

INTESTATE ESTATE OF THE DECEASED MARCELINO LUANZON Y HERRERA (ALIAS ORTEGA). LUISA PUZON, MOVANT AND APPELLEE, VS. DOROTEA ORTEGA, OPPONENT AND APPELLANT.

G. R. No. 34235. March 05, 1931

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The opponent, Dorotea Ortega, appeals to this court from an order issued by the Court of First Instance of Manila in the matter of the intestate proceedings of the late Marcelino Luanzon y Herrera (alias Ortega), the dispositive part of which reads as follows:

"Wherefore, it is held that Dorotea Ortega, not being an acknowledged natural sister of Marcelino Ortega, from whom the estate came, is not entitled to succeed him by intestacy or to intervene in these proceedings for lack of personality."

In support of her appeal, the appellant assigns the following alleged errors as committed by the court below, to wit:

- We believe the lower court erred in holding that the appellant, Dorotea Ortega, is not an acknowledged natural sister of the late Marcelino Ortega.
- We believe likewise that the lower court erred in holding that Dorotea Ortega is not entitled to succeed the late Marcelino Ortega in his intestate estate or to intervene in these proceedings for lack of personality."

The relevant facts necessary to decide the questions raised in this appeal are the following:

On the 24th of April, 1930, Luisa Puzon filed a motion with the Court of First Instance of Manila praying that letters of administration be issued to her over the estate left by her husband Marcelino Luanzon y Herrera (alias Ortega), who had died intestate on March 20, 1930, leaving some property and a minor son by the petitioner, named Guillermo Ortega.

On May 6, 1930, Dorotea Ortega filed a motion alleging that Guillermo Ortega is not a son of the late Marcelino Ortega by the petitioner Luisa Puzon but by another woman named Narcisa Calvan, during the marriage of the deceased to the former and therefore an adulterine, without any right to inherit from his father, and that she is the sole heiress of the decedent, being his sister, praying that she be included as an interested party in the intestate proceedings, and that the National Bank be appointed administrator of the estate.

The petitioner, Luisa Puzon, having objected to said motion, a hearing took place, the movant adducing documentary and parol evidence from which it appears that she is a natural sister of the late Marcelino Ortega (alias Luanzon), (alias Herrera), both of them being children of Antonio Ortega and Simplicia Tuason, now dead, who were not legally married, but who could have contracted matrimony with or without dispensation. But the movant failed to prove that she and her deceased natural brother, Marcelino Ortega, had been acknowledged by their natural parents or by one of them as natural children by any of the methods recognized in law, or by royal concession.

Article 945 of the Civil Code provides the following.

"ART. 945. In default of natural ascendants, natural and legitimated children shall be succeeded by their natural brothers and sisters in accordance with the rules established for legitimate brothers or sisters."

The appellant contends that as the above-quoted article does not mention acknowledgment, this is not required in order that a natural child may inherit from a natural brother, and it is sufficient that the conditions required by law for acknowledgment be present, citing *Cosio vs. Pili* (10 Phil., 72), where it was held that "recognition need not necessarily be an express one nor made in a solemn manner; it suffices if made in a way that will not allow of doubt and that it appear proven by any of the means acknowledged by law," and *Llorente vs. Rodriguez* (3 Phil., 697), where it was held that "the mere proof of the birth of a natural child is sufficient to give it the status of a recognized natural child;" and other cases which cannot be applied to the present one, because the object was either to compel the parent to acknowledge a natural child as such or to obtain a judicial declaration of acknowledgment made by said parent during the lifetime thereof, all the requisites of the law for such acknowledgment being present.

In the present case there is no question of obtaining a judicial declaration of an acknowledgment made by the deceased Antonio Ortega and Simplicia Tuason, alleged natural parents, of the sister and brother, Dorotea Ortega and Marcelino Ortega, as their natural children, but of asking that a natural daughter who does not appear to have been acknowledged be permitted to intervene as an interested party in the intestate proceedings of her natural brother, who does not appear to have been acknowledged, either voluntarily or compulsively, by their common natural parents. Although article 945 of the Civil Code, quoted above, does not mention acknowledgment, such a requirement is understood, since the section under which such article comes is entitled, "Acknowledged Natural Children," and deals with their right to succeed, and has nothing to do with the rights of simple natural children who have not been acknowledged.

For the foregoing considerations, we are of opinion and so hold that while article 945 of the Civil Code makes no mention of acknowledgment in speaking of natural brothers and sisters who are to succeed to natural children in default of natural ascendants, such a requirement is understood, since the section under which said article comes is entitled, "Acknowledged Natural Children," and deals with the rights of succession appertaining to natural children legally acknowledged.

By virtue whereof, and finding no error in the order appealed from, the same is affirmed in its entirety, with costs against the appellant. So ordered.

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

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