

IN RE WILL OF JOSE GREGORIO ROCHA, DECEASED. MARIA ELOISA ROCHA, PETITIONER AND APPELLEE, VS. EMILIA TUASON Y PATIÑO AND MARIA ROCHA DE DESPUJOLS, OPPONENTS AND APPELLANTS.

G.R. No. 14254. August 05, 1919

Ponente: TORRES, J.

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TORRES, J.:

This is an appeal from an order of the Court of First Instance of the city of Manila, dated February 26, 1918, in re will of Jose Gregorio Rocha, deceased, which declares the petitioner, Maria Eloisa Rocha, the recognized natural daughter of the said Jose Gregorio Rocha, deceased, has the right to intervene in these proceedings, and to have a share in the property left at the death of the said Jose Gregorio Rocha, and which appoints Recaredo Pando as administrator of the same property.

On April 23, 1913, these proceedings were commenced by the petitioner who presented, for probate a certified copy of the will of Jose Gregorio Rocha.

After the will was duly legalized and after all the proceedings required by law in connection with cases of this kind were duly complied with, the court fixed a date for a hearing of this case with the object of learning from the parties whom they wanted appointed administrator of the property of the testate succession. But the opposing party appealed from said order to this court which declared the said order inappealable^[1] and returned the case to the court of origin. Counsel for the opponent, Emilia Tuason y Patino, filed their objections against all proceedings had and against the appointment of a judicial administrator.

On May 17, 1917, the petitioner, Maria Eloisa Rocha, filed a motion alleging herself to be the recognized natural daughter of the deceased, Jose Gregorio Rocha, and praying the court to fix a day for the hearing of the evidence tending to prove her allegation.

The counsel for the opponent Emilia Tuason y Patino presented an opposition against the claim of the petitioner on the ground that the motion was premature.

A day having been fixed for the hearing of the appointment of administrator and of the aforesaid motion of the petitioner, the opponent, Emilia Tuason, reiterated her objections against all the proceedings had and that might be had, and alleged that the petitioner could no longer ask to be declared the recognized natural daughter, because her action had already prescribed and. was therefore estopped.

Before the aforesaid hearing took place Maria Emilia Rocha de Despujols filed a motion that alleged herself to be the legitimate daughter of Jose Gregorio Rocha; that the petitioner, Maria Eloisa Rocha, had no longer any right, interest, or share in the property of the deceased. Jose Gregorio Rocha; and that, if there might have been any interest or share whatever, any action for such claim had already prescribed because the period fixed by law for the filing of such an action had expired; wherefore she prayed the court to declare that there was no ground for the appointment of an administrator and to dismiss these proceedings.

After the trial of the case and the hearing of the evidence presented by the parties, the lower court pronounced the judgment in question to which the opponents duly excepted and, the appeal having been perfected, the court forwarded the same to the clerk of this court.

In the present case there are two principal questions submitted for this high court. The first is whether the plaintiff, Maria Eloisa Rocha, had been recognized, during the lifetime of the deceased Jose Gregorio Rocha, as his natural daughter; and the second, is, granting that she had been so recognized whether she has a personality and right to claim a share in the inheritance of her deceased natural father and whether she has the right to ask for the probate of the will of the said father and the appointment of an administrator of the property left at his death.

The plaintiff Eloisa Rocha was born on March 18, 1867. Jose Gregorio Rocha, being a bachelor, must have married Emilia Tuason y Patino in 1871 or 1872 and Maria Emilia Josef a Casiano Rocha de Despujols, the daughter begotten in this marriage, must have been born in 1873, (facts which have been taken for granted as true and adopted, in this decision, inasmuch as the certificate of marriage of the said spouses and the certificate of birth of the said Maria Emilia Josefa Rocha de Despujols, legitimate daughter of that marriage, were not included, in the records forwarded to this court) taking for this basis the declaration of Jose Gregorio Rocha in his will made on March 14, 1898, stating that his legitimate daughter, Maria Rocha de Despujols, was already more than 25 years of age at the time of the execution of the said will.

From this data it is inferred that the facts of the birth of the plaintiff Maria Eloisa Rocha; of the marriage of Jose Gregorio Rocha with Emilia Tuason y Patino; and of the birth of Maria Emilia Rocha de Despujols should be governed by the provisions of the legislation prior to the Civil Code promulgated and enforced in this Archipelago on December 7, 1889.

