

INTESTATE OF THE DECEASED PEDRO DE GALA. SINFOROSO DE GALA, PETITIONER AND APPELLEE, VS. GENEROSO DE GALA AND JOSEFA ALABASTRO, OPPONENTS AND APPELLANTS.*G.R. No. 27989, February 08, 1928*

Ponente: STREET, J.

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This is an administration proceeding from the Court of First Instance of the Province of Tayabas whereby the petitioner, Sinforoso de Gala, seeks to enforce the liquidation of the estate of his father, Pedro de Gala, deceased, against Josefa Alabastro, as widow, and Generoso de Gala, a son of the decedent and half-brother of the plaintiff, and to recover from them the hereditary portion which the plaintiff alleges pertains to him in said estate. Opposition was made to the proceeding by the two defendants, and this opposition finally took the form of a motion to exclude the plaintiff from participation in the estate on the ground that he had no heritable interest therein. Upon considering this motion the trial court sustained the plaintiff's right and denied the motion. From this order the defendants appealed.

The first point raised in the appellants' bill of exceptions has reference to a matter of procedure, which, in the view We take of the case, is not necessary to the decision. We therefore provisionally assume that no error was committed by the trial judge in entertaining the motion which gave origin to the appealed order; and we pass at once to the consideration of the question of substantive law involved in the case. The facts are fortunately few and undisputed.

It appears that Pedro de Gala died intestate in the City of Manila on or about July 23, 1919, leaving an estate in the Province of Tayabas and in the City of Manila, consisting of real and personal property. It is stated in the petition that the value of this estate is approximately five hundred thousand pesos (P500,000), with an annual income of about fifty thousand pesos (P50,000). The defendants do not admit that the value of the estate reaches the amount stated, but it is evidently large. The plaintiff, Sinforoso de Gala, is a natural son of Pedro de Gala and was born on June 17, 1879, while Generoso de Gala, one of the defendants herein, is a legitimate son of Pedro de Gala and was born on July 17, 1881. As already stated, the other defendant, Josefa Alabastro, is the widow of Pedro de Gala.

The plaintiff, Sinforoso de Gala, was never recognized as a natural son by the voluntary act of his father, Pedro de Gala, in life; and in order to enforce recognition the plaintiff, on August 29, 1917, instituted an action against his father to compel recognition. While this litigation was pending Pedro de Gala died, and Josefa Alabastro and Generoso de Gala were substituted as defendants. When the cause was finally heard in the Supreme Court, upon appeal from a judgment of the Court of First Instance, which had been unfavorable to the plaintiff, said judgment was reversed and judgment was here entered requiring the defendants to recognize the plaintiff as the natural son of Pedro de Gala (*De Gala vs. De Gala*, 42 Phil., 771). Pursuant to said judgment, and in order to obtain his share in the estate of his deceased father, the present proceeding¹ was begun.

The right of the plaintiff to participate in the estate of his deceased father is based upon articles 134 and 942 in relation with article 840 of the Civil Code, defining the heritable portion of a recognized natural child in case of the concurrence of such heir with one or more legitimate children. In this connection it will be remembered that the right of a recognized natural child to inherit any part of the estate of his father was, in Spanish law, first conferred by the Civil Code, which went into effect in the Philippine Islands on December 8, 1889.

In support of the plaintiff's right to participate in the estate, reference is made to subsection 12 of the transitory provisions of the Civil Code, wherein it is stated, in effect, that the estates of those who die, with or without will, subsequently to the taking effect of the Civil Code, shall be allotted and divided according to the Code, and that the legal portion given by the Code shall be respected. The defendants on the contrary question the heritable right of the plaintiff, basing their contention on No. 1 of the transitory provisions, as interpreted by this court in *Rocha vs. Tuason and Rocha de Despujols* (39 Phil., 976).

The transitory provisions thus brought under discussion are vital to the case and are therefore here reproduced:

"Changes introduced by this Code prejudicial to rights acquired under prior civil law shall not have retroactive effect.

