

HERADIO F. DONADO, PLAINTIFF AND APPELLEE, VS. MERCEDES MONTEHERMOSO AND MIGUEL PEÑARANDA, DEFENDANTS AND APPELLANTS.

G. R. No. 33658. March 24, 1931

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendants Matilde Menendez Donado, Mercedes Montehermoso, and Miguel Peñaranda, from the judgment of the Court of First Instance of Iloilo rendered in civil cases Nos. 7651 (G. R. No. 33658), and 7652 (G. R. No. 33659), the dispositive part of which reads as follows:

"By virtue of the foregoing, the plaintiff Heradio F. Donado is held to be an acknowledged natural child of Gertrudis Donado, by her express and voluntary act, and as such is entitled to participate in the estate of his deceased mother, Gertrudis Donado.

"It is ordered that the property set forth in Annex A of the amended complaint in case No. 7652 be partitioned between the plaintiff and the defendant Mercedes Montehermoso.

"It is ordered that the property set forth in Annex A of the complaint in case No. 7651, and in the supplement filed on the 17th of July, 1929, page 71 of the record, be partitioned between the plaintiff Heradio F. Donado, and the defendants Mercedes Montehermoso and Matilde Menendez.

"It is ordered that defendants Mercedes Montehermoso and Matilde Menendez Donado each render an accounting to the plaintiff of all the products of the property referred to in the aforesaid Annexes, within sixty days from receipt of notice hereof, and thereafter let the case be again set for trial with a view to finally determining what portion of said products shall appertain to the plaintiff.

"And lastly, the defendants Mercedes Montehermoso and Matilde Menendez Donado are ordered to submit to this court within the said period of sixty days from receipt of notice hereof, the proper schemes of partition with reference to the aforesaid property, so that the portion to which the plaintiff is entitled may be adjudicated to him in accordance with article 942 taken in connection with article 840 of the Civil Code; and the scheme of partition presented in conformity with this order shall be set for hearing with the accounts mentioned above.

"No special pronouncement of costs is made.

"So ordered."

In support of their appeal the appellants assign the following alleged errors as committed by the trial court in its judgment, to wit:

- The court erred in its order of March 15, 1929, to strike out paragraph IV of the cross-complaint.
- Having declared in said order that 'the parties agree that the plaintiff's status must be governed by the law in force prior to the enactment of the Civil Code,' the lower court erred in preventing the defendants by said order to strike out the aforesaid paragraph, from showing that, in accordance with said prior law, the plaintiff is not a

natural child.

- The lower court erred in holding that the acknowledgment of a natural child by its father as required by Law 11 of Toro, is not an absolute condition to qualify its natural filiation, but only with regard to its father.

- Having admitted in said order that, under the law prior to the Civil Code, neither the investigation of the paternity nor the revelation of the person by whom a child was begotten, was prohibited in case of separate acknowledgment by the father or the mother, the court below erred in inferring that the mention of the name of such person was deemed never to have been made, and could not produce any effect, and in making the other inference based upon the former premise; that when the acknowledgment was made by the mother alone, without revealing the name of the person by whom she had the child, the investigation of the child's paternity can in no case be made.

- The court having held that under the former law, the separate acknowledgment of a child could only be attacked when the father or the mother was not in a condition to acknowledge the natural child, it also erred in applying to the instant case the interpretation made by Manresa upon article 119 of the Civil Code in connection with articles 130 and 132 thereof.

- The trial court erred in restricting to sacrilegious children the provision of Law 9 of Toro, prohibiting them from inheriting from their mothers.

- The trial court erred in holding in said order that the investigation of paternity with a view to impugning the status of a supposed natural child, cannot be made after the promulgation of the Civil Code, even where the child was born prior thereto.

- The trial court erred in applying the doctrine laid down in *Borres and Barza vs. Municipality of Panay* (42 Phil., 643), to the present case.

- The lower court also erred in using as the basis for its order against paragraph IV of the cross-complaint, saying: that in said paragraph the defendants in violation of the law attempted to investigate the plaintiff's paternity.

- The lower court erred in its theory regarding, the acknowledgment of natural children according to the prior law.

