

INTESTATE OF THE DECEASED WILLIAM GITT. MIKE GITT AND VIOLETA GITT, APPLICANTS AND APPELLEES, VS. KATHLEEN GRACE GITT, OPPOSITOR AND APPELLANT.

G.R. No. 45829. July 15, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

This case was instituted in the court of its origin to ask that Violeta Gitt and Mike Gitt be declared the sole heirs of the deceased William Gitt, who died on October 24, 1916, in Sta. Clara County, California, United States, or in Hawaii, this particular fact being unascertainable because the court, in declaring that he died in the first of said two places, merely based its finding on the allegations of one of the parties, which are not supported by any evidence whatsoever. Violeta Gitt and her brother Mike Gitt, who institutes the case, claimed to be acknowledged natural children of the above-named deceased and that, as such, they should be declared the sole heirs thereof, there being no others having a better right than they to inherit the estate left by him. The estate left by the deceased upon his death is entirely personal property, it consists merely in the 1,050 shares of the Benguet Consolidated Mining Company, of the par value of P1,500, to which he had subscribed during his lifetime.

Upon the institution of the case, as already stated, Kathleen Grace Gitt appeared therein to state that she was the widow of William Gitt, alleging that both of them had been married and had lived together as husband and wife until his death in the territory of Hawaii on the above-stated date, October 24, 1916; that the court of said territory appointed her administratrix of the estate left by him, and that it later declared her his sole heir. In passing she denied that Violeta Gitt and Mike Gitt are acknowledged children of said deceased and later asked for the denial of their petition that they be declared the sole heirs to his estate.

After the trial of the case, in view of the incompatible allegations of the parties, the following facts were established: William Gitt and Juana Malayto, both single, lived as husband and wife for about six years, notwithstanding the fact that they were unmarried. Juana Malayto gave birth to Mike Gitt and Violeta Gitt in the years 1905 and 1907, respectively. It is stated in Violeta Gitt's birth certificate (Exhibit A) that her father is one named William Get, of California, United States. It does not appear, however, that said document or the original thereof has been subscribed by said William Get or by the deceased William Gitt.

On January 30, 1908, William Gitt, who was then 34 years of age, married Kathleen Grace Gitt, without the knowledge of Juana Malayto. The latter, upon learning said fact, broke with him and went to live with her parents. From the time of Mike's and his sister Violeta's birth, William Gitt, in spite of the fact that he had married Kathleen Grace Gitt, supported them and gave them money for their and their mother Juana Malayto's needs, up to the year 1913. This was done by him while he was in the Philippines, and after he had left for the United States to cure himself of the sickness which afflicted him, he continued to do likewise, although no longer personally, but through his partner in business, Tobias Wright. All the money given them by him through this means amounted to P1,500.

The trial court, upon the foregoing facts, decided the case in favor of Mike Gitt and his sister Violeta Gitt, declaring them to be natural children of the deceased William Gitt and adjudicating to them, as heirs of said deceased, his entire estate. Kathleen Grace Gitt appealed from said judgment, attributing to the court the various errors assigned by her in her brief.

It is noteworthy that Mike's and his sister Violeta's petition to be declared heirs of William Gitt was filed only on June 4, 1936. Kathleen Grace Gitt's pleading seeking, in turn, to be declared the heiress of said deceased and opposing the petition of Mike and Violeta Gitt, was filed on August 15, 1936. It may at once be stated that on June 4, 1936, Mike Gitt was 31 years, 6 months and 4 days old, and Violeta Gitt, 29 years, 4 months and 12 days old. Upon the death of William Gitt, Mike Gitt was 11 years, 10 months and 24 days old, and Violeta Gitt, 9 years, 9 months and 2 days old. Mike Gitt became of age in 1926, and Violeta Gitt, in 1928. Consequently, taking into consideration the provisions of law on the matter, the action which they had to bring for the purpose of asking that they be declared acknowledged natural children of William Gitt, a necessary and indispensable condition in their case in order that they could succeed him, upon his death, in the possession and enjoyment of his estate and rights, should have been commenced, by Mike, before the expiration of the four years counted from the year 1926, when he became of age, that is, on or before June 4, 1930, and by Violeta, before the lapse of the four years counted from January 22, 1928, on which she, in turn, attained her majority, that is, on or before January 22, 1932. This is so, because the action for the acknowledgment of natural children, after the death of the father or of the mother by whom it is sought to have them acknowledged, prescribes upon the expiration of the first four years next following the attainment of their majority. On this point, article 137 of the Civil Code provides:

"Actions for the acknowledgment of natural children may be commenced only during the lifetime of the putative parents except in the following cases:

"1. If the father or mother died during the minority of the child, in which case the latter must commence the action within the four years next following the attainment of its majority.

