

**IN RE ESTATE OF JOSE MACROHON TIAHUA. FRANCISCO BARRIOS,
ADMINISTRATOR AND APPELLEE, VS. EDUARDA ENRIQUEZ ET AL.,
HEIRS AND APPELLANTS. IGNACIO MACROHON, APPELLANT.**

G.R. No. 29789, December 22, 1928

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by Eduarda Enriquez, surviving spouse of the deceased Jose Macrohon Tiahua, and the latter's legitimate children on the one side, and Ignacio Macrohon, his adulterous son, on the other, from an order of the Court of First Instance of Zamboanga, laying down the following conclusions of law: (1) That an adulterous child may be instituted heir within the limits provided by law; (2) that in making Ignacio Macrohon an heir under his will, the testator did not observe the limitations prescribed by law; (3) that the institution of Ignacio Macrohon as heir under the will ought not to be declared absolutely void, but he should so share in the inheritance as not to prejudice the legitime of the other heirs; (4) that as Exhibit 1 deals with certain acts contrary to law, such as not presenting the will to the court, and as some minors took part in it through their guardian without the latter being authorized by the court to enter into the transaction in their behalf, said exhibit cannot bind the parties, nor do the admissions made by them therein constitute estoppel; whereupon it disapproved the scheme of partition presented by the administrator and ordered him to file another in consonance with the conclusions therein laid down.

In support of their appeal, Eduarda Enriquez, widow of Jose Macrohon Tiahua, and the latter's legitimate children, assign the following alleged errors as committed by the trial court in its judgment, to wit:

"Now come the herein surviving spouse, Eduarda Enriquez, and the legitimate heirs of Jose Macrohon Tiahua, deceased, by their undersigned attorney, and allege that under the law and the evidence in the above-entitled proceeding, the lower court committed the following errors:

"I. In not approving the project of distribution of the estate of the herein deceased, Jose Macrohon Tiahua, as submitted by the herein executor, Francisco Barrios.

"II. In holding that the deceased, Jose Macrohon Tiahua, had any right to institute and name his bastard son, Ignacio Macrohon, as an heir in his will, together and in a like manner with his legitimate descendants and heirs.

"III. And in holding that the said bastard son, Ignacio Macrohon, having been so instituted and named in the will of the said Jose Macrohon Tiahua, deceased, said Ignacio Macrohon had a right under the terms of the will and the law, to inherit a portion of the estate of the deceased, to the prejudice of the legitimate descendants and heirs of the said Jose Macrohon Tiahua, deceased."

Ignacio Macrohon, adulterous son of the deceased Jose Macrohon Tiahua in turn, assigns the following alleged errors as committed by the trial court in its judgment, in support of his appeal, to wit:

"Comes now the appellant Ignacio Macrohon, thru the undersigned attorneys, and to this Honorable Court respectfully submits that the lower court erred, as follows:

"1. In holding that its order dated November 10, 1926, did not constitute *res adjudicata* as to question of the right of the appellant Ignacio Macrohon to inherit from his deceased father, Jose Macrohon Tiahua, under and in accordance with the will of the latter.

"2. In not holding that the right of the said Ignacio Macrohon as heir of said deceased cannot, by reason of the doctrine of estoppel, be questioned by the other heirs.

"3. In holding that the manner the institution of the heirs was made in the will of the testator herein falls under, or is the case contemplated by, article 765 of the Civil Code.

"4. In not allowing said Ignacio Macrohon the full share allotted to him in and by the will of the testator, that is, a portion equal to that granted in said will to each of the legitimate children of the deceased, or one-tenth of the whole hereditary estate."

The questions, all of law, raised by the respective parties in their respective appeals, may be reduced to the following:

(1) Did the deceased Jose Macrohon Tiahua have a right to dispose of a part of his estate by will in favor of his adulterous son? (2) If so, has the deceased Jose Macrohon Tiahua infringed the limitations prescribed by the law in putting his adulterous son Ignacio Macrohon on the same footing as his legitimate children by giving him a share equal to that of each of the latter?

As to the first question, while it is true that article 845 of the Civil Code provides that "illegitimate children who have not the status of natural children shall be entitled to support only," and therefore cannot demand anything more of those bound by law to support them, it does not prohibit said illegitimate children from receiving, nor their parents from giving them, something more than support, so long as the legitimate children are not prejudiced. If the law permits a testator to dispose of the free third of his hereditary estate in favor of a stranger (art. 808 of the Civil Code), there is no legal, moral or social reason to prevent him from making over that third to his illegitimate son who has not the status of a natural son. On the contrary, by reason of blood, the son, although illegitimate, has a preferential right over a stranger unless by his behaviour he has become unworthy of such consideration.

For these reasons, we are of opinion and so hold, that Jose Macrohon Tiahua could dispose of the free third of his estate in favor of his adulterous son, Ignacio Macrohon.

With respect to the second question of law, Jose Macrohon Tiahua states the following in his will:

"After all my debts, obligations, and funeral expenses have been paid, I hereby bequeath and devise all my property, real, personal, and mixed, as follows, to wit:

"One-half (1/2) *pro indiviso* of my whole estate to my wife Eduarda Enriquez, and the other half (1/2) in equal parts *pro indiviso* to each of my children, including Fernando Quintas and Julia Quintas, son and daughter, respectively, of my deceased daughter, Gregoria Macrohon, who shall receive the portion corresponding to the share of my said daughter, that is, 1/44 for each of the two."

Included among the children mentioned by the testator in said will, and to whom he gave the one-half of the property corresponding to him from the conjugal partnership, is the herein appellant Ignacio Macrohon, his adulterous son. Dividing this half, that is ten-twentieth parts (10/20), among his nine legitimate children and his adulterous son, Ignacio Macrohon, into equal parts, each of them will be entitled to one-twentieth of the whole estate.

Now then, does the twentieth part corresponding to the share of Ignacio Macrohon impair the legitime corresponding to each of the nine legitimate children?

According to article 808 of the Civil Code, the legitime of legitimate children and descendants consists of two-thirds of the hereditary estate of the father and of the mother, the latter being allowed to dispose of one of said two parts in order to give it as a betterment to their legitimate children or descendants. In the present case the testator has not disposed of any of the two parts forming the legitime in order to give it as betterment to any of his children, and the said legitime therefore remains intact, and according to article 806 of the same Code, is by the law reserved for the forced heirs and the testator cannot dispose of it in any other way.

Hence, the nine legitimate children are entitled to twothirds of said half, or two-sixths of the whole, which, divided equally among them would give to each, two fiftyfourths or one twenty-seventh of the whole estate. When Jose Macrohon Tiahua, therefore, provided in his will that the one-half of the conjugal property belonging to him was to be divided equally among his nine legitimate children and one adulterous son, each to receive one-twentieth part, he did not go beyond the limits provided by law for such cases, because, one-twentieth for each of his legitimate children is more than each of his legitimate children should receive as his legitime, which only amounts to one twenty-seventh. In other words, since Jose Macrohon Tiahua could dispose of the free third of his hereditary estate in favor of his adulterous son, Ignacio Macrohon, and as he only gave a part of said free third to the latter, he did not infringe any legal prohibition and his testamentary disposition to this effect is valid and effective.

Having arrived at these conclusions there is no need to discuss the other questions of law raised by the parties in their respective assignments of error.

By virtue whereof, the order appealed from is modified and it is ordered that the dispositions made by Jose Macrohon Tiahua in his last will and testament be strictly complied with, without special pronouncement of costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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