

MELECIO MADRIDEJO, ASSISTED BY HIS GUARDIAN AD LITEM, PEDRO MADRIDEJO, PLAINTIFF AND APPELLEE, VS. GONZALO DE LEON ET AL. DEFENDANTS AND APPELLANTS.

G.R. No. 32473. October 06, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

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This is a rehearing of the appeal taken by the defendants, Gonzalo de Leon et al. from the judgment of the Court of First Instance of Laguna holding as follows:

"Wherefore, the court finds that Melecio Madridejo is Domingo de Leon's next of kin, and hereby orders the defendants in case No. 5258 to restore and deliver the ownership and possession of the property described in the complaint filed in the aforesaid case, to Melecio Madridejo, costs. So ordered."

In support of their appeal the defendants assign the following alleged errors as committed by the trial court, to wit:

"1. The lower court erred in holding that the marriage between Pedro Madridejo and Flaviana Perez is valid.

"2. The lower court also erred in declaring that solely because of the subsequent marriage of his parents, the appellee Melecio Madridejo, a natural child, was legitimated.

"3. The lower court lastly erred in not rendering judgment in favor of the defendants and appellants."

The relevant facts necessary for the decision of all the questions of fact and of law raised herein are as follows:

Eulogio de Leon and Flaviana Perez, man and wife, had but one child, Domingo de Leon. The wife and son survived Eulogio de Leon, who died in the year 1915. During her widowhood, Flaviana Perez lived with Pedro Madridejo, a bachelor. The registry of births of the municipality of Siniloan, Laguna, shows that on June 1, 1917, a child was born to Pedro Madridejo and Flaviana Perez, which was named Melecio Madridejo, the necessary data being furnished by Pedro Madridejo (Exhibit B). On June 17, 1917, a 24-day old child was christened Melecio Perez at the parish church of Siniloan, Laguna, as a son of Flaviana Perez, no mention being made of the father (Exhibit 2). On July 8, 1920, Flaviana Perez, being at death's door, was married to Pedro Madridejo, a bachelor, 30 years of age, by the parish priest of Siniloan (Exhibit A). She died on the following day, July 9, 1920, leaving Domingo de Leon, her son by Eulogio de Leon, and the plaintiff-appellee Melecio Madridejo, as well as her alleged second husband, Pedro Madridejo. Domingo de Leon died on the 2d of May, 1928.

With regard to the first assignment of error, the mere fact that the parish priest of Siniloan, Laguna, who married Pedro Madridejo and Flaviana Perez, failed to send a copy of the marriage certificate to the municipal secretary

does not invalidate the marriage in articulo mortis, it not appearing that the essential requisites required by law for its validity were lacking in the ceremony, and the forwarding of a copy of the marriage certificate is not one of said essential requisites.

Touching the second assignment of error, there has been no attempt to deny that Melecio Madrideo, the plaintiff-appellee, is the natural son of Pedro Madrideo and Flaviana Perez. The only question to be decided is whether the subsequent marriage of his parents legitimated him.

Article 121 of the Civil Code provides:

"ART. 121. Children shall be considered as legitimated by a subsequent marriage only when they have been acknowledged by the parents before or after the celebration thereof."

According to this legal provision, in order that a subsequent marriage may be effective as a legitimation, the natural children born out of wedlock must have been acknowledged by the parents either before or after its celebration. The Civil Code has established two kinds of acknowledgment: voluntary and compulsory. Article 131 provides for the voluntary acknowledgment by the father or mother as follows:

"Art. 131. The acknowledgment of a natural child must be made in the record of birth, in a will, or in some other public document,"

Article 135 provides for the compulsory acknowledgment by the father, thus :

"Art. 135. The father may be compelled to acknowledge his natural child in the following cases:

"1. When an indisputable paper written by him, expressly acknowledging his paternity, is in existence.

"2. When the child has been in the uninterrupted possession of the status of a natural child of the defendant father, justified by the conduct of the father himself or that of his family.

"In cases of rape, seduction, or abduction, the provisions of the Penal Code with regard to the acknowledgment of the issue, shall be observed."

Article 136 providing for the compulsory acknowledgment by the mother, reads:

"Art. 136. The mother may be compelled to acknowledge her natural child:

"1. When the child is, with respect to the mother, included in any of the cases mentioned in the next preceding article.

"2. When the fact of the birth and the identity of the child are fully proven."

Let us see whether the plaintiff-appellee, Melecio Madrideo, has been acknowledged by his parents Pedro Madrideo and Flaviana Perez, under any of the provisions above quoted.

To begin with the father, no document has been adduced to show that he has voluntarily acknowledged Melecio Madrideo as his son, except the registry certificate of birth, Exhibit B. This, of course, is not the record of birth mentioned in the law, for it lacks the requisites of article 48 of the Law of Civil Registry. It, no doubt, is a public instrument, but it has neither been executed nor signed by Pedro Madrideo, and contains no statement by which he acknowledges Melecio Madrideo to be his son. Although as Pedro Madrideo testified, he furnished the municipal secretary of Siniloan with the necessary data for recording the birth of Melecio Madrideo, and although said official inscribed the data thus given in the civil registry of births. this is not sufficient to bring it under the legal provision. regarding acknowledgment by a public document.

As to the mother, it does not appear that Flavians Perez supplied the data set forth in the civil registry of births Exhibit B, or in the baptismal register, whereof Exhibit 2 is a certificate, and which constitutes final proof only of the baptism, and not of the kinship or parentage of the person baptized (*Adriano vs. De Jesus*, 23 Phil., 350). Furthermore, church registers of baptism are no longer considered public documents (*United States vs. Evangelista*, 29 Phil., 215).

Melecio Madridejo, then, was not voluntarily acknowledged by Pedro Madridejo or Flaviana Perez, either before or after their marriage. Did Pedro Madridejo acknowledge Melecio Madridejo as his son, by compulsion?

The compulsory acknowledgment by the father established in article 135 of the Civil Code, and by the mother according to article 136, requires that the natural child take judicial action against the father or mother, or against the persons setting themselves up as the heirs of both, for the purpose of compelling them to acknowledge him as a natural son through a judgment of the court.

In the instant action brought by Melecio Madridejo not only has he not demanded to be acknowledged as a natural child, which is the condition precedent to establishing his legitimation by the subsequent marriage and his right to the estate of his uterine brother, Domingo de Leon, but he has not even impleaded either his father, Pedro Madridejo, or the heirs of his mother, Flaviana Perez, in order that the court might have authority to make a valid and effective pronouncement of his being a natural child, and to compel them to acknowledge him as such.

The plaintiff-appellee alleges that the second paragraph of the defendants' answer amounts to an admission that he is indeed Flaviana Perez's son, and relieves him of the burden of proving that his mother acknowledged him as a son before her marriage. Such an admission would have been effective if the present action had been brought for the purpose of compelling Flaviana Perez or her heirs to acknowledge the appellee as her son.

In view of the foregoing, it is evident that Melecio Madridejo has not been acknowledged by Pedro Madridejo and Flavians Perez, either voluntarily or by compulsion, before or after their marriage, and therefore said marriage did not legitimate him.

Wherefore, the judgment is reversed, the complaint dismissed, and the defendants absolved with costs against the appellee without prejudice to any right he may have to establish or compel his acknowledgment as the natural son of Pedro Madridejo and Flaviana Perez. So ordered.

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

DISSENTING

Johns, J.:

I dissent and the judgment of the lower court should be affirmed.

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