In order that a child may be considered as natural, according to the said prior legislation, it is not enough that the father and the mother could have married lawfully without dispensation at the time of the conception or of the birth of the child, but it was also necessary, in accordance with the provision of Law 11 of Toro which became law 1, title 5, book 10 of the Novisima Recopilacion, that the father should recognize the child as his, a recognition verified by any of the means prescribed in the laws in force prior to the present Civil Code.

In accordance with the provision of that legislation, the natural son or daughter is excluded, even having been recognized, from the inheritance, maternal as well as paternal, as soon as there are legitimate children or children legitimized by subsequent marriage, the father or the mother being able to leave to them, by way of support, only one-fifth of his or her capital. Wherefore, from the moment of the birth of Maria Emilia Rocha de Despujols, somewhere about the year 1873 or 1874, as the legitimate daughter of the spouses Jose Gregorio Rocha and Emilia Tuason y Patino—even admitting as proven the fact that Jose Gregorio Rocha had recognized Maria Eloisa Rocha as his natural daughter—Maria Eloisa Rocha has no right to pretend or claim a part of the inheritance of her supposed natural father.

However, from the records it is not possible to infer that Jose Gregorio Rocha during his lifetime had recognized, in accordance with legislation prior to the Code, Maria Eloisa Rocha as his supposed natural daughter. She may be really his daughter, had as a bachelor with a woman also unmarried, but that which is certain is that Jose Gregorio Rocha during his lifetime did not make any public and formal declaration of the fact that he recognized Maria Eloisa Rocha as his natural daughter. In the baptismal certificate of the said Eloisa Rocha it does not appear that Jose Gregorio Rocha was present during the act of baptism when she was a recently born creature—nor was there presented any authentic document that would give credit to such a recognition. And it is surprising that, in executing his will on March 14, 1898, and in setting aside the property which he was leaving as legacy to the plaintiff Eloisa Rocha, the deceased Jose Gregorio Rocha did not make nor express any declaration that he was

leaving her the legacy as his daughter, for in paragraph 10 of his will he says that he bequeaths to the daughter of Dona Luisa Casal, called Maria Eloisa Rocha, the urban property No. 32 on Solana Street, Intramuros. The deceased Rocha during his lifetime not only failed to mention in any document public, official, or private, the fact that the plaintiff was his natural daughter but even the formal document, expressive of his last will and perhaps the last that he would execute in favor of the plaintiff, was so cautiously written as not to express any declaration which would imply recognition in favor of the plaintiff.

Certainly, he might have been supporting Eloisa Rocha from her birth up to the execution of the said will with some pension in money; he might have said or intimated to some relative or friend that the plaintiff was his natural daughter, but it does not appear that she was recognized as his natural daughter in the manner required by former legislation, thus it is that the party plaintiff has not been able to present any document justificative of having been lawfully recognized as the natural daughter of the now deceased Jose Gregorio Rocha.

However, even admitting that there was an implied recognition on the part of Jose Gregorio Rocha in favor of the plaintiff, yet this circumstance does not give her any right, after the birth of the legitimate daughter begotten from the marriage of her father Jose Gregorio Rocha, to pretend and allege any share in any part of the property of the said father in accordance with the provisions of the legislation prior to the present code.

It is true that according to rule 1 of the transitory provisions of the Civil Code the right, mentioned for the first time in article 840 of the said Code, relative to those natural children lawfully recognized to have, each one of them, a share in the one-half of the portion of the inheritance which may go to each of the legitimate children not receiving any betterment (*mejora*) always provided that it is comprised within the third part which may be freely disposed of, is enforceable even if the fact that gave rise to it, that is to say the birth of the said natural children lawfully recognized, might have taken place under former legislation. But it is no less certain that in order for natural children lawfully recognized to enjoy the benefits established for the first time in their favor by the said article 840, to receive one-half of the portion of the inheritance which is provided for in said article, it is indispensable that they fulfil the condition laid down in the aforesaid rule 1 in that the right which the natural child shall make use of may not prejudice other rights acquired from the same origin. In this last named situation Maria Eloisa Rocha finds herself. Granting that her right as a natural daughter to share in the inheritance of Jose Gregorio Rocha originated under former legislation and was recognized by the Code for the first time, the same undoubtedly prejudices the legitimate right of Maria Emilia Rocha de Despujols, a right of the same origin and enjoyed as the legitimate daughter of the consorts, Jose Gregorio Rocha and Emilia Tuason.

