

JOSEFA AND CARMEN CASTELLTORT, PETITIONERS AND APPELLANTS, VS. BALBINA PASION, OPPOSITOR AND APPELLEE.

G.R. No. 45264. May 26, 1939

Ponente: MORAN, J.

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MORAN, J.:

On February 19, 1934, petitioner herein, Rosario de Leon, instituted the present proceeding seeking to be declared universal heir and appointed administratrix of the properties left by her nephew, Jose F. de Leon, a minor who died intestate without spouse, descendants or collateral relatives other than said petitioner. Balbina Pasion, claiming to be the natural mother of said deceased, interposed an opposition and asserted for herself the right sought by the petitioner. The trial court adjudged the oppositor universal heir of the deceased minor, and from the judgment thus rendered, petitioner took the instant appeal.

The case rests basically upon the legal sufficiency or insufficiency of the acknowledgment made by the oppositor-appellee herein of the natural filiation of the deceased minor.

The pertinent provisions of the Civil Code are:

"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"

"Art. 133. * * * Whenever the acknowledgment of a minor is not made in a record of birth or in a will, judicial approval (after hearing the prosecuting attorney) shall be necessary."

Acknowledgment has not been made in a record of birth, which has never existed in this country, nor in a will, but is alleged to have been made in public documents with judicial approval. In *Legare vs. Cuerques* (34 Phil., 221), and *Samson vs. Corrales Tan* (48 Phil., 401), we expressed the view that when an acknowledgment is made in a public document, judicial approval in a proceeding for that purpose is necessary. In the instant case, there is a substantial compliance with the requirements of the law.

In the intestate proceedings (Civil Case No. 33553 of the Court of First Instance of Manila) of the late Jose G. de Leon y Tanguco, natural father of the deceased minor, and in the guardianship proceedings (Civil Case No. 33861 of the Court of First Instance of Manila) instituted in behalf of the minor by the now appellee herein, mother and son, in numerous records thereof consisting of formal pleadings, exhibits, affidavits and testimonial evidence, have, on repeated occasions and in most instances under oath, expressly and mutually recognized each other as such. This status has also been expressly and under oath recognized by present appellant herein in said proceedings, and the court, in the course of and in the final adjudication of those proceedings, has actually, expressly and solemnly recognized such status. Since such records are public documents (*Arcenas and Arcenas vs. Laserna*, 27 Phil., 599; *U. S. vs. Asensi*, 34 Phil., 750; *Donado vs. Menendez Donado*, 55 Phil, 861), we are of the opinion and so hold that the acknowledgment thus made therein, mutually and indubitably, by mother and son, with due recognition thereof by the appellant and by the court, satisfies substantially the requirements of articles 131 and 133 of the Civil Code, *supra*. (See *Donado vs. Menendez Donado*, *supra*.) There was indeed, strictly

speaking, no judicial approval given in a proceeding instituted for that purpose. However, considering the judicial recognition made under the peculiar circumstances of the proceedings in which it was given and wherein the status in question was a relevant fact, and the absence of any reason whatsoever why the acknowledgment should not be approved if judicially inquired into in a proceeding directly instituted for that purpose, we believe that, in the interest of justice, such judicial recognition may be regarded as equivalent to and having the same effect as the formal judicial approval required by law.

Judgment is affirmed, with costs against the appellant.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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