"For the application of the corresponding legislation in cases not expressly determined in the Code, the following rules shall be observed:

"1. Rights originating, according to prior legislation, in acts that occurred under the regimen of such legislation shall be governed thereby, even if the Code regulates them in some other way or does not recognize them. But if the right shall have been declared for the first time in this Code, it shall have effect at once, although the fact originating it may have occurred under the former regimen, whenever it is not prejudicial to any other acquired right of equal origin.

"12. Rights to the inheritance of one who may have died, with or without a will, before this Code goes into effect, shall be governed by prior legislation. The inheritance of those dying afterwards, with or without a will, shall be allotted and divided in accordance with this Code, but in harmony, in so far as the latter permits it, with the testamentary dispositions. Therefore legal portions, betterments, and legacies shall be respected; but their amounts shall be reduced when it is not possible in any other manner to give to each participant in the inheritance the share pertaining to him according to this Code."

From the facts already stated it will be seen that both the natural and the legitimate son of Pedro de Gala were born before the Civil Code went into effect in these Islands; while the death of the father and the enforced judicial recognition of the natural son occurred under the regimen of said Code. It is a tenable assumption that the legal recognition of the plaintiff as a natural son should be considered as effective from the date of the filing of the complaint in 1917; but if not so, it was at least effective from the date of the judgment entered in 1922. For the purposes of this suit the point is unimportant, since it is clear that in any case legal recognition did not occur until long after the Civil Code became effective in these Islands.

As the death of Pedro de Gala and the opening of the succession to his estate occurred under the regimen of the Civil Code, we are of the opinion that No. 12 of the Transitory Provisions is of exact and particular application, and that there is nothing in No. 1 of the same provisions which supplies any obstacle to the application of No. 12 to the facts of this case. In paragraph No. 12 it is expressly declared that the estates of those who die after the Code becomes effective shall be distributed according to the Code and that legal portions shall be respected. This language can have no other meaning than that the hereditary portion given to the recognized natural child by No. 3 of article 134 of the Civil Code shall be recognized as valid, for the circumstance that the plaintiff in this case,

though beginning his action for acknowledgment within the life of his father, did not succeed in obtaining a judgment compelling recognition until after his father was dead cannot be considered in any wise prejudicial to him. That No. 12 of the Transitory Provisions is applicable to the estates of persons dying after the Civil Code went into effect is recognized in decisions of the Supreme Court of Spain dated respectively March 20, 1897, and June 24, 1897; and this doctrine is expounded by Manresa in his comment upon No. 12 as follows:

"Here is the legal reason and at the same time the determination of the scope and meaning of the rule of which we speak. It does not mean that the succession shall be governed by one or the other law according to whether the ancestor may have died before or after the Code went into effect, nor was there any need of making such a statement, because this is already provided for in rule 2, and what is provided for in the present rule by way of exception to what is provided for in the former is that the rights of forced heirs to the inheritance in successions opened after the Civil Code went into effect shall always be governed by the provisions of the latter, to which end the provisions of wills executed before May 1st, 1889, referring to the rights of said heirs, will be adjusted to the provisions of said Code.

"The reason of that is obvious, because in the matter of succession there is no vested right until the succession is opened, that is, till the death of the person whose inheritance is in question, as we have already said on another occasion, and by the present it is made to conform with the precepts of modern legislation, harmonizing it and making it compatible with the transcendent reform effected by the Civil Code.

"The Supreme Court, in its decision of June 24, 1897, giving the same explanation to the present rule, declared that the principle of the irretroactivity of the new law governs only such rights as originated under the regimen of the old law, it being well known that hereditary rights do not vest until the death of the person whose inheritance is in question. Therefore, they cannot be governed by the old law if the death is posterior to the new, which is the very thing we have stated as being the foundation of juridical reason of this precept."