The plaintiff, Maria Eloisa Rocha, as well as the defendant, Maria Emilia Rocha, were born long before the Civil Code was in force in these islands, and, therefore, their respective rights have their origin from facts which took place under prior legislation. In accordance with said legislation, even if it be supposed that Maria Eloisa Rocha is really the natural daughter of Jose Gregorio Rocha, lawfully recognized by the latter, nevertheless, as such natural daughter she is excluded from the inheritance of her natural parents as the latter have a legitimate daughter who is Maria Josefa Casiano de Despujols. Therefore, it is undisputable that the plaintiff, according to former legislation, lacks the right to inherit from the deceased Rocha.

From the date of the death of the predecessor in interest, Jose Gregorio Rocha, which took place on April 16, 1905, his rights were transmitted to his only legitimate and testamentary heiress, Maria Emilia Rocha de Despujols, who has succeeded her deceased father in all of his rights and obligations by the mere fact of his death. (Articles 657 and 661 of the Civil Code under whose provisions died the testator Rocha.)

Under the same hypothesis that the plaintiff Maria Eloisa Rocha had been recognized, even impliedly, by Jose Gregorio Rocha and founded upon this reason, in order to invoke the right mentioned in her favor in article 840,

according to the provision of the said rule 1 of the transitory provisions of the Code, the condition therein imposed should be observed in full for the concession of the right and benefit granted, to wit, that the same may not prejudice other rights acquired from the same origin. It is undeniable that the right to a part of the inheritance, claimed by the plaintiff Maria Eloisa Rocha, prejudices the right acquired by the legitimate daughter of Jose Gregorio Rocha, Maria Emilia Rocha de Despujols, begotten in a lawful wedlock with Emilia Tuason y Patino.

The condition imposed by the said rule 1 of the transitory provisions is evidently unavoidable in the present case inasmuch as, when Jose Gregorio Rocha died, his legitimate daughter, Maria Emilia Rocha de Depujols, became the legitimate owner not only of the two-thirds of the inheritance left by her father at his death but also of the rest, the one-third which may be freely disposed of, after all of the legacies mentioned in the will were paid including the property bequeathed to the plaintiff, Maria Eloisa, and the funeral expenses and those of the last illness of the testator. Undoubtedly, complying with his moral obligations as well as those of his conscience, having given the plaintiff a pension in money from her childhood until the said legacy, consisting of one lot, was delivered, the testator in executing his will ordered the said legacy which, as we have already said, was duly and timely delivered to her. But beyond this the plaintiff has no right to claim another portion of the property of the testator even if it be taken out of the one third which may be freely disposed of, because all of the rest of this free part which may not be used to meet the obligations ordered by the testator in the testament belongs exclusively to the legitimate heir. And against the express provision of the law the heiress should not be prejudiced in her legitimate interests and right; and, undisputably, Maria Emilia Rocha de Despujols would be prejudiced if, in spite of the expressed condition established by the said rule 1 of the transitory provisions, the right to receive the share of inheritance to which the said article 840 of the Civil Code refers, in addition to the legacy given, be conceded to Maria Eloisa Rocha under the supposition that she is the recognized natural daughter. The rights recognized by the Civil Code under articles 840, 939 and others in favor of natural children legally recognized apply only to those born under the rules prescribed therein. Those born under the rules prescribed by prior legislation are subject to the rules established in its (Civil Code) transitory provisions.

The right to make a will, to inherit and the system of legitime, which, in a certain way, curtail the liberty and rights of the testator, are the creation of positive legislation and the condition, imposed, by the latter in order that some of its provisions might have retroactive effect, should be strictly observed to the end that the new law may produce all its legitimate consequences.

