it. The trial court found the dismissal erroneous allegedly because Juan Casocot had not been notified of the hearing on July 24, 1965 in Civil Case No. 896. But the trial court did not have the power to reopen that case. It was improper for it to do so, since the order of dismissal was final.

“WHEREFORE, the decision appealed from is REVERSED and the complaint in this case is DISMISSED in so far as it seeks the recovery of the title and possession of four parcels of land covered by TD No. 2667 (Exh. B), TD No. 3227 (Exh. C), TD No. 1209 (Exh. D), TD No. 2666 (Exh. F). In other respects, the decision appealed from is AFFIRMED.”[1]

In this petition for review, petitioners raise the following assignment of errors:

“1. The appellate court gravely erred in reversing the trial court’s decision holding that Catalino Gono was the acknowledged natural child of Juan Casocot by his common law wife, and that the deceased Juan Casocot’s declaration in his deed of donation to Eugenia Gonzales, wife of Catalino Gono, that the deceased was giving the land in donation to the surviving wife of my son is sufficient recognition.

“2. The appellate court gravely erred in reversing the trial court’s decision holding that when the land in question was sold at public auction for failure to pay taxes the same was bought by Anunciacion Gono-Javier who is one of the petitioners’ herein, hence the questioned land belongs to the petitioners.

“3. The appellate court gravely erred in reversing the trial court’s decision holding that the alleged sale between the late Juan Casocot and the private respondents herein were simulated hence null and void.

“4. The appellate court gravely erred in ruling that the action for recovery of possession and ownership filed by the herein petitioners with the trial court is barred by the dismissal of the complaint for nullification of the Deed of Sale filed by the deceased Juan Casocot himself during his lifetime, which was dismissed, for his failure to attend the hearing wherein he was not notified.”[2]

Petitioners’ first assignment of error would have been impressed with merit had the acknowledgment in the deed of donation in 1954 been extended to Catalino prior to his death some time in 1942 or 1943. Juan Casocot himself died in 1964. Article 278 of the New Civil Code, the law applicable in 1954,[3] provided:

“Art. 278. Recognition shall be made in the record of birth, a will, a statement before a court of record, or in any authentic writing.” (Underscoring ours.)

The statement made in the deed of donation, a public document, executed by Juan Casocot in favor of Eugenia Gonzales, widow of Catalino, i.e., that among the reasons for the donation was that the donee was “the surviving spouse of my son had with my common law wife,” would have well been explicit enough or, at the very least,

sufficient to make it fall within the purview of the doctrine of incidental recognition. Unfortunately for petitioners, however, the recognition came too late. The donation, whereon the questioned statement appeared, was made on 29 March 1954, or about 11 years after the death of Catalino in 1942 or 1943.

The provisions of the Civil Code[4] on acknowledgment would readily indicate that voluntary acknowledgment can legally be effected only during the lifetime of both the acknowledging parent and the acknowledged illegitimate child. When that voluntary recognition is so timely made, as above, an action for its judicial declaration can survive the death of either or both parties (see *Gaspay, Jr. vs. Court of Appeals*, G.R. No. 102372, 15 November 1994). The reason for this latter rule is that the due recognition of an illegitimate child in a record of birth, a will, a statement before a court of record, or in any authentic writing (Art. 278, Civil Code) is, in itself, a consummated act of acknowledgment of the child, and no further court action is required (see *Divinagracia vs. Bellosillo*, 143 SCRA 356), albeit not prohibited, to yet have it declared as such. When a party is so minded as to still bring an action on the basis of such voluntary acknowledgment, no time frame for initiating it would obviously be a constraint.

Parenthetically, where, a claim for recognition is predicated on other evidence merely tending to prove paternity, i.e., outside of a record of birth, a will, a statement before a court of record or an authentic writing, judicial action within the applicable statute of limitations[5] is essential in order to establish the child's acknowledgment. Thus, the mere possession of status of a child, contrary to the assertion in passing of petitioners, does not itself constitute an acknowledgment; it is only a ground for the child to compel, by judicial action, recognition by his assumed parent.[6]

Petitioners, in their second and third assignment of errors, would want us to reverse the Court of Appeals in finding: (a) that while petitioner Anunciacion Gono-Javier was issued a Certificate of Repurchase (Exh. "N") on 20 June 1956, she was, however, fully refunded for the price paid and actual redemption was, in truth, made by Juan Casocot and (b) that the deed of sale executed by Juan Casocot, duly notarized, was validly executed. These factual findings by the appellate court, having been amply explained and substantiated by it, should not further be disturbed.

Petitioners take issue, finally, with the Court of Appeals in holding that petitioners' action to nullify the deed of sale to private respondents is, in any event, barred by the order of dismissal thereof by the then Court of First Instance of Agusan in Civil Case No. 896, entitled "*Juan Casocot vs. Restituta Casocot and Fermin Casocot*." Suffice it to say that an unconditional dismissal of an action for failure to prosecute under Section 3, Rule 17, of the Rules of Court is with prejudice and has the effect of an adjudication on the merits (*Guanzon vs. Mapa*, 7 SCRA 457; *Insular Veneer, Inc. vs. Plan*, 73 SCRA 1).

All told, we find no valid justification for sustaining the petition.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED. Costs against petitioners.

SO ORDERED.

Bidin, Romero, and Melo, JJ., concur.
Feliciano, J., (Chairman), on leave.

[1] Rollo, pp. 27-30.

[2] Rollo, pp. 9-10.

[3] Up until the Family Code took effect on 03 August 1988.

[4] An example is Article 281 providing thusly:

“Art. 281. A child who is of age cannot be recognized without his consent.

“When the recognition of a minor does not take place in a record of birth or in a will, judicial approval shall be necessary.

“A minor can in any case impugn the recognition within four years following the attainment of his majority. (133a) -

[5] Art. 285. The action for the recognition of natural children may be brought only during the lifetime of the presumed parents, except in the following cases:

(1) If the father or mother died during the minority of the child, in which case the latter may file the action before the expiration of four years from the attainment of his majority;

(2) If after the death of the father or of the mother a document should appear of which nothing had been heard and in which either or both parents recognize the child.

In this case, the action must be commenced within four years from the finding of the document.

[6] The case of *Tongoy vs. Court of Appeals* (123 SCRA 99), which held that possession of a child may be considered an acknowledgment itself is an aberration (see *Paulino vs. Paulino*, 3 SCRA 730); in any case, it has since been abrogated in subsequent cases (*Cruz vda. de Sy- Quia vs. SyQuia*, 125 SCRA 835; *Noble vs. Noble*, 18 SCRA 1104; *Quismundo vs. WCC*, 132 SCRA 590).

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