- The lower court erred in holding that the documents Exhibits A, B, C, and D, were duly identified as referring to the plaintiff and establishing his identity.

- The lower court erred in holding that the plaintiff gave his consent, in accordance with article 133 of the said Code, to the acknowledgment alleged to have been made in his favor in Exhibits A, B, C, and D.

- he lower court erred in holding that said documents are the public documents referred to in article 131 of the Civil Code.

- The lower court erred in holding that the plaintiff's right of action has not prescribed.

- The lower court erred in holding that since express acknowledgment is superior to tacit acknowledgment, and inasmuch as the plaintiff had been expressly acknowledged by Gertrudis Donado after the Civil Code went into effect, said acknowledgment must be governed by the provisions of said Code, as well as the plaintiff's alleged rights with regard to the inheritance of said Gertrudis Donado.

- The court also erred in holding that even if the express acknowledgment had not taken place, with the tacit acknowledgment alone, the plaintiff's alleged rights with reference to Gertrudis Donado's inheritance should still be governed by the provisions of the Civil Code, in spite of the fact that he had no capacity to inherit from said Gertrudis Donado, and that Mercedes Montehermoso and Matilde Menendez Donado being legitimate

relatives of the decedent they exclude the plaintiff from her inheritance.

- The court also erred in holding that the doctrine applicable to the case is that laid down in *De Gala vs. De Gala and Alabastro* (51 Phil., 480), and not that enunciated in *Rocha vs. TUason and Rocha de Despujols* (39 Phil., 976).

- The court erred in holding that the latter portion of Rule 1 of the transitory provisions found in the Civil Code is not applicable to the present case, but rule 12 of said transitory provisions.

- The court erred in ordering the partition of the property mentioned in the lists attached to the complaints, the rendition of accounts regarding the products of said property, and the presentation of the scheme of partition of the said property.

- Lastly, the court erred in denying the defendants' motion for a new trial."

The present judicial proceedings originated in two complaints filed by Heradio F. Donado, one of which was against Matilde Menendez Donado et al., and the other against Mercedes Montehermoso et al., praying that he be adjudged entitled to participate in the estate left by his deceased mother Gertrudis Donado, as well as in the property inherited by the latter and the defendant Matilde Menendez Donado from their mother, Marcela Donado, and that the aforementioned defendants, Mercedes Montehermoso and Matilde Menendez Donado, be ordered to render an accounting of the products obtained from said property, and meanwhile to pay said plaintiff his share of such products to which he is entitled by law, upon the ground that he is a natural son voluntarily acknowledged by his deceased mother, Gertrudis Donado, who, at the time of his conception had legal capacity to marry.

The defendants, in answer to the respective complaints, deny that the plaintiff has ever been voluntarily acknowledged by Gertrudis Donado as her natural son, and by way of cross-complaint allege that the said Heradio F. Donado is not a natural son of Gertrudis Donado but an illegitimate son of a priest of the Roman Catholic Apostolic Church ordained in sacris, who, at the time of the conception and birth of said Heradio F. Donado had no legal capacity, and was prevented under the laws then in force, to contract marriage; that his contention that he is a natural child voluntarily acknowledged prejudices considerably the rights and interests of the cross-complainants, for which reason they attack such contention and any acknowledgment, whether tacit or express, made in favor of the cross-defendant, Heradio F. Donado, to the prejudice of the rights of the cross-complainant Mercedes Montehermoso as a legitimate daughter of Gertrudis Donado; and that the action instituted by said plaintiff has already prescribed.

Upon motion of the plaintiff, the lower court ordered that paragraph IV of the cross-complaint be stricken out, upon the ground that it would lead to an investigation of the paternity, which is prohibited by the Civil Code now in force, and that, therefore, the facts therein alleged, even if true, are irrelevant and redundant, and cannot be established by the evidence.

It will be seen that in the two complaints filed by Heradio F. Donado, he does not ask to be declared a natural child voluntarily acknowledged by his deceased mother, Gertrudis Donado, but that, taking such voluntary acknowledgment for granted, he be adjudged entitled to participate in the property left by his aforesaid mother.

