

CORAZON DEZOLLER TISON AND RENE R. DEZOLLER, PETITIONERS, VS. COURT OF APPEALS AND TEODORA DOMINGO, RESPONDENTS.

G.R. No. 121027. July 31, 1997

Ponente: REGALADO, J.

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REGALADO, J.:

The present appeal by certiorari seeks the reversal of the judgment rendered by respondent Court of Appeals on June 30, 1995[1] which affirmed the Order of December 3, 1992 issued by the Regional Trial Court of Quezon City, Branch 98, granting herein private respondent's Demurrer to Plaintiff's Evidence filed in Civil Case No. Q-88-1054 pending therein.

The present appellate review involves an action for reconveyance filed by herein petitioners against herein private respondent before the Regional Trial Court of Quezon City, Branch 98, docketed as the aforesaid Civil Case No. Q-88-1054, over a parcel of land with a house and apartment thereon located at San Francisco del Monte, Quezon City and which was originally owned by the spouses Martin Guerrero and Teodora Dezoller Guerrero. It appears that petitioners Corazon Tison and Rene Dezoller are the niece and nephew, respectively, of the deceased Teodora Dezoller Guerrero who is the sister of petitioners' father, Hermogenes Dezoller. Teodora Dezoller Guerrero died on March 5, 1983 without any ascendant or descendant, and was survived only by her husband, Martin Guerrero, and herein petitioners. Petitioners' father, Hermogenes, died on October 3, 1973, hence they seek to inherit from Teodora Dezoller Guerrero by right of representation.

The records reveal that upon the death of Teodora Dezoller Guerrero, her surviving spouse, Martin, executed on September 15, 1986 an Affidavit of Extrajudicial Settlement[2] adjudicating unto himself, allegedly as sole heir, the land in dispute which is covered by Transfer Certificate of Title No. 66886, as a consequence of which Transfer Certificate of Title No. 358074 was issued in the name of Martin Guerrero. On January 2, 1988, Martin Guerrero sold the lot to herein private respondent Teodora Domingo and thereafter, Transfer Certificate of Title No. 374012 was issued in the latter's name.

Martin Guerrero died on October 25, 1988. Subsequently, herein petitioners filed an action for reconveyance on November 2, 1988, claiming that they are entitled to inherit one-half of the property in question by right of representation.

At the pre-trial conference, the following issues were presented by both parties for resolution:

- (1) whether or not the plaintiffs (herein petitioners) are the nephew and niece of the late Teodora Dezoller;
- (2) whether or not the plaintiffs are entitled to inherit by right of representation from the estate of the late Teodora Dezoller;
- (3) whether or not defendant (herein private respondent) must reconvey the reserved participation of the plaintiffs to the estate of the late Teodora Dezoller under Section 4, Rule 74 of the Rules of Court which was duly annotated on the title of the defendant;

(4) whether or not the plaintiffs are entitled to damages, moral and exemplary, plus attorney's fees for the willful and malicious refusal of defendant to reconvey the participation of plaintiffs in the estate of Teodora Dezoller, despite demands and knowing fully well that plaintiffs are the niece and nephew of said deceased; and

(5) whether or not the subject property now in litigation can be considered as conjugal property of the spouses Martin Guerrero and Teodora Dezoller Guerrero.[3]

During the hearing, petitioner Corazon Dezoller Tison was presented as the lone witness, with the following documentary evidence offered to prove petitioners' filiation to their father and their aunt, to wit: a family picture; baptismal certificates of Teodora and Hermogenes Dezoller; certificates of destroyed records of birth of Teodora Dezoller and Hermogenes Dezoller; death certificates of Hermogenes Dezoller and Teodora Dezoller Guerrero; certification of destroyed records of live birth of Corazon and Rene Dezoller; joint affidavits of Pablo Verzosa and Meliton Sitjar attesting to the parents, date and place of birth of Corazon and Rene Dezoller; joint affidavit of Juliana Cariaga and Manuela Cariaga attesting to the fact of marriage between Martin Guerrero and Teodora Dezoller; and the marriage certificate of Martin and Teodora Guerrero.[4] Petitioners thereafter rested their case and submitted a written offer of these exhibits to which a Comment[5] was filed by herein private respondent.

