VICTOR ALLARDE ET AL., PLAINTIFFS AND APPELLANTS, VS. VALENTIN ABAYA ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 36654. February 27, 1933

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the plaintiffs Victor Allarde et al., from the judgment of the Court of First Instance of Ilocos Sur, the dispositive part of which is as follows:

> "In view of the foregoing, the court decrees:
>
> "(a) That the plaintiff Inocencia Abaya has no right to the property that belonged to Bibiano Abaya, because she is neither a legitimate nor a natural child of the late Adriano Abaya. Inasmuch as Adriano Abaya died before the Civil Code went into effect, the plaintiff Inocencia, if she were an acknowledged natural child of his, would be entitled, under the former law, to not more than one-sixth of the estate of said Adriano Abaya. Neither has she any right to participate, by representation, in the estate left by Juliana Rebullido who, upon her death, left as her sole surviving child, Cornelia Abaya, the mother of the defendants. The latter died on December 10, 1910.
>
> "(b) The property that belonged to Bibiano Abaya has not been identified.
>
> "(c) In the remote case that the plaintiff Inocencia Abaya had some right to the property in question, the action has already prescribed, and the defendants have acquired title to such property by prescription. The plaintiff has been unsuccessfully asking for her alleged share in the property, since she was married on July 4, 1912. The complaint of record was filed on January 15, 1930.
>
> "(d) It is further held that the said property belongs in common to the plaintiffs, the children of Guillermo Abaya, and the defendants.
>
> "It is ordered that the property described in the complaint be partitioned, giving one-sixth to the plaintiffs, the children of Guillermo Abaya; one-sixth to each of the defendants Valentin, Francisco, Maria, and Francisca Abaya; and one-sixth to the defendants, children of the deceased Egecipo Abaya. If the parties can not agree upon an amicable partition within 30 days from the date this decision becomes final, the court will appoint commissioners to effect such partition. The costs shall be charged pro rata. "So ordered."

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

> "1. In holding that it has not been proved that Adriano Abaya recognized Inocencia Abaya as his daughter, and that since Adriano Abaya died a bachelor said Inocencia cannot be held to be his natural daughter.
>
> "2. In holding that there is no evidence clearly determining the lands left by Bibiano Abaya and his wife, Juliana Rebullido.
>
> "3. In holding that the parcels described in the complaint were partly the exclusive property of Dionisio Abaya,

father of the defendants.

"4. In holding that the adjudication by the defendants to the plaintiff Inocencia Abaya of a piece of land, Exhibit C, was not an indubitable act of acknowledgment by the defendants that she is a real coowner of the other parcels of land.

"5. In not finding that the offer by the defendants to give to the plaintiff Inocencia Abaya six more parcels constitutes an indubitable act of acknowledgment by the defend- ants that she is their coowner of the parcels claimed.

"6. In holding that the plaintiff Inocencia Abaya is not entitled to the property that belonged to Bibiano Abaya.

"7. In holding that the property that belonged to Bibiano Abaya has not been identified.

"8. In holding that the action of the plaintiff Inocencia Abaya has prescribed, and that the defendants have acquired the property in question by prescription.

"9. In not permitting the witnesses of the plaintiffs to point out the property in question, its location and source, before a referee appointed by the court.

"10. In not granting the prayer of the complaint.

"11. In denying the motion for new trial."

This case was commenced with a complaint filed by the plaintiffs Victor Allarde, Inocencia Abaya, Sofia Guirnalda, Jesus Abaya, Loreto Abaya, Milagros Abaya, Jose Abaya and Cesareo Abaya, against Valentin Abaya, Francisco Abaya, Maria Abaya, Blas Espiritu, Francisca Abaya, Ester Abaya, Carmen Abaya, Jose Abaya, and Jesus Abaya, praying for the partition of the real property described in the complaint, alleged to have been left upon the death of their common predecessors in interest, Bibiano Abaya and Juliana Rebullido, the plaintiff Inocencia Abaya claiming to be a daughter of the deceased Adriano Abaya, who was the son of the aforesaid Bibiano Abaya and Juliana Rebullido; and for any other remedy that may be just and equitable.

