

IN RE ESTATE OF DEMETRIO LARENA, DECEASED. ASUNCION LARENA DE VILLANUEVA AND MAXIMIANA LARENA DE ALVIOLA, PETITIONERS AND APPELLANTS, VS. JOSEFINA RUBIO VIUDA DE LARENA, OPPONEN...

G. R. No. 16215. February 06, 1922

Ponente: AVANCEÑA, J.

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AVANCEÑA, J.:

Asuncion Larena de Villanueva, Maximiana Larena de Alviola, and Eustaquio Larena appeared in these proceedings alleging that they are the natural children of the deceased Demetrio Larena, and as such they pray that they be declared as coheirs of the said deceased.

The trial court dismissed their petition from which Asuncion Larena, Maximiana Larena, and Eustaquio Larena appealed. However, in this instance Asuncion Larena alone filed a brief and an assignment of errors.

In the year 1900 Demetrio Larena contracted marriage with Josefina Rubio by whom he had four children. The appellant, Asuncion Larena, is a natural daughter of Demetrio Larena begotten by another woman at the time when both were free and could have contracted marriage. Asuncion Larena was born in 1880 and from early childhood until before the year 1889, when the Civil Code went into effect here, she had been living with her father and enjoying the status of a daughter, not only within the family circle, but also publicly on account of the acts of her father.

The lower court based its decision upon the fact that since the appellant had attained the age of majority in the year 1901, and her father having died in 1916, without any effort on her part previous to that time looking to her acknowledgment as a natural child, she had lost such right in view of article 137 of the Civil Code which requires that action for acknowledgment should be commenced during the lifetime of the father. This is an error. The Civil Code is not applicable to this case. The appellant was born and had enjoyed the status of a natural child by acts of acknowledgment of her father even before the said Code was put in force here. Under the law at that time (Law 11 of Toro), this tacit acknowledgment on the part of her father was in itself sufficient to give the appellant the status of a natural child, and such acknowledgment could be established by the ordinary means of evidence without any limitations as to time. This civil status granted to the appellant by the former law, derived from the fact of her birth and from the acts of implied acknowledgment of her father, having taken place under the former legislation, gives the appellant a vested interest inherent to her status which cannot in any way be impaired by the provisions of the Civil Code. The transitory provisions of this Code declare that the changes introduced by it, when prejudicial to the rights acquired under the former civil legislation, shall not have retroactive effect, and such former legislation shall regulate all the rights arising under it although the Civil Code may provide differently or may not recognize them. (Decisions of the supreme court of Spain of January 16, 1900, of April 11 and December 28, 1907, and decisions of this court in the cases of Mijares vs. Nery, 3 Phil., 195, and of Llorente vs. Rodriguez, 3 Phil., 697.)

Since the appellant is an acknowledged natural child of the deceased Demetrio Larena, she has the right to participate in the inheritance left by the latter in accordance with the provisions of the Civil Code. This is a right acknowledged by the Code for the first time. However the trial court maintains that as her participation in the inheritance would prejudice the rights to the legitime pertaining to the legitimate children of the deceased, it should not be allowed, in view of section 2 of the transitory provisions of the Code. This is also an error because this legal provision does not apply in this case. Section 2 of the said transitory provisions is to the effect that if the right is declared for the first time in this Code it shall take effect even though the source of such right is a former legislation whenever no other right of the same origin arising under the former legislation is prejudiced. The expression of the same origin means under the same former legislation. In the statement of the bases for the amendments and additions included in the new Civil Code we find: "But if the case should deal with a new right, declared for the first time in this Code and not recognized by the former legislation, it must be governed by the same Code, even though the fact of its origin had taken place under that legislation, unless it should work an injustice to another right acquired under it, as in this case he who will suffer the damage is more worthy of protection than he who will receive a gratuitous benefit." Since the legitimate children of the deceased Demetrio Larena were born at the time when the Civil Code was in force, their right to the inheritance did not arise from the former legislation and, consequently, their right cannot annul the effects of the right of the appellant to concur in the inheritance in accordance with the provisions of the Civil Code. It should be noted that this case is different from that of *Rocha vs. Tuason and Rocha de Despujols* (39 Phil., 976) upon which the court below based its decision. In that case the natural son and the legitimate son were born before the Civil Code went into effect and the source of the rights of both was the former legislation, which is precisely the subject matter of the exception established in section 2 of the transitory provisions of the Civil Code.

The judgment appealed from is reversed and the appellant is hereby declared as the acknowledged natural daughter of the deceased Demetrio Larena with the right to participate in the inheritance under the provisions of the Civil Code. Without special pronouncement as to costs. So ordered.

Araullo, C. J., Johnson, Street, Villamor, and Romualdez, JJ., concur.

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