Subsequently, private respondent filed a Demurrer to Plaintiff's Evidence on the ground that petitioners failed to prove their legitimate filiation with the deceased Teodora Guerrero in accordance with Article 172 of the Family Code. It is further averred that the testimony of petitioner Corazon Dezoller Tison regarding her relationship with her alleged father and aunt is self-serving, uncorroborated and incompetent, and that it falls short of the quantum of proof required under Article 172 of the Family Code to establish filiation. Also, the certification issued by the Office of the Local Civil Registrar of Himamaylan, Negros Occidental is merely proof of the alleged destruction of the records referred to therein, and the joint affidavit executed by Pablo Verzosa and Meliton Sitjar certifying to the date, place of birth and parentage of herein petitioners is inadmissible for being hearsay since the affiants were never presented for cross-examination.[6]

On December 3, 1992, the trial court issued an order granting the demurrer to evidence and dismissing the complaint for reconveyance .[7]

In upholding the dismissal, respondent Court of Appeals declared that the documentary evidence presented by herein petitioners, such as the baptismal certificates, family picture, and joint affidavits are all inadmissible and insufficient to prove and establish filiation. Hence, this appeal.

We find for petitioners.

The bone of contention in private respondent's demurrer to evidence is whether or not herein petitioners failed to meet the quantum of proof required by Article 172 of the Family Code to establish legitimacy and filiation. There are two points for consideration before us: first is the issue on petitioner's legitimacy, and second is the question regarding their filiation with Teodora Dezoller Guerrero.

I. It is not debatable that the documentary evidence adduced by petitioners, taken separately and independently of each other, are not per se sufficient proof of legitimacy nor even of pedigree. It is important to note, however, that the rulings of both lower courts in the case are basically premised on the erroneous assumption that, in the first place, the issue of legitimacy may be validly controverted in an action for reconveyance, and, in the second place, that herein petitioners have the onus probandi to prove their legitimacy and, corollarily, their filiation. We disagree on both counts.

It seems that both the court a quo and respondent appellate court have regrettably overlooked the universally recognized presumption on legitimacy. There is no presumption of the law more firmly established and founded

on sounder morality and more convincing reason than the presumption that children born in wedlock are legitimate.[8] And well settled is the rule that the issue of legitimacy cannot be attacked collaterally.

The rationale for these rules has been explained in this wise:

The presumption of legitimacy in the Family Code x x x actually fixes a civil status for the child born in wedlock, and that civil status cannot be attacked collaterally. The legitimacy of the child can be impugned only in a direct action brought for that purpose, by the proper parties, and within the period limited by law.

The legitimacy of the child cannot be contested by way of defense or as a collateral issue in another action for a different purpose. The necessity of an independent action directly impugning the legitimacy is more clearly expressed in the Mexican Code (Article 335) which provides: 'The contest of the legitimacy of a child by the husband or his heirs must be made by proper complaint before the competent court; any contest made in any other way is void.' This principle applies under our Family Code. Articles 170 and 171 of the code confirm this view, because they refer to "the action to impugn the legitimacy." This action can be brought only by the husband or his heirs and within the periods fixed in the present articles.

Upon the expiration of the periods provided in Article 170, the action to impugn the legitimacy of a child can no longer be brought. The status conferred by the presumption, therefore, becomes fixed, and can no longer be questioned. The obvious intention of the law is to prevent the status of a child born in wedlock from being in a state of uncertainty for a long time. It also aims to force early action to settle any doubt as to the paternity of such child, so that the evidence material to the matter, which must necessarily be facts occurring during the period of the conception of the child, may still be easily available.

x x x

Only the husband can contest the legitimacy of a child born to his wife. He is the one directly confronted with the scandal and ridicule which the infidelity of his wife produces; and he should decide whether to conceal that infidelity or expose it, in view of the moral and economic interest involved. It is only in exceptional cases that his heirs are allowed to contest such legitimacy. Outside of these cases, none - even his heirs - can impugn legitimacy; that would amount to an insult to his memory.[9]

The issue, therefore, as to whether petitioners are the legitimate children of Hermogenes Dezoller cannot be properly controverted in the present action for reconveyance. This is aside, of course, from the further consideration that private respondent is not the proper party to impugn the legitimacy of herein petitioners. The presumption consequently continues to operate in favor of petitioners unless and until it is rebutted.

Even assuming that the issue is allowed to be resolved in this case, the burden of proof rests not on herein petitioners who have the benefit of the presumption in their favor, but on private respondent who is disputing the same. This fact alone should have been sufficient cause for the trial court to exercise appropriate caution before acting, as it did, on the demurrer to evidence. It would have delimited the issues for resolution, as well as the time and effort necessitated thereby.