If the plaintiff does not have the right to a portion of the inheritance of the deceased Jose Gregorio Rocha, as has been shown, it follows that she does not have the right to exercise the action for the partition of the inheritance and much less to ask for the probate of the will of the deceased Jose Gregorio Rocha, nor to intervene in the said case and still less to ask for the appointment of an administrator of the property of the same. Regarding these additional questions there would be no necessity of assigning more extensive reasonings than have already been given in connection with the alleged rights of the plaintiff.

Neither is it necessary that this decision deal with the other errors assigned by the appellant and the respective allegations adduced by both parties for, once it has been declared by the court that the plaintiff lacks the right to claim a share of the inheritance which might correspond to her from the capital of Jose Gregorio Rocha, in the supposition that she had been recognized by the latter as his natural daughter, all of the questions presented, including that of the limitation of action, are devoid of any object and are immaterial inasmuch as the questions decided in this decision include all of the rest adduced and argued by both parties. .

From these considerations it follows in justice that, with the reversal of the judgment appealed from, it should be declared, as we do hereby declare, that Maria Eloisa Rocha has no right, even if she be considered as the natural daughter tacitly recognized by the deceased, Jose Gregorio Rocha, to any portion of the inheritance the said

deceased left under a will at his death. Therefore the said petitioner lacks the right to move for the probate of the will, to ask for the appointment of the administrator and to intervene in the proceedings of the said will. No special finding as to costs in both instances. So ordered.

Arellano, C.J., Johnson, Araullo, and Avanceña, JJ., concur.

Street, Malcolm, and Moir, JJ., dissent.

Judgment reversed.

DECISION ON MOTION FOR RECONSIDERATION, OF SEPTEMBER 4, 1919.

TORRES, J.,

This is a motion by counsel for appellee Maria Eloisa Rocha for a reconsideration of the judgment in this case rendered on the fifth of the present month.

Taking into consideration that the records furnish no motive nor legal basis from which the Judge of the Court of First Instance ought to have taken into account the fact that the deceased Jose Gregorio Rocha during his lifetime had expressly recognized the plaintiff Maria Eloisa Rocha, as his natural daughter, however much it is possible to infer from the acts of her father that he had impliedly recognized her as his natural daughter; and that, even considering that the implied recognition produces in law the same effects, as when the natural child has enjoyed by continuous possession the status of a natural child recognized by direct acts of the supposed father or of the family, it does not appear from the case that the plaintiff Maria Eloisa Rocha has enjoyed the continuous possession of such status and recognition of a natural daughter of the deceased Jose Gregorio Rocha.

Taking into consideration that in the decision of this court, for which a reconsideration is asked by counsel for the appellee, it has been expressly shown that, even supposing that Jose Gregorio Rocha may have impliedly recognized the appellee Maria Rocha as his natural daughter, by this act she did not acquire any right to a portion of the inheritance left at the death of the natural father, inasmuch as such a right, recognized for the first time in the Civil Code, neither existed as such nor was recognized by prior legislation; and evidently prejudices the right of the legitimate daughter of her own father born in wedlock, according to rule 1 of the transitory dispositions of the Civil Code; as the right of a natural daughter, recognized for the first time in the Code, can only be enforced so long as it does not prejudice other rights acquired from the same origin, as is that of Maria Rocha de Despujols, the legitimate daughter of the deceased Rocha. Taking into consideration that the provisions of articles 840 and 939 of the Civil Code relate only to recognized natural children, born subject to the rules of the Civil Code, and that, if to recognize natural children born subject to the rules of prior legislation, the Code concedes the same right, the concession is made on condition that the said right does not prejudice those of the legitimate child. (Rule 1 of the transitory provisions.)

Taking into consideration that the right to enter into the possession of an inheritance, left at the death of the predecessor in interest, commences only from the moment of the death of the owner of that which constitutes the inheritance, even though it is undeniable that a forced and necessary heir, according to the system of legitime, has, by provision of law, from the time of his birth a vested right of acquiring the inheritance from his ascendants after their death, and such a vested right is inherent with his legitimate filiation to which belong the paternal obligations and rights of the author of his being;