The defendants, answering the complaint, deny all and each of the allegations thereof, and by way of special defense, allege that they are the sole and exclusive owners of said real property, having been in possession thereof by themselves and through their predecessors in interest, Dionisio Abaya and Cornelia Abaya, for over fifty years, admitting, however, that the plaintiffs, who are the children of Guillermo Abaya, are entitled to one-sixth of the property, and his widow, the herein plaintiff, Sofia Guirnalda, to one-sixth of the portion belonging to her children, by way of widow's usufruct, and pray that they be absolved from the complaint, with costs against the plaintiffs.

The following facts were proved without question at the trial:

Bibiano Abaya and Juliana Rebullido were husband and wife. During their marriage they had two children, Adriano and Cornelia, surnamed Abaya. Bibiano Abaya died seventy years ago, about the year 1861, leaving behind his wife Juliana Rebullido, and their two children, Adriano and Cornelia Abaya. Adriano Abaya died single in Daraga, Albay, on July 19, 1889. His mother, Juliana Rebullido, died on May 20, 1909, at the age of 76 years. The plaintiff, Inocencia Abaya, who claims to be a daughter of Adriano Abaya, was 46 years of age when she took the witness stand in the case on June 22, 1931, and was therefore born about the year 1885. Cornelia Abaya, married Dionisio Abaya, with whom she had six children, the defendants herein, named Valentin, Francisco, Maria, Francisca, Egesipo, and Guillermo Abaya. Cornelia Abaya died on December 10, 1910, at the age of 52. Dionisio Abaya died also on August 22, 1927, at the age of 77. Egesipo Abaya, now deceased, is the father of the defendants Ester, Carmen, Jose, and Jesus Abaya. Guillermo Abaya died, survived by his wife, Sofia

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Guirnalda, and their children, the plaintiffs herein, Jesus, Loreto, Milagros, Jose, and Cesareo Abaya.

The plaintiffs attempted to prove the following facts:

That the 91 parcels of land here in litigation were originally the property of the deceased spouses, Bibiano Abaya and Juliana Rebullido, having been acquired by the former by inheritance from his deceased father, Francisco Abaya. Upon the death of Adriano Abaya during the Spanish regime, Inocencia Abaya, then only 3 years old, went to live with her grandmother, Juliana Rebullido, in Candon, Ilocos Sur, and there remained under her care. Juliana Rebullido used to tell Inocencia Abaya that the land in litigation belonged to Bibiano Abaya. After Bibiano Abaya died, Juliana Rebullido being already advanced in years, Dionisio Abaya, the only man in the family, took over in 1902 the management of said parcels of land, and declared them, with the consent of said Juliana Rebullido, in his name for land tax purposes, thereafter paying the tax with its produce, and receiving together with Inocencia Abaya, the produce or rent therefrom. When Inocencia Abaya married Victor Allarde in 1912, she went to live with her husband in Dionisio Abaya's house, and thenceforth received a hundred or more sheaves of rice (manojos de palay), and two piculs of sugar yearly, from the crops of the land in litigation. When Dionisio Abaya died in 1927, the heirs of Bibiano Abaya attempted to make a partition of the said land, adjudicating six small parcels to Inocencia Abaya (Exhibit D), of which the latter accepted but one which she exchanged for a lot with one Mariano Donato, for which purpose the deed Exhibit C was drawn up, wherein Maria, Francisco, Valentin, and Francisca Abaya declared that said parcel was one of those inherited by Inocencia Abaya from her grandparents, Bibiano Abaya and Juliana Rebullido, and gave her absolute power to dispose of it. On March 17, 1927, Dionisio Abaya appointed Victor Allarde his attorney-in-fact to perform whatever acts might be necessary with respect to the lots in question (Exhibit A) and took him to look over the same, pointing out the boundaries of each parcel, and between the two of them they then drew up the list Exhibit B of said lots in preparation for the cadastral hearing which was about to take place. Dionisio Abaya and his brother Victorino Abaya owned in common some lands which they inherited from their parents, which property was attached and acquired by Victorino's creditor named Ladislao Donato. Shortly before Dionisio Abaya's death his relatives, children and brothers called upon Attorney Antonio Aquino to make his will, but said Dionisio Abaya refused to execute any will, saying that he had no property to dispose of, and that all the property registered in his name belonged to his wife Cornelia Abaya. Sofia Guirnalda, widow of Guillermo Abaya, declared that she and her children should be allotted one-sixth of one-half of the property in litigation, and that the whole of the other half should go to Inocencia Abaya. She also stated that she knows of no property acquired by her parents-in-law, Dionisio Abaya and Cornelia Abaya.