Ordinarily, when a fact is presumed, it implies that the party in whose favor the presumption exists does not have to introduce evidence to establish that fact, and in any litigation where that fact is put in issue, the party denying it must bear the burden of proof to overthrow the presumption.[10] The presumption of legitimacy is so strong that it is clear that its effect is to shift the burden of persuasion to the party claiming illegitimacy.[11] And in order to destroy the presumption, the party against whom it operates must adduce substantial and credible evidence to the contrary.[12]

Where there is an entire lack of competent evidence to the contrary,[13] and unless or until it is rebutted, it has been held that a presumption may stand in lieu of evidence and support a finding or decision.[14] Perforce, a

presumption must be followed if it is uncontroverted. This is based on the theory that a presumption is prima facie proof of the fact presumed, and unless the fact thus established prima facie by the legal presumption of its truth is disproved, it must stand as proved. [15]

Indubitably, when private respondent opted not to present countervailing evidence to overcome the presumption, by merely filing a demurrer to evidence instead, she in effect impliedly admitted the truth of such fact. Indeed, she overlooked or disregarded the evidential rule that presumptions like judicial notice and admissions, relieve the proponent from presenting evidence on the facts he alleged and such facts are thereby considered as duly proved.

II. The weight and sufficiency of the evidence regarding petitioner's relationship with Teodora Dezoller Guerrero, whose estate is the subject of the present controversy, requires a more intensive and extensive examination.

Petitioners' evidence, as earlier explained, consists mainly of the testimony of Corazon Dezoller Tison, the baptismal, death and marriage certificates, the various certifications from the civil registrar, a family picture, and several joint affidavits executed by third persons all of which she identified and explained in the course and as part of her testimony.

The primary proof to be considered in ascertaining the relationship between the parties concerned is the testimony of Corazon Dezoller Tison to the effect that Teodora Dezoller Guerrero in her lifetime, or sometime in 1946, categorically declared that the former is Teodora's niece.[16] Such a statement is considered a declaration about pedigree which is admissible, as an exception to the hearsay rule, under Section 39, Rule 130 of the Rules of Court, subject to the following conditions: (1) that the declarant is dead or unable to testify; (2) that the declarant be related to the person whose pedigree is the subject of inquiry; (3) that such relationship be shown by evidence other than the declaration; and (4) that the declaration was made ante litem motam, that is, not only before the commencement of the suit involving the subject matter of the declaration, but before any controversy has arisen thereon.

There is no dispute with respect to the first, second and fourth elements. What remains for analysis is the third element, that is, whether or not the other documents offered in evidence sufficiently corroborate the declaration made by Teodora Dezoller Guerrero in her lifetime regarding the pedigree of petitioner Corazon Dezoller Tison or, if at all, it is necessary to present evidence other than such declaration.

American jurisprudence has it that a distinction must be made as to when the relationship of the declarant may be proved by the very declaration itself, or by other declarations of said declarant, and when it must be supported by evidence aliunde. The rule is stated thus:

One situation to be noted is that where one seeks to set up a claim through, but not from, the declarant and to establish the admissibility of a declaration regarding claimant's pedigree, he may not do so by declarant's own statements as to declarant's relationship to the particular family. The reason is that declarant's declaration of his own relationship is of a self-serving nature. Accordingly there must be precedent proof from other sources that declarant is what he claimed to be, namely, a member of the particular family; otherwise the requirement to admissibility that declarant's relationship to the common family must appear is not met. But when the party claiming seeks to establish relationship in order to claim directly from the declarant or the declarant's estate, the situation and the policy of the law applicable are quite different. In such case the declaration of the decedent, whose estate is in controversy, that he was related to the one who claims his estate, is admissible without other proof of the fact of relationship. While the nature of the declaration is then disserving, that is not the real ground for its admission. Such declarations do not derive their evidential value from that consideration, although it is a useful, if not an artificial, aid in determining the class to which the declarations belong. The distinction we have noted is sufficiently apparent; in the one case the declarations are self-serving, in the other

they are competent from reasons of necessity.”[17] (*Italics ours.*)

The general rule, therefore, is that where the party claiming seeks recovery against a relative common to both claimant and declarant, but not from the declarant himself or the declarant’s estate, the relationship of the declarant to the common relative may not be proved by the declaration itself. There must be some independent proof of this fact.[18] As an exception, the requirement that there be other proof than the declarations of the declarant as to the relationship, does not apply where it is sought to reach the estate of the declarant himself and not merely to establish a right through his declarations to the property of some other member of the family. [19]

We are sufficiently convinced, and so hold, that the present case is one instance where the general requirement on evidence aliunde may be relaxed. Petitioners are claiming a right to part of the estate of the declarant herself. Conformably, the declaration made by Teodora Dezoller Guerrero that petitioner Corazon is her niece, is admissible and constitutes sufficient proof of such relationship, notwithstanding the fact that there was no other preliminary evidence thereof, the reason being that such declaration is rendered competent by virtue of the necessity of receiving such evidence to avoid a failure of justice.[20] More importantly, there is in the present case an absolute failure by all and sundry to refute that declaration made by the decedent.

