

ROSALES, PLAINTIFF AND APPELLANT, VS. JOSE ROSALES, DEFENDANT AND APPELLEE.

G.R. No. 12749. July 14, 1959

Ponente: BENGZON, J.

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BENGZON, J.:

The plaintiff has appealed to this Court from the decision of the Court of First Instance of Rizal dismissing his complaint for support on the ground that his own evidence failed to establish his right thereto, inasmuch as he did not show he was one of the children entitled to support from their parents namely, (1) legitimate children; (2) acknowledged natural children; (3) natural children by legal fictions; (4) illegitimate children who are not natural.

In his notice of appeal, plaintiff announced the intention to bring the matter to this Court to raise questions of law only. And in the printed brief filed here, he contended that under the facts found by the trial judge, he was entitled to support, as an illegitimate child who is not natural. The defendant meets the points raised; and in addition discusses the vital question of paternity. He claims, and quotes from the testimonial evidence, that plaintiff is not his son, or has failed to establish filiation.

This appeal involves, therefore, issues of fact, and does not belong here, the amount in controversy being less than P50,000

"* * * when a case is appealed directly to the Supreme Court for the reason that appellant is raising only a question of law, but appellee in his brief raises questions of fact disputing the findings of the trial Court, the appeal should be referred to the Court of Appeals. An appellee who obtains a favorable judgment is not called upon to appeal and attack a decision that favors him; neither is he in a position to decide which Court he wants the appeal of the appellant to go to, until the (appellee) has read the brief of said appellant and, appraised himself of the issues raised, the arguments addressed, and the chances of having the appealed decision reversed or modified on those issues and arguments alone. Consequently, after reading the appellant's brief, appellee may raise issues of fact in his brief to maintain the judgment on other grounds without the necessity, in such case, of appealing. And if appellee, under such circumstances, does raise questions of fact in his brief, it is proper to certify the whole case to the Court of Appeals." (Moran, Rules of Court [1957 Ed.] Vol. I, p. 674 citing *Justo, et al. vs. Hernando*, 89 Phil., 268; *Saenz vs. Mitchell*, 60 Phil., 60, 80; *Villovert vs. Lim*, 62 Phil., 178 etc.; *Relativo vs. Castro*, 76 Phil., 563.)

Accordingly, the record should be referred, as it is hereby referred, to the Court of Appeals for adjudication.

Paras, C. J., Padilla, Montemayor, Bautista Angela, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

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