The two cases were jointly tried, and the following facts were established, some by agreement of the parties, and others by evidence adduced by the plaintiff, to wit:

Mercedes Montehermoso, one of the defendants, was born in May, 1882, being the only legitimate surviving child of the spouses Bernardo Montehermoso and Gertrudis Donado who were married in the year 1877. Bernardo Montehermoso died on the 9th of April, 1883, and was survived by his wife, Gertrudis Donado. Two or three years after the death of her husband, Gertrudis Donado gave birth to the plaintiff. Gertrudis Donado

lived in the house of her mother, Marcela Donado, but when she was about to give birth to the plaintiff, she left the house on account of some difference, and went to live in another house near the beach. There were other persons living in the house where Gertrudis gave birth to the plaintiff. Gertrudis Donado raised the plaintiff and defrayed the expenses of his education, clothing, and food. The initial F between his name and surname stands for Firmeza, so that his full name is Heradio Firmeza Donado. Gertrudis Donado died about the 25th or 26th of April, 1919.

The plaintiff presented at the trial Exhibit A, a copy of the decision of the Court of First Instance of Antique, rendered on March 9, 1911, making mention of Heradio F. Donado as a minor child of Gertrudis Donado; Exhibits B, C, and D, which are certified copies of the complaints filed in three cases instituted by Gertrudis Donado in the court of the justice of the peace of the municipality of Dao, Province of Antique, all dated April 13, 1918, wherein said Gertrudis Donado alleged that she was the guardian and administratrix of the property of her son, Heradio F. Donado; and Exhibit E, which is a copy of a power of attorney executed by Heradio F. Donado in favor of his mother, Gertrudis Donado, authorizing her to sell certain animals the credentials of which were in his name.

The defendants adduced the following evidence: "Matilde Menendez Donado, Gertrudis Donado's elder sister, had she been permitted to do so, would have testified that she knew the plaintiff to be the son of Fr. Justo Firmeza, with whom she had lived when the latter was a curate in Pototan, and who had presented the plaintiff to his intimate friends as his son, and that Fr. Firmeza told Matilde Menendez several times that Heradio F. Donado was his son. The defendants also offered in evidence through Tomas Lamberto that, had the court permitted the latter, he would have testified that the plaintiff is the son of Fr. Justo Firmeza; that the latter lived maritally with Gertrudis Donado in a house; that Fr. Firmeza, admitted in the presence of several persons, among them, Lamberto, that he was the plaintiff's father; that Fr. Firmeza had been living publicly in Eusebio Muchala's home for two years with Gertrudis Donado, who during that time gave birth to a boy; and in Felix Donato's house, to which Fr. Firmeza and Gertrudis Donado removed, the latter gave birth to a girl. Fr. Gregorio Rosaldez would also have testified, had he been allowed to do so, that Fr. Justo Firmeza was a clergy in the Roman Catholic Apostolic Church prior to the year 1886 and up to the year 1902, when he died."

The first question to decide is that of procedure: Whether the court below erred in ordering paragraph IV of the cross-complaint stricken out.

This will depend upon the question as to whether or not the defendants may attack the acknowledgment with evidence tending to investigate the plaintiff's paternity with a view to showing that he does not possess the status of a natural child.

The defendants argue in the affirmative, contending that inasmuch as the plaintiff, Heradio F. Donado, was born previous to the enactment of the Civil Code, which did not prohibit the investigation of paternity, they are entitled to attack Gertrudis Donado's acknowledgment of the plaintiff as her natural child, even if this would involve an investigation of his paternity.

The fourth paragraph of the transitory provisions of the Civil Code reads as follows:

"4. Actions and rights which accrued before this Code became operative, but which have not been enforced, shall continue to subsist with the same force and effect given them by the prior law, but shall be subject, with respect to their exercise, duration, and the procedure for enforcing them, to the provisions of this Code.

"If official proceedings for the enforcement of the right or action, commenced under the provisions of the prior law should be pending and such proceedings should be different from those prescribed by this Code the parties may elect to make use of either procedure."