From the foregoing disquisitions, it may thus be safely concluded, on the sole basis of the decedent’s declaration and without need for further proof thereof, that petitioners are the niece and nephew of Teodora Dezoller Guerrero. As held in one case,[21] where the subject of the declaration is the declarant’s own relationship to another person, it seems absurd to require, as a foundation for the admission of the declaration, proof of the very fact which the declaration is offered to establish. The preliminary proof would render the main evidence unnecessary.

Applying the general rule in the present case would nonetheless produce the same result. For while the documentary evidence submitted by petitioners do not strictly conform to the rules on their admissibility, we are however of the considered opinion that the same may be admitted by reason of private respondent’s failure to interpose any timely objection thereto at the time they were being offered in evidence.[22] It is elementary that an objection shall be made at the time when an alleged inadmissible document is offered in evidence,[23] otherwise, the objection shall be treated as waived,[24] since the right to object is merely a privilege which the party may waive.[25]

As explained in *Abrenica vs. Gonda, et al.*,[26] it has been repeatedly laid down as a rule of evidence that a protest or objection against the admission of any evidence must be made at the proper time, otherwise it will be deemed to have been waived. The proper time is when from the question addressed to the witness, or from the answer thereto, or from the presentation of the proof, the inadmissibility of the evidence is, or may be inferred.

Thus, a failure to except to the evidence because it does not conform with the statute is a waiver of the provisions of the law. That objection to a question put to a witness must be made at the time the question is asked. An objection to the admission of evidence on the ground of incompetency, taken after the testimony has been given, is too late.[27] Thus, for instance, failure to object to parol evidence given on the stand, where the party is in a position to object, is a waiver of any objections thereto.[28]

The situation is aggravated by the fact that counsel for private respondent unreservedly cross-examined petitioners, as the lone witness, on the documentary evidence that were offered. At no time was the issue of the supposed inadmissibility thereof, or the possible basis for objection thereto, ever raised. Instead, private respondent’s counsel elicited answers from the witness on the circumstances and regularity of her obtention of said documents: The observations later made by private respondent in her comment to petitioners’ offer of exhibits, although the grounds therefor were already apparent at the time these documents were being adduced in

evidence during the testimony of Corazon Dezoller Tison but which objections were not timely raised therein, may no longer serve to rectify the legal consequences which resulted therefrom. Hence, even assuming *ex gratia argumenti* that these documents are inadmissible for being hearsay, but on account of herein private respondent's failure to object thereto, the same may be admitted and considered as sufficient to prove the facts therein asserted.[29]

Accordingly, the Certificate of Marriage (Exhibit S) wherein it is indicated that the parents of Teodora Dezoller are Isabelo Dezoller and Cecilia Calpo, as well as the Certificates of Baptism of Teodora Dezoller[30] (Exhibit H) and Hermogenes Dezoller (Exhibit J) which both reflect the names of their parents as Isabelo Dezoller and Cecilia Calpo, to show that Hermogenes Dezoller is the brother of Teodora Dezoller Guerrero; and the Death Certificate of Hermogenes Dezoller (Exhibit K) the entries wherein were made by petitioner Corazon Dezoller Tison as his daughter, together with the Joint Affidavits of Pablo Verzosa and Meliton Sitjar (Exhibits N and P), to prove that herein petitioners are the children of Hermogenes Dezoller -- these can be deemed to have sufficiently established the relationship between the declarant and herein petitioners. This is in consonance with the rule that a *prima facie* showing is sufficient and that only slight proof of the relationship is required.[31] Finally, it may not be amiss to consider as in the nature of circumstantial evidence the fact that both the declarant and the claimants, who are the subject of the declaration, bear the surname Dezoller.[32]

III. The following provisions of the Civil Code provide for the manner by which the estate of the decedent shall be divided in this case, to wit:

“Art. 975. When children of one or more brothers or sisters of the deceased survive, they shall inherit from the latter by representation, if they survive with their uncles or aunts. But if they alone survive, they shall inherit in equal portions.”

