

MARIA COSIO ET. AL., PLAINTIFFS AND APPELLANTS, VS. ANTONINO AND JESUS PILI, DEFENDANTS AND APPELLEES.*G.R. No. 3720. February 03, 1908*

Ponente: TORRES, J.

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On the 9th of August, 1905, the attorney for Maria Cosio filed a petition requesting that letters of administration for the property of the late Tomas Cosio, a resident of the capital of La Laguna Province who died on the 1st of October, 1900, according to the burial certificate attached to the record marked as "Exhibit 1," be issued under the provisions of section 642 of the Code of Civil Procedure, and that Ignacio Pamilacan be appointed administrator under bond, and Marcelino Valdes and Gaudencio Tesoro commissioners to appraise and hear all claims in connection therewith, in view of the fact that deceased had no ascendants or descendants, but only collateral heirs, and because while in life he had not executed any will. At the time of his death the deceased owned real property which consisted of three parcels of land, 'situated within the territory of Santa Cruz, and two carabaos, the total value of which amounted to about P2,000 and yielded about P400 per annum; the deceased had inherited said property from his father, Celedonio Cosio. The petition further stated that the nearest relatives of the deceased were his sisters—viz, the petitioner and Elena Cosio—and his two nieces, Guadalupe and Juana Vazquez y Salva.

Upon bond having been furnished, the court ordered on the 10th of the said month of August that letters of administration be issued to Ignacio Pamilacan as administrator, and the aforementioned Valdes and Tesoro were appointed commissioners of appraisal; at folio 9 of the record appears an inventory of the property left by the deceased Tomas Cosio.

By a writing dated August 23, 1905, Elena Cosio, sister to the deceased, stated that she neither could nor did she claim to be heir to her late brother, Tomas Cosio, because the latter left children had with his wife, Leocadia Pili, also deceased, said children being named Antonino and Jesus Cosio; she therefore asked to cause it to be made of record that she had no claim or interest whatever in the inheritance of Tomas Cosio, notwithstanding the statement made by her sister, Maria Cosio, to which she did not conform.

Antonino and Jesus Cosio, both of age, also filed a petition stating that they were the natural sons', duly acknowledged and legitimized by subsequent marriage, of Tomas Cosio and Leocadia Pili, both deceased, and that for said reason the statement of Maria Cosio to the effect that their late father left no direct descendants but only collateral relatives was false, because the petitioners were the only ones entitled to the intestate inheritance of their father, and, citing the first paragraph of section 782 of the Code of Civil Procedure, asked that they be granted a hearing for the taking of the evidence that they proposed to produce in support of their respective rights, and that they be declared the only heirs of Tomas Gosio, deceased, and that, after all the formalities of the law should have been complied with, the administrator, Pamilacan, or his successor, deliver to them all the property of the deceased which might be in his possession.

On the 25th of August the attorney for Maria Cosio moved that the petition of the opposition be dismissed and

stricken from the record, with costs against the petitioners, the same being extemporaneous and improperly included in the proceedings in violation of the provisions of the Code of Civil Procedure; that the opponents were called plaintiffs when they had instituted no complaint, nor was the defendant summoned, for which reason he protested against the same. The attorney for the aforesaid brothers moved that a day be appointed for the hearing¹ on the declaration of heirs, a question that should be closed within the term of six months, and by another petition dated January 10, 1906, he set forth that it was more advisable to have the letter of administration made out to the petitioners or to any one of them, because Ignacio Pamilacan was not related by blood, but only distantly by marriage while they would be declared by the court to be the heirs; besides, the appointment of the said Pamilacan was causing the intestate estate and the parties concerned unnecessary expense; for which reasons the said administrator should be removed, the petitioners offering to furnish bond as required by law.

On the 2d of August, 1906, Juana Salva Cosio and Irene Gregorio Cosio presented a petition asking that they, together with the other nieces, be declared as lawful heirs entitled to the property of the late Cosio, because he had left no son or daughter but only a sister and nieces; there upon a day was appointed for the taking of evidence, and several witnesses offered by both parties were examined, the documents produced by them being read into the record. The court rendered a decision on the 18th of October, 1906, declaring the brothers Antonino and Jesus Cosio to be the sons legitimized by the subsequent marriage of Tomas Cosio with their mother, Leocadia Pili, holding them to be the sole heirs of the said Tomas Cosio, and, as such, entitled to the possession of the property of said deceased to the exclusion of the other relatives.

The administrator of the intestate estate, upon learning of the above decision, moved for a new trial on the ground of newly discovered evidence. The motion was overruled by the court, to which ruling the petitioner excepted; the appeal filed in another writing was approved by the court and ordered to be forwarded to the Supreme Court upon bond being furnished by the appellant, to the giving of which, however, the so-called nieces of the deceased objected.

The main question in this litigation is whether or not the above-mentioned Antonino and Jesus were really natural children, born at the time when Tomas Cosio and Leocadia Pili, now deceased, being single and free to marry each other, lived together as husband and wife; because should this be the case, it is unquestionable that they, by the subsequent marriage of their parents, should be considered as children legitimized by subsequent marriage, and none of the collateral relatives of the deceased Tomas Cosio would be entitled to inherit his estate.