In rebuttal, Gerardo M. Bello, the notary who ratified Exhibit A, testified that he read said document to Dionisio Abaya before the latter signed it, and that said Dionisio Abaya was apparently normal in health at that moment.

Victor Allarde denied all the testimony of the defendants concerning Exhibits A and C.

Inocencia Abaya, in turn, denied that Exhibit C was given her out of pity, affirming that it was her share. The defendants, in turn, attempted to prove the following :

Dionisio Abaya left upon his death about 80 parcels of land which are those now in litigation, situated in Candon, Calimuyod, and Santiago, some of which he had bought of one Dacumos, and the others he had inherited from his father Valentin Abaya. He had been in possession of them peacefully and under claim of title, without interruption for over thirty years, receiving and disposing exclusively of the products, and upon his death they passed by inheritance to his children, who likewise enjoyed the fruits thereof. Valentin Abaya, Dionisio's father, had inherited the property from his parents. Dionisio had been paying the land tax upon those parcels, with his own money, from the beginning of the American occupation. Maria Abaya, daughter of Dionisio Abaya, signed

Exhibit C simply because Inocencia Abaya had begged her to do so and out of pity for Inocencia, the land transferred by said deed being in the name of Dionisio Abaya for land tax purposes. Inocencia Abaya had lived under Dionisio Abaya's custody, in his house, from the time she was 3 years old until she married, as did Juliana Rebullido until her death; but neither the one nor the other ever received any share of the products of the land in litigation. Maria Abaya continued to support Inocencia Abaya, even after the latter had married, giving her palay. Exhibit A refers only to a power of attorney executed in favor of Victor Allarde in connection with a judicial case that Dionisio Abaya had against one Leonardo Madarang.

It is admitted by the defendants that plaintiff Inocencia Abaya is a daughter of Adriano Abaya, and lived with her grandmother, Juliana Rebullido and her uncles, Dionisio Abaya and Cornelia Abaya, until she was married to Victor Allarde; and that after her marriage, Dionisio Abaya gave her every year a hundred sheaves (manojos) of palay, and two piculs of sugar, and later offered to give her six parcels of land.

Before entering upon the discussion of the questions raised by the appellants in their assignments of error alleged to have been committed by the trial court in its decision, we shall take up the question of procedure raised by the defendants-appellees in their brief (Behn, Meyer & Co. vs. Campbell & Go Tauco, 11 Phil., 769), as to whether, under the allegations and prayer of the complaint, a judicial pronouncement may be made upon the filiation of the plaintiff, Inocencia Abaya.

On this point, the complaint contains no other allegation than that "Adriano Abaya, now deceased, was survived by a daughter, the plaintiff herein, Inocencia Abaya". The prayer of the complaint does not ask that she be declared to be an acknowledged natural child of the said Adriano Abaya, but it does ask for any other just or equitable remedy for the plaintiffs.