Taking into consideration that the beneficial provisions of the Civil Code in favor of natural children recognized and born subject to the rules of prior legislation should be applied to them according to rule 1 of the transitory

provisions—provided that the right acquired by the natural child, recognized by virtue of the retroactive effects of said provisions, does not prejudice other right of the same origin, as that of the right of the legitimate child of the same father who begot the natural child—inasmuch as the birth of a natural child does not affect nor prejudice the rights of another natural child born before or afterwards; but does prejudice those belonging to a legitimate child to whom belongs from the moment of its birth a vested right which becomes of a positive and efficient character on the death of its legitimate father, a condition not true in the case of a natural child born subject to the provisions of former legislation, a legislation which recognizes in favor of a natural child who is tacitly or expressly recognized by the natural father no right over his property;

Taking into consideration that the present Civil Code, like the former legislation, does not recognize liberty in the execution of wills wherefore it has established the system of legitime in favor of forced heirs of ascendants who died testate or intestate, and that as a consequence of said system forced heirs, also called necessary heirs, acquire the passive right to participate in the inheritance from the moment of their birth which becomes effective and positive from the moment of the death of their ascendants;

Taking into consideration that, parting from the supposition that the right to make a will as well as the right to inherit are mere creations of the civil law, it is indisputable that recognized natural children, born subject to the rules of the Civil Code, cannot be excluded from the testate or intestate succession of their natural father by the fact that a legitimate child was born to him in marriage, for the reason that the Code has expressly declared that a recognized natural child has a right to a certain portion of the inheritance of its natural father who has begotten in marriage with another woman a legitimate child, for the reason that the Code has expressly recognized the right of the natural child, born during the time the same has been in force, to a portion of the inheritance of its natural father, taking care that the portion of the property destined for the natural child who has legitimate brothers and sisters shall necessarily be taken from the one-third of the inheritance which may be freely disposed of as, according to article 840 of the Code, it is provided that the share which corresponds to the natural child legally recognized is included within the aforesaid one-third of the inheritance of free disposition; but natural children born during the time the prior legislation was enforced, even if recognized by their natural father, acquire a certain portion of the inheritance of their natural father by virtue of the retroactive effect established in the Civil Code in so far as said portion does not prejudice the right which belongs to the legitimate child begotten by the said father in wedlock;

Taking into consideration that the doctrines which, according to the petitioner, have been upheld by this court in its decisions are strictly based upon the express provisions of the Civil Code and its transitory provisions and neither contradict nor are opposed to those set forth in its former decisions which now form jurisprudence; as those doctrines cited in the case of *Mijares vs. Neri* (3 Phil. Rep., 195), are not applicable to the case at bar since that case was concerned with the right of a natural daughter begotten by her natural father against those rights belonging to other natural daughters had by the same father with a woman other than the mother of the first natural daughter;

Taking into consideration that the birth of a natural child cannot prejudice the rights of other children born under the same condition of natural children, but do prejudice in fact the indisputable right which is enjoyed by a legitimate child begotten in wedlock by the natural father of the illegitimate.

In conclusion, it must be held, after the foregoing reasonings, that both of the interested parties were born subject to the rules of prior legislation with the following difference—that Maria Eloisa Rocha did not acquire from her birth the vested right over the inheritance of her natural father because said, legislation did not concede her any right under the system of legitimes which was then established, while Maria Emilia Josef a de Despujols as a legitimate daughter had from her birth the vested right to inherit from her legitimate father, a right recognized by

prior legislation and sanctioned by the Civil Code, regardless of the date of the father's death.

When the Civil Code, which for the first time has declared the right of a natural child to inherit from its natural father a limited portion of his property, imposed the condition that such a right of a natural child should not prejudice other rights acquired from the same origin, the legislator took into consideration and paid special attention to the powerful reasons of justice and equity whereby he whose rights shall be damaged is more worthy of respect than he who will have to receive the benefit granted by the new law in recognizing the right not previously recognized, which is the case of Maria Eloisa Rocha, the plaintiff, in relation to the defendant. (Read Manresa's commentaries of the said rule 1 of the transitory provisions of the Code, vol. 12, p. 921.)

From the above considerations and those cited in former decisions it is hereby declared that the motion for reconsideration filed by the counsel for the plaintiff-appellee is dismissed, with costs. So ordered.

Arellano, C.J., Johnson, Araullo, and Avanceña, JJ., concur.

Street, Malcolm, and Moir, JJ., dissent.

Motion denied.

[1] Rocha vs. Tuason (36 Phil. Rep., 496).

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