It is to be noticed that the birth of the said Antonino and Jesus took place many years before the Civil Code, which went into force on December 7, 1889, was promulgated in these Islands, and, therefore, the rights acquired by them under the shelter of the former legislation are regulated by and must be judged in accordance therewith; the provisions of the said Civil Code can not be applied retroactively in so far as they are prejudicial to them. (Rule 1 of the transitory instructions therefor.)

Although the question herein refers solely to the intestate estate of Tomas Cosio, it should be taken into account that it is of record, and the judge has so considered it in his decision, that Leocadia Pili was unmarried when she gave birth, on the 14th of May, 1879, to her natural son Antonino, and on the 17th of June, 1882, to her other son Jesus; that for a number of years prior to the birth of her said children she was living with Tomas Cosio, as his wife, in the barrio of San Juan, Santa Cruz, the capital of La Laguna, and that after living together during long years they were married on the 27th of May, 1889. It is inferred from these facts, that the two sons born while they lived together as husband and wife had the condition of natural children afterwards legitimized by subsequent marriage. (Law I, Title XIII, Partida IV, and articles 119 et seq. of the Civil Code.)

The certainty and reality of the natural filiation as the fundamental basis for the rights of a child born out of

wedlock requires the recognition by his parents, which, according to Law XI of Toro, now Law I, Title V, Book X of the Novisima Recopilacion, is its conditional complement.

Said recognition need not be made in a solemn or formal manner; it suffices if made in a way that will leave no room for doubt, and that may be proven by any of the means prescribed by law in order that the courts may declare the filiation of the child and that he may be considered as recognized by his natural father, according to the uniform rule established by the supreme court of Spain with respect to the application and construction of said Law XI of Toro, in its decisions of October 8, 1853, June 13, 1862, January 10, 1874, and November 10, 1886, the last of which establishes the doctrine that "the proof of the recognition of a natural child by his father is subject to the means recognized by law, one of which is the testimony of witnesses, the probatory force of which must be considered by the court in accordance with the rules of sound criticism, taking into account the fundamental reasons adduced and the circumstances which surround them."

The record shows that Tomas Cosio, while living with his wife, complied with the duties of a father in respect to the children had with the latter from the time of their respective and successive births to that of his death; he kept them with the mother in his own house, fed, cared for, and treated them as such children; he introduced them everywhere and to his relatives especially, telling them that he wished them to treat the aforesaid Antonino and Jesus as their relatives, because they were his children. Such conduct on the part of the father unquestionably argues the tacit or implicit recognition demanded by the Law of Toro and the jurisprudence of the courts; 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; therefore, there can be no question as to the right of the above-named brothers, as natural children recognized by their father and later on legitimized by the subsequent marriage of the latter to their mother, to inherit their father's estate. (Arts. 121, 122, Civil Code.)

In the jurisprudence of the courts of these Islands the doctrine that the recognition of a natural child need not necessarily be an express one, but that a tacit recognition satisfactorily shown in the record is sufficient, has been observed and followed. (No. 1362, Llorente vs. Bodriguess.[1]) The tacit and express recognition granted freely and spontaneously, by successive acts performed in the course of more than twenty years, to the brothers Antonino and Jesus by their father, Tomas Cosio, carries with it the natural presumption that they were really the natural children of the latter; and in order to overcome the same, decided and competent proof to the contrary is indispensable; such proof has not, however, been produced to counteract the probatory value of the testimony of the witnesses for the said two brothers, one of whom is Maria de los Reyes, widow of Eladio Cosio, who, according to his certificate of baptism, is the natural son of Francisca Anonuevo, the mother of Tomas Cosio, and, therefore, a natural brother to the latter.

The mere insinuation that the two aforesaid brothers, Antonino and Jesus, are the children of a father other than the one who cared for them from birth, fed and kept them in his own house, treated and considered them as his children, and was publicly known as their father, is not sufficient, in the absence of evidence to the contrary, to overcome the conviction as to the real filiation of said children, and of the paternity of Tomas Cosio.

As to the error attributed to the judge for having heard and decided in special proceedings the claims of the sons of the deceased, we do not consider that such allegation is well founded, because when challenging a will, the opposition to the authentication thereof, and every claim presented by any heir or party in interest in a testate or intestate estate must be acted upon in special proceedings, and not in an action separate therefrom; and the same judge considering the hearing on the administration of the estate shall have jurisdiction in connection with the question raised, inasmuch as he will, in due course, be called upon to distribute and adjudicate the property to the

parties in interest, as will be found in Part II of the Code of Civil Procedure, at least, in section 551 et seq.

For the reasons above set forth and considering that the judgment appealed from together with the resolution of November 9, 1906, is in accordance with the law, the same is hereby affirmed with costs against the appellants. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, Wiliard, and Tracey, JJ., concur.

[1] 3 Phil. Rep., 697.

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