To establish the allegation just quoted, the plaintiff adduced evidence—without objection from the defendants—tending to show that the plaintiff, Inocencia Abaya, is an acknowledged natural child of said Adriano Abaya. Since there in such an allegation, although defective, and there is also evidence tending to show that said Inocencia Abaya is an acknowledged natural child of the aforementioned Adriano Abaya, the lower court could, under the general prayer make a pronouncement and finding upon her filiation and the nature and conditions thereof (sec. 90, Act No. 190; La Insular vs. Jao Oge, 42 Phil., 366; Rosales vs. Reyes and Ordoveza, 25 Phil., 495; 49 Corpus Juris, 176).

Considering now the case upon its merits, the first question to decide, raised in the first assignment of error, is whether or not the court a quo erred in holding that it has not been proved that Adriano Abaya acknowledged Inocencia Abaya as his daughter.

We have seen that Inocencia Abaya was 46 years old when she testified in her own behalf at the hearing of the case, and that therefore, she must have been born about the year 1885; and that Adriano Abaya died on July 19, 1889, before the Civil Code went into effect, that is, on December 8, 1889. The fact of her acknowledgment as a natural child must therefore be determined by the law in force not only at the time of the birth of the alleged natural child, but also of the alleged acknowledgment by her alleged father and of the latter's death, which is Law 11 of the Laws of Toro, reading as follows:

> "And for the purpose of avoiding doubt as to who are natural children, we order and decree that natural children are those, who, at the time of their birth or conception were of fathers who could have married their mothers properly and justly and without dispensation; provided that the father acknowledged such issue as his child, although he would not have had the woman with whom he had had such relations in his house, or any other one. We decree that the child having the qualifications above mentioned is a natural child."

According to the foregoing legal provision, two requisites must be present in order that a child may be considered

natural: (1) that at the time of its birth, the father acknowledging it must have had capacity to contract marriage without dispensation; and (2) that it be acknowledged by the father as his own child.

As to the first requisite, the defendants admit that Adriano Abaya was the father of Inocencia Abaya, and that he died single; therefore, when the latter was born, her father could marry legally without dispensation.

It is contended, however, that it is not sufficient to prove that Adriano Abaya could legally marry without dispensation, but that the woman with whom he had that child, Inocencia Abaya, could also legally marry without dispensation.

This objection brings us to the question whether, after proving who Inocencia Abaya's father was and his capacity to legally contract marriage without dispensation, it is further necessary to prove that the mother of the child also had capacity to legally contract marriage without dispensation at the time said child was born.

This question has already been decided in the negative by the Supreme Court of Spain in a decision dated April 13, 1897, citing another dated October 11, 1882, which lays down the following doctrine:

> "Once the filiation of a person is established with reference to another, who is legally qualified to be his father—the mother being unknown and therefore her qualifications for marriage without dispensation being also unknown—condition, the possibility of its existence at the time of conception or birth of said person being required by Law 11 of Toro, First, Title 5, Book 10 of the Novisima Recopilacion, for his natural filiation, the law presumes, save as otherwise shown by the evidence, in accordance with the doctrine of the Supreme Court, that the parents were qualified for marriage, this being the most general condition, because proof of an exception rests upon the person asserting it, and because unlawful and punishable intercourse can not be presumed."