According to the transitory provision quoted, the actions which accrued before this Code became operative but which have not been enforced shall continue to subsist with the same force and effect given them by the prior law. The right to impugn the acknowledgment of a natural child is recognized by the law and is intended to protect the rights of those who may be prejudiced by such acknowledgment. Inasmuch as the rights of truly natural children in contemplation of law or of legitimate children are not really threatened or prejudiced in such a way as to need protection, except when a definitive voluntary acknowledgment is made or a judicial declaration sought of the acknowledgment of a child not in enjoyment of the status of a natural child, the right of action to attack it does not accrue and cannot be exercised except from the time the acknowledgment is made either voluntarily or judicially. Since the alleged voluntary acknowledgment of the plaintiff Heradio F. Donado by Gertrudis Donado as her natural son, was made under the Civil Code and in accordance with its provisions, the right of action appertaining to the defendants-appellants Mercedes Montehermoso, the legitimate daughter of Gertrudis Donado, and Matilde Menendez Donado, sister of said Gertrudis Donado, accrued under said Code; it is therefore the provisions of this Code that must govern the exercise of the said defendants' right to impugn the acknowledgment in question, and not the provisions of the prior law, notwithstanding the fact that both the plaintiff Heradio F. Donado and the defendant Mercedes Montehermoso were born under the prior law, for the latter's right of action to impugn the former's acknowledgment in question accrued under the Civil Code. And following the doctrine laid down in *Borres and Barza vs. Municipality of Panay* (42 Phil., 643), which states the rule applicable to the case, the investigation of paternity cannot be permitted except in the cases authorized by law, even for the purpose of attacking the acknowledgment of a natural child. Since the present case is not one of those wherein the law permits the investigation of paternity, the allegations contained in paragraph IV of the cross-complaint are irrelevant and unnecessary, and, therefore, the court of origin did not err in ordering that said paragraph be stricken from the record.

The second procedural question raised by the appellants refers to the prescription of the plaintiff's action.

As stated above, this is not an action for a judicial declaration of a tacit or express acknowledgment of the plaintiff-appellee made by his mother Gertrudis Donado in a private instrument, but of his right to participate in the inheritance of his said mother Gertrudis Donado by virtue of a voluntary acknowledgment made in a public document, that is, an action for the partition of inheritance, for which reason the provisions of article 137 of the Civil Code with reference to the duration of actions to compel the acknowledgment of a natural child, are not applicable.

As an action of partition and recovery of property, that brought by the plaintiff-appellee has not prescribed, inasmuch as Gertrudis Donado, whose inheritance is in question, died on the 25th of April, 1919, and the complaints in the two cases were filed on the 19th of October, 1928, before the expiration of ten years from the time plaintiff's right of action accrued, that is, from the time the defendants took possession of the property left by the late Gertrudis Donado to her death. (Sec. 40, Act No. 190.)

Coming now to the merits of the case, the first question presented is that of the sufficiency of the documents Exhibits A, B, C, and D, as instruments of the acknowledgment established in article 131 in connection with article 129 of the Civil Code, which read as follows:

"ART. 129. A natural child may be acknowledged by the father and mother jointly or by either of them alone.

"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."

There can be no doubt that the documents Exhibits A, B, C, and D, being integral parts of judicial records, and having been subscribed to by a notary public, are public documents. (*Arcenas vs. Laserna*, 27 Phil., 699; *U. S. vs.*

Asensi, 34 Phil., 750.)

But, do these documents constitute the acknowledgment required by article 131 quoted above?

In *Cosio vs. Pili* (10 Phil., 72), the court said:

"* * * and it having been further proven that Tomas Cosio, as cabeza de barangay, entered in his poll list, under his signature, the names of the two brothers as the sons of himself and his wife, the express recognition contained in an official document is then obtained, thus complying with the provisions of article 131 of the Civil Code; * * * ."

Manresa, commenting upon article 131 of the Civil Code with reference to the acknowledgment of a natural child, says the following:

"The terms in which the acknowledgment is made are immaterial, and Goyena's opinion is admissible that, with reference to article 124 of the bill of 1851, the law inclines favorably to an acknowledgment made incidentally or in any terms, so long as the intention to acknowledge sufficiently appears. 'It is enough/ he adds, 'that the testator mention the legatee as his natural child who may thence forth demand his rights as a natural child, even if the will is revoked.'"