“Art. 995. In the absence of legitimate descendants and ascendants, and illegitimate children and their descendants, whether legitimate or illegitimate, the surviving spouse shall inherit the entire estate, without prejudice to the rights of brothers and sisters, nephews and nieces, should there be any, under Article 1001.”

“Art. 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half.”

Upon the death of Teodora Dezoller Guerrero, one-half of the subject property was automatically reserved to the surviving spouse, Martin Guerrero, as his share in the conjugal partnership. Applying the aforequoted statutory provisions, the remaining half shall be equally divided between the widower and herein petitioners who are entitled to jointly inherit in their own right. Hence, Martin Guerrero could only validly alienate his total undivided three-fourths (3/4) share in the entire property to herein private respondent. Resultantly, petitioners and private respondent are deemed co-owners of the property covered by Transfer Certificate of Title No. 374012 in the proportion of an undivided one-fourth (1/4) and three-fourths (3/4) share thereof, respectively.

All told, on the basis of the foregoing considerations, the demurrer to plaintiffs' evidence should have been, as it is hereby, denied. Nonetheless, private respondent may no longer be allowed to present evidence by reason of the mandate under Section 1 of revised Rule 3 of the Rules of Court which provides that “if the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.”[33]

WHEREFORE, the questioned judgment of respondent Court of Appeals is hereby REVERSED and SET ASIDE, and herein petitioners and private respondent are declared co-owners of the subject property with an undivided one-fourth (1/4) and three-fourths (3/4) share therein, respectively.

SO ORDERED.

Romero, Puno, and Mendoza, JJ., concur.
Torres, Jr., J., on leave.

[1] Penned by Associate Justice Gloria C. Paras, with Associate Justices Quirino Abad Santos, Jr. and Delilah Vidallon Magtolis, concurring; Annex K, Petition, Rollo, 74.

[2] Annex B, id.; ibid., 41.

[3] Original Record, 207-208.

[4] Ibid., 224-229.

[5] Ibid., 233-234.

[6] Ibid., 259-267.

[7] Ibid., 275.

[8] Jones, Commentaries on Evidence, Vol. 1, 2nd ed., 118-119.

[9] Tolentino, A., Civil Code of the Philippines, Commentaries and Jurisprudence, Vol. 1, 1990 ed., 535-537.

[10] Op. cit., 535.

[11] Jones on Evidence, Vol. 1, 5th ed., 178.

[12] 95 ALR 883.

[13] 31A CJS, Evidence, Sec. 114, 195.

[14] Ibid., Sec. 119, 216.

[15] Brawsell vs. Tindall, 294 SW 2d 685.

[16] TSN, February 14, 1992, 5-8.

[17] Jones, Commentaries on Evidence, Vol. 3, 2nd ed., 2094-2095.

[18] Op. cit., 2096.

[19] Op. cit., 2098.

[20] In re Clark's Estate, 110 P 828.

[21] Hartman's Estate, 107 P 105, cited in Moran, Comments on the Rules of Court, Vol. 5, 1980 ed., 322.

[22] On offer of evidence, the Rules of Court pertinently provide: "Sec. 35. When to make offer. - x x x

Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the Court to be done by writing.

"Sec. 36. Objection. - Objection to evidence offered orally must be made immediately after the offer is made.

Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent."

[23] Martin, Rules of Court, Vol. 5, 3rd ed., 611.

[24] *People vs. De la Cruz*, G.R. No. 108180, February 8, 1994, 229 SCRA 754.

[25] *Moran*, *Comments on the Rules of Court*, Vol. 6, 1980 ed., 125.

[26] 34 Phil. 745 (1916).

[27] *Conlu vs. Araneta, et al.*, 15 Phil. 387 (1910).

[28] See *Talosig vs. Vda. De Nieba, et al.*, G.R. No. L-29557, February 29, 1972, 43 SCRA 472.

[29] *Op cit.*, 128.

[30] This parochial record is an official document, having been made prior to the passage of G.O. No. 68 and Act No. 190 (*U.S. vs. Evangelista*, 29 Phil. 215 (1915), and cases therein cited).

[31] *Fulkerson, et al vs. Holmes, et al.*, 117 US 389.

[32] *Francisco*, *Rules of Court*, Vol. 7, 1973 ed., 494.

[33] This amendatory provision under the 1997 Rules of Civil Procedure, which took effect on July 1, 1997, is substantially the same as the antecedent provision in Sec. 1, Rule 35: "However, if the motion is granted and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf."

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