With reference to the second requisite prescribed by Law 11 of the Laws of Toro in order that a child may be considered natural, to wit, that the father must acknowledge it to be his own child, it is already an established doctrine of the Supreme Court of Spain and of this court, that such acknowledgment need not be express, but may be tacit, so long as it is proved by any of the means prescribed by law. (Llorente vs. Rodriguez, 3 Phil., 697; Buenaventura vs. Urbano, 5 Phil., 1; Capistrano vs. Gabino, 8 Phil., 135; Requejo vs. Rabalo, 34 Phil., 14; Rocha vs. Tuason and Rocha, 39 Phil., 976; Borres and Barza vs. Municipality of Panay, 42 Phil., 643; De Gala vs. De Gala, 42 Phil., 771; Larena and Larena vs. Rubio, 43 Phil., 107.) In the present case, we have seen that the defendants themselves have at all times acknowledged that the plaintiff, Inocencia Abaya, is a daughter of Adriano Abaya, Dionisio Abaya, predecessor in interest of the defendants, having had her under his care from the time she was 3 years old, when he had her brought from Manila to Candon, IIocos Sur, after Adriano Abaya had been appointed Promotor Fiscal of Albay. With respect to Adriano Abaya, it appears that Victor Allarde, husband of Inocencia Abaya, testified that his father-in-law had written from Albay to his mother, Juliana Rebullido, so that she would send for his daughter Inocencia. Although this is hearsay evidence, in the absence of objection and petition to strike it from the record, it becomes admissible by the tacit consent of the defendants. (Diaz vs. U. S., 223 U. S., 442; United States vs. Choa Tong, 22 Phil, 562.) Besides, it is corroborated by the fact that she was brought from Manila with Adriano Abaya's personal effects, when the latter was appointed Promotor Fiscal of Albay. It is not denied that Adriano Abaya wrote to his mother so that she would send for his personal effects, which, in fact, she did; and it is likely that he also asked that his daughter Inocencia Abaya be taken home for the person who brought his personal effects would not have brought her also, had he not been instructed to do so. The preponderance of the evidence shows, therefore, that Adriano Abaya acknowledged Inocencia Abaya as his daughter.

Having reached the conclusion that the plaintiff-appellant, Inocencia Abaya, is an acknowledged natural daughter of the late Adriano Abaya, the question arises whether or not she is entitled to share in the estate of her natural

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grandparents, Bibiano Abaya and Juliana Rebullido.

We have already noted that Bibiano Abaya, father of Adriano Abaya, and natural grandfather of Inocencia Abaya, died about the year 1861, before his aforementioned son Adriano Abaya who died on July 19, 1889, both deaths having occurred before the Civil Code went into effect, that is, on December 8, 1889. Upon the death of his father Bibiano Abaya, Adriano Abaya with his sister, Cornelia Abaya, inherited the decedent's estate, each of them receiving one-half. (Sixth Law of Toro.) As Adriano Abaya died on July 19, 1889, before the Civil Code took effect, the rights of Inocencia Abaya, natural child of Adriano Abaya, to the latter's hereditary estate, must be determined by the former legislation, to wit, laws 8 and 9, title 13, partida 6, according to which in the absence of legitimate children and their legitimate descendants, natural children shall receive by way of inheritance, one-sixth of the estate of their natural father. (Mijares vs. Nery, 3 Phil., 195.)

As for Juliana Rebullido, it may also be noted that she died on May 20, 1909, after the death of her son, Adriano Abaya. The question to be decided now is whether Inocencia Abaya, as an acknowledged natural daughter of Adriano Abaya, is entitled to inherit from natural grandmother by representation. In the case of Centeno vs. Centeno (52 Phil., 322), this court laid down the following doctrine:

> "3. Id.; ACKNOWLEDGED NATURAL CHILDREN; THEIR SHARE IN THEIR PARENT'S HEREDITARY ESTATE.—Articles 843 and 941 specifically provide that the portion corresponding to natural children in the hereditary estate of the parents who acknowledged them, is transmitted upon the death of these children to their legitimate or natural descendants. The latter's right, however, to represent their natural father in the hereditary estate of their grandfather is not admitted, because they are not called by law to participate in their grandfather's estate. (Decision of Supreme Court of Spain, June 16, 1918.)"

According to this doctrine, the plaintiff-appellant Inocencia Abaya, not being a legitimate or legitimated child, although she is an acknowledged natural child of Adriano Abaya, has no right to inherit from her grandmother Juliana Rebullido by representation.

The next question to decide is whether the right of action of Inocencia Abaya to ask for the partition of the estate left by her natural father, Adriano Abaya, and which was inherited from the latter's legitimate father, Bibiano Abaya, has prescribed.

