

RUFO MASECAMPO, PLAINTIFF AND APPELLANT, VS. PABLO MASECAMPO, DEFENDANT AND APPELLEE.

G.R. No. 3386. July 18, 1908

Ponente: TORRES, J.

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TORRES, J.:

By a writing dated October 20, 1905, the representative of Rufo Masecampo, of age, alleged that the latter was a resident of the town of Opon, Province of Cebu, and the natural son of Paulina Godinez and Pablo Masecampo, the last named a resident of the city of Cebu; that at the time of his conception his parents were single and there was no impediment to their contracting marriage; that he was born in said town in November, 1879; that when he was 8 or 9 years old his father, the defendant herein, took him to his house where he cared for, nourished, and treated him as his (the defendant's) child, caused him to use his (the defendant's) surname, and also provided for his education from 1890 to 1894; and that during the year last named the plaintiff went to live with his mother, thus quitting his father's side, and concluded by praying that judgment be entered in his favor, compelling the defendant to recognize the plaintiff as his natural son, and granting him any other remedy under the law, with the costs of the proceedings against the defendant.

Upon the defendant, Pablo Masecampo, having been duly summoned, his attorney, Hernandez Junquera, appeared and stated in writing that the said defendant had died in the city of Cebu in the early part of November of said year, for which reason he moved that the case be dismissed.

In a writing dated November 23, 1905, the attorney for the plaintiff asked the court's permission to continue the action against the heirs or the executor of the deceased defendant in view of the fact that the latter had died a few days after the action was brought. By an order of court of the 4th of December, the hearing on the motion filed by Attorney Junquera was continued to the 9th of December, 1905, and the motion of Attorney Clarin was dismissed for the reason that the heirs or executor of the defendant had not been notified thereof.

The hearing of the motion presented by Attorney Junquera, asking that this case be dismissed on account of the death of the defendant, was held on the 9th of December aforesaid. This motion was objected to by Attorney Clarin, and on the 19th of January the court dismissed the motion of the attorney for the plaintiff asking permission to continue the proceedings against the heirs or executors of the deceased, and ordered the case dismissed with the costs against the plaintiff, who, upon receiving notice of the decision, excepted thereto and gave notice of his intention to file a bill of exceptions, which he did, and upon the same having been brought to this court, it has followed the ordinary course.

The action brought by the attorney representing Rufo Masecampo is based on the provisions of articles 135 and 137 of the Civil Code, and the demand for recognition was presented at a time when the alleged father, Pablo Masecampo, was still living. The latter was apprised and was summoned by the sheriff in due form, but he was unable to answer the same within the term allowed by law because of his death.

The subsequent death of the father is not a bar to the action commenced during his lifetime by one who pretended

to be his natural son. It may survive against the executor, administrator, or any other legal representative of the testate or intestate succession.

The death of the defendant as the natural father, while the action was pending, could not have given rise to or require the dismissal of the complaint, according to the provisions of section 119 of the Code of Civil Procedure, which reads as follows:

"Sec. 11.9. Death of party.—In case a party to an action dies while the action is pending, the action shall not abate by reason thereof, but the court on motion may allow the action or proceeding to be continued by or against his executor, administrator, or other legal representative, and the judgment, if it be for the payment of costs and against the executor, administrator, or other legal representative, shall be that he pay in due course of administration: Provided, nevertheless, That if the action is for the recovery of money, debt, or damages against the deceased, it shall be discontinued, and the claim thereafter be prosecuted as provided in section six hundred and eighty-six."

Whatever reasons the executor or legal representative of the deceased's succession had for opposing the recognition claimed, the matter must be discussed and decided in a proper action. The exercise of a lawful right before the courts of justice by means of a formal action, terminating in a final decision, can not lawfully be impeded.

In view of the foregoing considerations, it is our opinion that the order of the court below dated January 19, 1906, dismissing the complaint, should be reversed, and it is held that the plaintiff is entitled to continue the action already commenced by him in accordance with the provisions of section 119 of the Code of Civil Procedure. So ordered.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.

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