

**TEODORO SUMLJAG BONGAL WITH HIS GUARDIAN AD LITEM AND
NATURAL MOTHER, SEVERINA SUMALJAG, PLAINTIFF-APPELLANT,
VS. BARBARA P. VDA. DE BONGAL, DEFENDANT-APPELLEE.**

G.R. No. 17463. May 16, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

On February 1, 1960, Teodoro S. Bongal, about 20 years old at the time, represented by his guardian ad litem and natural mother Severina Sumaljag, filed an action for acknowledgment, partition and damages in the Court of First Instance of Leyte against Barbara P. Bongal, surviving spouse of the late decedent Zosimo Bongal, who died intestate on November 7, 1959 in Palompon, Leyte. It was alleged in the complaint that during the period from 1938 to 1940, the deceased Zosimo Bongal and Severina Sumaljag - who were then without legal impediment to marry each other - lived and cohabited under one roof in Ormoc City as husband and wife; that as a result of that cohabitation plaintiff Teodoro Sumaljag Bongal was born; that subsequently Zosimo Bongal married Barbara P. Bongal; that plaintiff lived for sometime in the household of the said spouses; that when Zosimo died on November 7, 1959 he left real and personal properties, but no legitimate issue; that demands for extrajudicial partition had been made upon defendant, but she refused to accede to them; and that plaintiff sustained damages and expenses for attorney's fees as a consequence.

On May 4, 1960, defendant filed an answer with counterclaim, denying the allegations in the complaint and setting up several special and affirmative defenses, to wit: that plaintiff is not the natural child of Zosimo Bongal, the latter being, in his lifetime, incapable of procreation as he was sterile; that the present action is barred by a prior judgment, rendered in Special Proceedings No. 111-0, also by the Court of First Instance of Leyte, wherein the deceased and his wife, defendant herein, filed a petition for the adoption of one Rustico Bongal, which petition was favorably acted upon in an order dated November 29, 1955.

On May 25, 1960, plaintiff filed an amended complaint, which was admitted by the Court. The amendment consisted of the addition of another plaintiff, Dalmacia Ruiz Vda. de Bongal, deceased Zosimo Bongal's mother, who had allegedly executed and filed a "Manifesto" to the effect that all her shares in the estate of Zosimo Bongal should be given to plaintiff by virtue of an alleged Deed of Donation executed by her in his favor.

On June 9, 1960 defendant filed an "Urgent Motion to Dismiss," which was subsequently amplified by an "Amended Motion to Dismiss," based on the grounds: (1) that the cause of action was barred by the prior judgment in Special Proceedings No. 111-0 granting the adoption of Rustico Bongal; and (2) that the amendment of the complaint by the addition of Dalmacia as additional plaintiff had not been authorized by her. The Court a quo granted the motion and dismissed the case on the first ground alleged. The said Court said:

"In his argument, counsel for the plaintiff insisted that the court had no jurisdiction over the subject matter of the action in Sp. Proc. No. 111-0 on the strength of the plaintiff's allegation that the plaintiff was an acknowledged natural son of the adopting father, Zosimo Bongal. If this is the case, if we are to consider the

plaintiff as an acknowledged natural son in the present case, this case for acknowledgment will be considered a mere surplusage for the purpose of compelling the surviving spouse of the estate of Zosimo Bongal. It is impossible to consider the plaintiff as the acknowledged natural son of the deceased Zosimo Bongal. The Court, therefore, holds that for lack of opposition on the part of the present plaintiff at the time the Sp. Proc. No. 111-0 was heard notwithstanding its proper publication in a newspaper of general circulation in the City of Ormoc and in the province of Leyte, this Court had jurisdiction over Sp. Proc. No. 111-0. The Court, therefore, holds that the present action is barred by the order of this Court dated November 29, 1955, in Sp. Proc. No. 111-0 and the plaintiff is already estopped from questioning the said special proceedings."