The defendants admit that from the time Inocencia Abaya married Victor Allarde, she received every year 100 sheaves (manojos) of palay and two piculs of sugar from Dionisio Abaya until the latter's death in the year 1927; but they contend that Dionisio Abaya gave the palay and the sugar to Inocencia Abaya out of charity. The defendants Maria, Francisco, Valentin, and Francisca Abaya admit in the deed Exhibit C, that Inocencia Abaya was entitled to participate in certain real property left by the spouses Bibiano Abaya and Juliana Rebullido. If this is1 true, it was not charity that led Dionisio Abaya to give the palay and sugar to his niece, Inocencia Abaya, but his duty as administrator of the estates of said deceased spouses, in which she had a right to participate by inheritance from her natural father, Adriano Abaya. The defendants, then, cannot maintain that they acquired the ownership by themselves and through their predecessor in interest, Dionisio Abaya, of an undivided portion of said estate corresponding to Adriano Abaya by way of inheritance from his father, Bibiano Abaya, as to which Inocencia Abaya, as the natural child of said Adriano Abaya, is entitled to the extent of one-sixth, because said right having been acknowledged by them, their possession is not adverse and therefore does not satisfy one of the essential requisites of prescription according to section 41 of the Code of Civil Procedure.

Inasmuch as the plaintiff and appellant, Inocencia Abaya, as the acknowledged natural daughter of Adriano Abaya, is not entitled to participate in more than one-sixth of the hereditary portion allotted to her deceased natural father, Adriano Abaya, from the estate left by her natural grandfather, Bibiano Abaya, it is necessary to

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determine the hereditary portion of said Adriano Abaya. The evidence of the plaintiffs-appellants tended to show that the lands mentioned in the complaint are conjugal property of the deceased spouses Bibiano Abaya and Juliana Rebullido, but they were not permitted to identify them physically in the presence of arbiters, for which reason, the record does not furnish clear data as to which of the lands belong to the deceased spouses and which portion corresponded to Adriano Abaya, wherein the plaintiff-appellant is entitled to participate in the proportion of one-sixth.

In view of the foregoing, we are of opinion and hold: (1) That parole hearsay evidence may be taken into consideration on the ground of tacit consent, if not objected to, or if no petition to strike it from the record was made. (Diaz vs. U. S., 223 U. S., 442; United States vs. Choa Tong, 22 Phil., 562); (2) that the fact that a father has written to his mother so that she would send for his daughter is sufficient proof of acknowledgment of such daughter under the Law of Toro; (3) once it has been proved that a father has acknowledged a daughter of his, begotten when he could legally marry without dispensation, there is no need to prove that the woman with whom he had the child could also legally marry without dispensation, for such capacity is presumed by law, in default of evidence to the contrary (Decision of the Supreme Court of Spain, April 13, 1897; In re Estate of Enriquez and Reyes, 29 Phil., 167; Borres and Barza vs. Municipality of Panay, 42 Phil., 643); (4) that acknowledged natural children born before the Civil Code went into effect, of parents who died while the former law was in force without leaving any legitimate descendants or ascendants, are only entitled to inherit one-sixth of the estate of such parents (Mijares vs. Nery, 3 Phil., 195); and (5) that acknowledged natural children, born before or after the Civil Code went into effect, have no right to inherit by representation of their natural parents (arts. 843 and 941, Civil Code; Centeno vs. Centeno, 52 Phil., 322).

Wherefore, the judgment appealed from is reversed, and it is held that plaintiff-appellant Inocencia Abaya is the acknowledged natural child of Adriano Abaya, with the right to one-sixth of the latter's share in the estate left by his father, Bibiano Abaya. Let the case be remanded to the court of origin, in order that said Inocencia Abaya may identify the property left by said decedent Bibiano Abaya and inherited by his son Adriano Abaya, also deceased, with costs against the appellees. So ordered.

Villamor, Hull, Vickers, and Imperial, JJ., concur.

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