Directing our attention now to No. 1 of the Transitory Provisions, which is supposed by the appellants to be incompatible with the right asserted by the plaintiff, we note first that proposition No. 1 is of a more general nature than proposition No. 12, since the latter provides a particular rule for the distribution of the estates of persons dying after the Code enters into effect, while No. 1 states a general rule for harmonizing certain competing rights. In accordance then with the rule that the particular governs the general, No. 12 must control over No. 1.

It will be noted that, under No. 1, where there are two competing rights, one of which is given for the first time by the Code, the law looks to the acts in which the two competing rights may have originated, and when it is found that the acts which gave origin to the competing rights occurred prior to the adoption of the Code, the right newly recognized in the Code cannot be given effect, because prejudicial to the other right. In the case before us, while it is evident that the successional right of the legitimate son, Generoso de Gala, did not become vested until the death of his father, yet it is also clear that this right is derived from a fact which occurred under law anterior to the Code, namely, the fact that said son was born with the status of legitimate son. It is this fact which originated the successional right of this heir. But with respect to the natural son, Sinforoso de Gala, it is equally obvious that the act that gave origin to his successional right was the enforced judicial recognition resulting from the civil action begun by the plaintiff in 1917. This act occurred under the Code. In this connection it must be remembered that the fact of birth does not give the natural child any heritable right whatever in the estate of his father. This is equally true of both the old and the new law. It is the recognition of the natural child that originates his right of succession, recognized for the first time in the Code. As a consequence the two competing successional rights in this case do not have the same origin in respect to the state of law under which they occurred, since one had its origin in an act occurring under the anterior legislation while the other had its origin in an act occurring under the Code.

Upon analyzing the language of No. 1 of the Transitory Provisions it will be noted that it is only when the two competing rights have their origin in acts occurring under the old regime that the restriction applies which prohibits the right newly granted in the Code from having its due effect. If the acts originating the two rights occur under the Code, or if either occurs under the Code, the Code provision must rule, and the right newly given by it prevails. It is obvious, for instance, that if, in the case before us, the legitimate son had been born after the Code entered into effect, the provisions of the Code would have prevailed; also that the same result would have followed in such case even if the act of recognition of the natural son had occurred prior to the date when the Code took effect.

But it is supposed that the decision of this court in the case of *Rocha vs. Tuason and Rocha de Despujols* (39 Phil., 976), is inconsistent with the right of the plaintiff. This is a mistake. In the case mentioned both the natural and the legitimate child were born under the regimen of the old law, and in addition to this there had been a tacit recognition of the natural child—which was valid under said law—long prior to the date when the Civil Code went into effect. Both the competing rights in that case therefore had their origin in acts which occurred under the earlier regimen; and this circumstance makes the very case for the application of the restriction upon the new right which is expressed in the closing words of No. 1 of the Transitory Provisions. It may be noted that three members of the court dissented in *Rocha vs. Tuason and Rocha de Despujols*, a circumstance which detracts in some measure from the weight of the precedent; and the attorneys for the appellee have drawn in question the correctness of the judgment. Into this controversy it is not necessary to enter. We may observe, however, that the opinion of the court in the case referred to makes no reference to No. 12 of the Transitory Provisions, which if reflectively weighed, might have been found pertinent to the decision.

The order appealed from is in our opinion without error, and it is accordingly affirmed, with costs. So ordered.

Johnson, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

CONCURRING

MALCOLM, J.:

I concur on the ground that the parties having expressly stipulated and admitted that Sinforoso de Gala is a natural son of the deceased Pedro de Gala, and as such entitled to a certain portion of the estate, are now estopped to deny those facts. The appellants cannot be permitted to advance a new theory of the case at this late date intended to demonstrate that Sinforoso de Gala has no right to the inheritance left by Pedro de Gala. Suits should move forward not backward. There must be an end to litigation sometime. Although opposing interests have succeeded in keeping Sinforoso de Gala out of all participation in his inheritance for ten years, they should no longer be allowed to do so. There is no need of the Court deciding any of the nice legal questions presented.

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