"2. If, after the death of the father or mother, some document, before unknown, should be discovered in which the child is expressly acknowledged.

"In this case the action must be commenced within the six months next following the discovery of such document."

Paragraph 1 of the above-cited article is absolutely on all fours with the case of the two brother and sister in question, the second paragraph not being so, because in the record there is not the least mention or even any insinuation that they commenced their action for having discovered a document, before unknown to them, in which William Gitt expressly acknowledged them as his natural children. On the other hand, they have not sought to be declared natural children. They simply took for granted that they are so. For this reason, all that they asked for and continue to ask for is that they be declared heirs of said deceased. But, granting now that their petition to be declared heirs implies, or necessarily carries with it the petition to be declared acknowledged natural children of said deceased, there is no way tenable in law whereby they may be considered as such.

Article 131 of the Civil Code clearly provides that the acknowledgment of a natural child should be made in the record of birth, in a will, or in some other public document. It certainly does not appear that William Gitt has ever acknowledged said brother and sister in the record of birth, in a will, for he made none, or in any other document of public character. And it avails nothing to state that under article 135 of the Civil Code, William Gitt or his heirs are obliged to acknowledge both Mike and his sister Violeta as the former's natural children, because said article refers exclusively to cases in which acknowledgment is sought during the lifetime of the father by whom it is desired to be made. There should be no confusion in terms: one thing is the acknowledgment of a child by the

father, made voluntarily; another is the action that should be instituted by the child against the father to compel the latter to acknowledge him as a natural child. For this reason, said articles 131 and 135 have been inserted separately in the Civil Code, because each one answers and has been intended for a distinct purpose.

The continuous possession of the status of a natural child, tolerated by his father and justified by direct acts of the latter, does not, of itself, constitute evidence of acknowledgment that he is so in effect. It is, at most, a good evidence to compel the father to acknowledge him. However, the action for this purpose should be brought within the periods of time prescribed in article 137, that is, four years in the case of both Mike and his sister Violeta.

To counteract Kathleen Grace Gitt's action, Mike Gitt and his sister Violeta alleged that the former's claim, based upon the allegation that their action for acknowledgment as natural children of William Gitt does not lie on the ground that they allowed the period to elapse without taking any action, is untenable because she failed to plead the defense of prescription. She had no reason to plead such defense because at no time prior to the institution of this case in the lower court did said brother and sister claim to be acknowledged natural children of the deceased. Neither did they ask the other heirs of the deceased, in said case, to recognize them as such. On the other hand, it was absolutely incumbent on them and at the same time their duty to take the necessary steps for their acknowledgment by the above-stated legal means, before the expiration of the first four years from their age of majority, so that, upon their failure to take such steps for said purpose, as they failed in this case, they could not be recognized. Their right to be acknowledged,—as the law so stated, and is precisely the first thing for them to prove in order to enforce such right, if any,—is based on the ground, as important as the continuous possession of the status of natural children and of having been expressly acknowledged as such in a document not discovered prior to the death of their alleged natural father, which is not the case herein, that they exercised it within the above-stated period of four years.

By virtue of the foregoing considerations, this court holds that the lower court really erred in declaring Mike Gitt and his sister Violeta Gitt heirs of William Gitt, and in declaring that both are acknowledged natural children of said deceased.

This court refrains from passing upon the question whether or not in this jurisdiction it may be declared who are the heirs of William Gitt, because the records are silent as to the nationality of said deceased. All that was stated by the lower court with respect to his identity, and all that may be inferred from the evidence is that William Gitt resided in the Philippines from 1903, married Kathleen Grace Gitt at the age of 34 years, and died in Sta. Clara County, California, United States, or in Hawaii, on October 24, 1916. This court so acts, upon the express provisions of article 10 of the Civil Code which reads as follows:

"Personal property is subject to the laws of the nation of the owner thereof; real property to the laws of the country in which it is situated.

"Nevertheless, legal and testamentary successions, in respect to the order of succession as well as to the amount of the successional rights and the intrinsic validity of their provisions, shall be regulated by the national law of the person whose succession is in question, whatever may be the nature of the property or the country in which it may be situated. * * *"

For all the foregoing, the lower court's decision appealed from is reversed, without any pronouncement as to costs, the brother and sister Mike and Violeta Gitt having been allowed to institute this case in the lower as well as in this court without previous payment of fees, by reason of poverty. So ordered.