According to the cases cited above and Manresa's opinion, acknowledgment made in a public or private document need not be direct, but may even incidentally admit that the person whose name appears in the document in question is the subscriber's child.

The defendant-appellant also discusses the plaintiff-appellee's identity as the child to whom Gertrudis Donado gave birth.

Aside from the statements made by Gertrudis Donado in the public documents Exhibits A, B, C, and D, that Heradio F. Donado is her son, the witnesses Honorio Nuevacubeta and Angel Flores, whose respective mothers were sisters of Gertrudis Donado, testified that they lived in the same house with Gertrudis Donado and saw her give birth to Heradio F. Donado; that Gertrudis Donado nursed and brought up the plaintiff-appellee, whose education she paid for; and that after his marriage he continued to live in his mother's house; and that Gertrudis Donado always considered the plaintiff-appellee as her son.

These statements of the mother, made in public documents, and the testimony of those who were present at the birth and saw the child nursed and reared by the mother, and later living with her, are conclusive evidence of the identity of Heradio F. Donado, the plaintiff-appellee, as Gertrudis Donado's son.

The appellants also contend that as Heradio F. Donado was already of legal age when his mother acknowledged him as her natural child, his consent was necessary to give legal effect to the acknowledgment, according to article 133 of the Civil Code, which provides that a child of legal age shall not be acknowledged without his consent.

Since said article does not prescribe the manner in which the consent should be given, it may be given either expressly or tacitly. The plaintiff, Heradio F. Donado gave his consent impliedly not only when he put in a claim to the property left by his mother, Gertrudis Donado, upon the strength of her express voluntary acknowledgment of him in a public document, but also when he empowered her in Exhibit E to sell certain cattle belonging to him.

As it has been shown that the plaintiff-appellee Heradio F. Donado has been voluntarily acknowledged in a public judicial document by Gertrudis Donado as her natural son; that Gertrudis Donado could marry with or without dispensation at the time of the conception and the birth, being a widow—presuming that the man by whom she was pregnant could also marry her with or without dispensation—and that the issue was therefore a natural child both

according to Law 11 of Toro and according to article 119 of the Civil Code; and that Heradio F. Donado has consented to such acknowledgment, the question arises as to whether the said Heradio F. Donado is entitled to participate in the property left by his deceased mother, Gertrudis Donado, in accordance with the provisions of the Civil Code, or whether he is not entitled to do so, according to Law 9 of Toro, because of the existence of a legitimate daughter, namely, the defendant-appellant, Mercedes Montehermoso.

The appellants contend that Heradio F. Donado is not entitled to participate in the property left by his mother, Gertrudis Donado, because being a natural child born under the law prior to the Civil Code of a woman who also had a legitimate child, he cannot claim the rights granted by article 340 of the Civil Code to legally acknowledged natural children concurring with legitimate children, because that would prejudice the right of the defendant-appellant Mercedes Montehermoso, in accordance with the first paragraph of the transitory provisions of the Civil Code, citing the doctrine laid down by this court in *Rocha vs. Tuason and Rocha de Despujols* (39 Phil., 976).

In said case the natural daughter Maria Eloisa Rocha and the legitimate daughter Maria Rocha de Despujols were born prior to the enforcement of the Civil Code, and in accordance with Law 9 of Toro the former, even if acknowledged as a natural daughter under the prior legislation, would not be entitled to participate in the inheritance of her natural father Jose Gregorio Rocha, but only to support, because he had also left a legitimate daughter.

In the case at bar, while Heradio F. Donado, the natural son of Gertrudis Donado, was born under the prior law, like Mercedes Montehermoso, the legitimate daughter of Gertrudis Donado, nevertheless, the former's acknowledgment by his mother as her natural child took place during the enforcement of the Civil Code, and in accordance with the requisites established thereby.