Plaintiff moved to reconsider, and after his motion was denied interposed the present appeal. He assigns four errors allegedly committed by the court a quo. However, reduced to essentials, the main issue presented is whether or not the present action is barred by the final judgment in Special Proceedings No. 111-0 of the Court of First Instance of Leyte.

Appellee's position, which was upheld by the lower court, is that the decree of adoption is conclusive as to the fact that the adopting father, the deceased Zosimo Bongal, had no acknowledged natural child, and therefore was determinative of appellant's lack of status as such child. Reliance is placed expressly on Article 335 of the Civil Code, which provides that "those who have legitimate, legitimated, acknowledged natural children, or natural children by legal fiction" cannot adopt. Since the adoption was valid, according to the lower court, having been decreed after jurisdiction was duly acquired upon compliance with all the requisites of the law, and since appellant failed to appear in the proceeding and register his opposition to the petition for adoption, his claim as acknowledged natural child is already foreclosed by the decree.

There seems to be a misapprehension of the facts, as alleged in the complaint, and of the resulting legal situation, both by the parties and by the trial court itself. They proceed on the assumption that plaintiff Teodoro S. Bongal had been voluntarily acknowledged by the deceased Zosimo Bongal as his natural child prior to his death. From this premise they derive conflicting conclusions: on the part of plaintiff, that the whole adoption proceeding was a nullity in view of Article 335 of the Civil Code; and on the part of appellee and of the lower court, invoking the same provision, that the adoption being valid, it settled not only the status on the adopted child, Rustico Bongal, but also the status of appellant - the latter in the sense that he was not an acknowledged natural child.

However, appellant's case is not based on the theory that he had been voluntarily acknowledged. It is in fact a complex action for compulsory recognition and partition. The complaint nowhere categorically affirms that there was voluntary recognition made "in the record of birth, in a will, in a statement before a court of record or in any authentic writing," as provided in Article 278 of the Civil Code. To be sure, appellant alleges that his record of birth shows that he is the son of the late Zosimo Bongal, and that his school records make the same showing. But such documents, as thus referred to, fall short of making out a case of voluntary recognition; if anything, they are evidence of filiation upon which an action for compulsory recognition may be based, pursuant to Article 283 of the Civil Code.

From the foregoing the following conclusions may be drawn: (1) that since appellant did not have the status of an acknowledged natural child of the deceased Zosimo Bongal at the time of the adoption of the child Rustico Bongal, the provision of Article 335, paragraph 1, of the Civil Code did not apply and constituted no impediment to the proceeding; (2) that by the same token, appellant had no personality then to contest the adoption and could not be bound thereby in any way insofar as his own status was concerned; and (3) that the adoption of Rustico Bongal did not deprive plaintiff of his right to seek recognition as a natural child in a proper petition and upon evidence that is competent and legally admissible. It would have been irregular for plaintiff to appear in the adoption proceeding with a petition for compulsory recognition in his own behalf, and at the same time use such petition as a ground for opposing the adoption.

But on the theory that plaintiff was voluntarily recognized by the deceased Zosimo Bongal as his natural child and therefore his status as such has been duly established, that status is of a permanent character and cannot be deemed lost by reason of the fact that the natural father subsequently adopted another child. As soon say that a legitimate child loses his status for the same reason, considering that under Article 335 of the Civil Code a person cannot adopt if he has a legitimate child. The absurdity of the situation is self-evident.

The only instance when recognition already made may be impugned is if the child does not possess all the conditions stated in Article 269 of the Civil Code, that is, if the child is not really natural, as defined in said provision, or if the requirements of the law concerning recognition have not been fulfilled (Art. 286, Civil Code). In fact, this is a defense raised by appellee in her answer to the complaint, but this defense should properly be the subject of evidence at the trial.

WHEREFORE, the order appealed from is set aside, and the case is remanded to the court below for trial and judgment on the merits. Costs against defendant-appellee.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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