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

Moran, J., see dissenting opinion.

Laurel, J., concurs in the foregoing dissent of Justice Moran.

DISSENTING OPINION

MORAN, J.:

There is not the least doubt that the applicants-appellees Mike Gitt and Violeta Gitt have been in the continuous possession of the status of natural children of the deceased William Gitt. However, they are refused recognition as such, simply because they failed to file their claim within the four (4) years next following the date of their attainment of majority. The period of four (4) years prescribed by article 137 of the Civil Code, now reduced to two (2) years by section 45 of the Code of Civil Procedure, is a period for the prescription of actions, as this court stated in the case of *Suarez vs. Suarez* (43 Phil, 903), and as the oppositor-appellant failed to set up the defense of prescription, the same is understood to have been waived, as this court has stated in various cases (*Domingo vs. Osorio*, 7 Phil., 405; *Pelaez vs. Abreu*, 26 Phil., 415; *Karagdag vs. Barado*, 33 Phil., 529; *Calma vs. Calma*, 56 Phil., 102; *Sesuya vs. Lacopia*, 54 Phil., 534; *Aldeguez vs. Hoskyn*, 2 Phil., 500; *Harty vs. Luna*, 13 Phil., 31; *Marzon vs. Udtujan*, 20 Phil., 232; *Maxilom vs. Tabotabo*, 9 Phil., 390; *Sunico vs. Ramirez*, 14 Phil., 500; *U. S. vs. Serapio*, 23 Phil., 584).

It is contended, however, that the oppositor-appellant could not interpose the defense of prescription of the action on the ground that the applicants-appellees, in fact, did not bring any action against her to compel her to such recognition. The majority seems to make it understood thereby that the application filed by the appellees cannot be considered sufficient for the purposes of said action. This is contrary to doctrines laid down by this court. In the case of *Lopez vs. Lapez* (37 Off, Gaz., 3091), this court stated as follows:

"Contrary to appellants' contention it is a well-settled rule that a person claiming to be an acknowledged natural child of a deceased need not maintain a separate action for recognition but may simply intervene in the intestate proceedings, by alleging and proving therein his or her status as such and claiming accordingly the right to share in the inheritance. (*Conde vs. Abaya*, 13 Phil., 249; *Severino vs. Severino*, 44 Phil., 343, 348; *Gaas vs. Fortich*, 54 Phil., 196.)"

"The petition filed by Concepcion Lopez in the intestate proceedings is alleged to be insufficient. It is said that there is no prayer therein that she be declared an acknowledged natural child, but only that she be adjudged universal heiress, of the deceased. In the body of the petition there is an allegation that she is a natural child of the deceased and has been in an uninterrupted possession of such status. And inasmuch as the recognition of her status is a prerequisite to her right to heirship, her prayer that she be declared universal heiress implies a like prayer that she be recognized as an acknowledged natural child. Furthermore, it is a well-settled rule of pleadings, applicable to motions or petitions, that the prayer for relief though part of the pleading, is no part of the cause of action or defense alleged therein, and the pleader is entitled to as much relief as the facts duly pleaded may warrant (*Rosales vs. Reyes and Ordoveza*, 25 Phil., 495; *Aguilar vs. Rubiato and Gonzalez Vila*, 40 Phil., 570; *Yanez de Barnuevo vs. Puster*, 29 Phil, 606; *Allarde vs. Abaya*, 57 Phil 909; Cf. *Cohen and Cohen vs. Benguet Commercial Co.*, 34 Phil, 526, 533.)"

The provisions of law relative to the acknowledgment of natural children should be construed liberally in their favor. As Manresa says: "The high principles of justice are ever favorable to the children and a way to improve their condition should not be closed to them, which, after all, is very unlikely to result in the social upheavals assumed by those simple souls untutored in the realities of life." (1 Manresa, Commentaries on the Civil Code, 560.) Or, as Scævola says: "There is, in behalf of the legal criterion, a tendency frankly favorable to natural children, prevalent in the scientific as well as in the positive order." (3 Scævola, *Codigo Civil Comentado*, 258.) Those children of distracted love, who were brought into the world without their consent and under disadvantageous conditions, at times bordering on cruelty, are deserving of all the equitable considerations within

the power of the courts to dispense, which courts would undoubtedly be acting in consonance with the spirit of the times if, instead of applying the rigors of the law in all their crudeness, they were to facilitate them the means, compatible with the interests of justice, to improve theV lot or condition. It is not at all offensive to public interest for this court, once in a while, to temper the severity of justice with effusions of generosity.

I dissent, therefore, from the majority opinion.

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