

TESTATE ESTATE OF THE LATE DON VICENTE NOBLE. JUAN NOBLE, PETITIONER-APPELLEE, VS. MARIA S. NOBLE, OPPOSITOR-APPELLANT.*G.R. No. 17742, December 17, 1966*

Ponente: BARRERA, J.

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This is an appeal by Maria S. Noble from an order of the Court of First Instance of Batangas (in Sp. Proc. No. 343), dismissing her opposition to the probate of the purported last will of the late Don Vicente Noble, who died on April 25, 1959.

The proceedings for the probate of the last will of the deceased was instituted by Juan Noble who was named executor therein and who had expressed willingness to assume the trust. This was opposed by Maria S. Noble, who claimed to be an illegitimate (spurious) child of the deceased, born on July 22, 1923 out of an illicit relation between the latter and Lucia Sinag. It was alleged that the will sought to be probated, dated August 25, 1957, was not the last will and testament of the late Don Vicente Noble; that from all indications as shown by a perusal of the alleged last will of the deceased, the same was not executed in accordance with the law, and that the said will was executed through undue influence, mistake and improper pressure on the part of one or some of the beneficiaries, and that petitioner Juan Noble, as then incumbent Assistant General Manager of the NAMARCO, a government corporation, could not properly execute the trust of his office in the estate of the deceased, which consists of real and personal properties located in several provinces. Furthermore, oppositor contended that petitioner has an adverse interest against those immediately interested in the estate, like her. Thus, she prayed that the purported last Will and Testament presented to the court be disallowed; that she be declared the only surviving illegitimate daughter of the deceased; and in case the will sought to be probated be allowed, the institution of heirs made therein be declared null and void; the devises and legacies be declared ineffective for being inofficious; and oppositor be declared entitled to one-half of the entire hereditary estate of the deceased; that instead of petitioner, letters of administration be issued in favor of Mrs. Corazon Apacible de Caña of Taal, Batangas. Simultaneously, she filed a motion asking for permission to present evidence of her alleged filiation with the deceased. This motion was opposed by petitioner Juan Noble, on the ground that the claim was in effect an action for compulsory recognition, and since it was brought after the death of the putative father and when claimant was already of majority age, the right to bring the same has already prescribed pursuant to Article 285 of the new Civil Code.[1] This motion was not immediately resolved. Instead, the court proceeded with the reception of the evidence for the petitioner, during which proceeding, the oppositor was allowed to cross-examine the petitioner's witnesses.

Finding, on the basis of the evidence presented by the petitioner, that the document, Exhibit "D", and its copies, Exhibits "D-1" to "D-12", constitute the last will and testament of the deceased Vicente Noble, and it was executed with all the formal requirements of the law, the aforesaid will was admitted to probate, and Juan Noble was appointed administrator of the estate upon a bond of P30,000.00. It was also ruled that the petition of Maria S. Noble to present proof for the purpose of establishing her filiation, filed after the death of the presumed father,

had been barred by prescription. Consequently, the motion to dismiss the petition of Maria S. Noble was granted. Oppositor appealed.

The main issue presented in this case requiring resolution by this Court is: what is necessary to be established by an illegitimate not natural child in order that he may be entitled to successional rights under Article 887 of the G. R. No. L-17742 new Civil Code, the fact of his Afiliation, or a filiation acknowledged by the putative parent?

While the Civil Code merely provides that "in all cases of illegitimate children, their filiation must be duly proved" (Art. 887), there are cogent reasons, both legal and moral, which require that such filiation must be acknowledged by the presumed parent. For, if the mere fact of the paternity of the supposed father is all that need be proved, that construction of the law would pave the way to unscrupulous individuals taking advantage of the death of the presumed parent who would no longer be in a position to deny the allegations, to present even fictitious claims and expose the life of the deceased to inquiries affecting his character.

But more important than this, the law could not have demanded anything less than proof of an acknowledged filiation. Precisely, under Article 289 of the new Civil Code, the investigation of the paternity or maternity of children mentioned in the two preceding articles (referring to illegitimate not natural children) is specifically permitted only in the circumstances enumerated in Articles 283 and 284 of the same Code. It must be noted that these two articles refer to compulsory recognition or acknowledgment. Hence, since the proof of filiation required in Article 887, necessarily involves the investigation mentioned in Article 289, and this investigation in turn refers to recognition by the putative parent, it follows that the filiation to be proven must be one that is recognized.

In the present case, what is intended to be proved by appellant is simply the supposed naked paternity of the deceased. This is evident from the pertinent allegations of her opposition to the probate of the will, which state:

"2. That the oppositor is in continuous possession of status of a child of the late Don Vicente Noble by the direct acts of the latter and/or his family; and, that the oppositor has in her favor evidence and/or proof that the late Don Vicente Noble is her father."

It may be pointed out that the first sentence does not state that the supposed father had recognized or acknowledged the oppositor as his child. It is merely claimed that she was in continuous possession of the status of a child, an allegation which is a ground for compelling recognition under Article 283 of the new Civil Code and, therefore, presupposes no previous recognition. The last sentence alleges that oppositor has in her favor evidence and/or proof that the late Don Vicente Noble is her father. Again, there is no assertion that she has evidence that the deceased had recognized or acknowledged her as such a child.

In a unanimous decision in the case of *Paulino v. Paulino* (G.R. No. L-15091, Dec. 28, 1961), this Court held:

"it is true that by their motion to dismiss the appellees are deemed to have admitted that the appellant is the illegitimate spurious, not natural, child of the deceased Marcos Paulino. Such an admission, however, does not entitle her to inherit from her alleged putative father. It is necessary to allege that her putative father had acknowledged and recognized her as such. Such acknowledgment is essential and is the basis of her right to inherit. There being no allegation of such acknowledgment the action becomes one to compel recognition which can not be brought after the death of the putative father." (Italics supplied.)

This is authority to the declaration that acknowledgment is the basis of the right of a spurious child to enjoy the successional rights mentioned in Articles 287 and 887 of the new Civil Code. There being no allegation of her recognition or acknowledgement by the alleged father in the petition to establish her filiation, the same, therefore, states no cause of action and the dismissal thereof by the lower court was proper.

Incidentally, the last sentence of the abovequoted portion of the decision in the *Paulino* case constitutes a reversal

of the ruling contained in the majority opinion in the case of Zuzuarregui v. Zuzuaregui (G.R. No. L-10010, Oct. 31, 1957) relied upon by the appellant.

WHEREFORE, the order appealed from is hereby affirmed, with costs against appellant.

SO ORDERED.

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

[1] "ART. 285. The action for the recognition of natural children may be brought only during the lifetime of the presumed parents, except in the following cases:

- (1) If the father or mother died during the minority of the child, in which case the latter may file the action before the expiration of four years from the attainment of his majority;
- (2) If after the death of the father or of the mother a document should appear of which nothing had been heard and in which either or both parents recognize the child. In this case, the action must be commenced within four years from the finding of the document."

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