The right to inherit pertaining to the natural daughter and to the legitimate daughter in the Rocha case were of the same origin, i. e., Law 9 of Toro; whereas the origin of the right to inherit pertaining to the natural son and to the legitimate daughter in the present case is different, the former arising under the Civil Code, by virtue of the acknowledgment made thereunder according to its provisions, and the latter under Law 9 of Toro. Heradio F. Donado, as an acknowledged natural child, is entitled to the portion of the inheritance granted by article 840 of the Civil Code to natural children concurring with legitimate children, although such right is for the first time set forth in the Code, inasmuch as the fact which originated it, that is, the acknowledgment, was made under the present law, and is not derived from the same origin as the right acquired by Mercedes Montehermoso, as a legitimate daughter, which arose under the prior law, by virtue of her birth, and therefore, the doctrine applicable to this case is that laid down in *De Gala vs. De Gala y Alabastro* (51 Phil., 480), which states:

"SUCCESSION RIGHT OF RECOGNIZED NATURAL CHILD TO PARTICIPATE IN ESTATE OF FATHER.—A natural child born before the Civil Code went into effect but recognized after that date is entitled to the hereditary portion of his father's estate given to him by said Code as against a half brother— legitimate son of the same father—who was also born before the Civil Code went into effect."

In that case, Sinf oroso de Gala, a natural son of Pedro de Gala, born under the prior law the same as Generoso de Gala, a legitimate son of said Pedro de Gala, had been judicially declared to be an acknowledged natural son of Pedro de Gala under the Civil Code, and it was this judicial declaration that gave rise to his right to inherit, not the mere implied acknowledgment derived from his possession of the status of a natural child, as the appellants erroneously interpret the doctrine laid down by this court in said De Gala case.

Since the plaintiff-appellee's right to inherit from his mother, Gertrudis Donado, originated in the latter's acknowledgment made in a public document, in accordance with the provisions of the Civil Code, and Gertrudis

Donado having died while said Code was in force, the aforesaid Heradio F. Donado is entitled to the portion of the inheritance assigned to him by the Civil Code, in accordance with transitory provision No. 12 of the said Code, notwithstanding any prejudice to the legitimate daughter Mercedes Montehermoso, inasmuch as the right acquired by her is not of the same origin as that acquired by Heradio F. Donado, in accordance with the first paragraph of the transitory provisions of the Civil Code.

It is contended in the cross-complaint that the property described in the list Exhibit A, attached to the complaint, was inherited by Mercedes Montehermoso from her legitimate father, Bernardo Montehermoso. Since the court below did not receive evidence upon this point to ascertain the source of said property, the partition thereof cannot here be ordered.

Summing up all the conclusions set forth above, we are of opinion and so hold: (1) That the right of action to impugn the voluntary acknowledgment of a natural child only accrues at the moment when such acknowledgment takes place; (2) that the voluntary acknowledgment of a natural child, born under the former law, made separately by a mother under the Civil Code and in accordance with its provisions, cannot be attacked by a legitimate daughter also born under the same prior law, when such action would involve an investigation of the identity of the father who did not acknowledge said child, for under the present law such an inquiry is prohibited; (3) that the action brought by Heradio F. Donado on October 19, 1928, praying that he be adjudged entitled to participate in the inheritance of his mother has not yet prescribed, since his mother died on April 26, 1919, and the ten-year period required by section 40 of the Code of Civil Procedure for the prescription of actions pertaining to real property has not yet elapsed; (4) that inasmuch as Gertrudis Donado died while the Civil Code was in force, Heradio F. Donado's right to her inheritance must be governed by the Civil Code, in accordance with the 12th paragraph of the transitory provisions of said Code, notwithstanding any prejudice to the right acquired by Mercedes Montehermoso as a legitimate daughter of her deceased mother, Gertrudis Donado, inasmuch as the origins of both rights are different, the latter arising under the prior law by virtue of her birth, and the former arising under the Civil Code, the voluntary acknowledgment being made thereunder; and (5) that the cross-complaint alleging that a portion of the property to which Heradio F. Donado lays claim derived from the father of the defendant and appellant, Mercedes Montehermoso, the partition of the property in question cannot be ordered without first obtaining evidence showing the source of said property.

By virtue whereof, the judgment appealed from is affirmed in so far as it adjudges the plaintiff Heradio F. Donado the right to participate in the inheritance of his mother, Gertrudis Donado, and reversed in so far as it orders the partition of said property; and let the cause be remanded to the court of origin for further proceedings, without special pronouncement of costs. So ordered.

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

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