

INTESTATE ESTATE OF THE DECEASED ANTONIO JAYME Y LEDESMA. FORTUNATO E. JAYME, PETITIONER AND APPELLANT, VS. GENOVEVA GAMBOA ET AL., OPPOSITORS AND APPELLANTS.

G.R. No. 47820, November 28, 1942

Ponente: OZAETA, J.

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OZAETA, J.:

Fortunato E. Jayme claims the right to inherit from the deceased Antonio Jayme as the latter's legally acknowledged natural son. His claim is contested by the widow and the legitimate children and grandchildren of the deceased, who deny the status of acknowledged natural child asserted by him.

It is not disputed that Fortunato E. Jayme is the son of Antonio Jayme and Engenia Enriquez, who appeared to have known each other with intimacy in Manila. Antonio brought her to his home town, Bacolod, where not long after her arrival she gave birth on April 17, 1883, to a child that was baptized on the 21st of the same month as Fortunato Enriquez, "hijo natural de padre desconocido y de Engenia Enriquez." Lucio Jayme, a younger brother of Antonio, acted as the godfather of the child. He had been commissioned by Antonio to arrange for the baptism. At the age of five or six years, when he began to remember things, Fortunato came to know Antonio Jayme as his father, for the latter used to visit him two or three times a week in the house where he lived with his mother. He used to kiss the boy, who also used to kiss Don Antonio's hand. Antonio used to take Fortunato to the store of a Chinaman named Cambang, where he used to get money, give some to Fortunato, and buy him candies. In 1889 Fortunato and his mother moved from Bacolod to Pilar, Capiz, where he stayed until 1899. In that year his mother sent him back to Bacolod for education. Upon his return to that town his father Antonio Jayme received him in Cambang's store and made arrangements for his lodging in the house of his employee named Florencio Fegarido and for his enrolment in a private school conducted by a teacher named Hilario. The father supported the child until the latter went to Manila in the early part of the American occupation. He, departed with the consent of his father, who recommended him to the care of his friend named Santos, with whom he made arrangements for the boy's education and maintenance in the city. But in a short time Fortunato secured employment as a room boy in Malacañan of one Major Kinley. Eight months later Major Kinley took Fortunato to the United States after Fortunato had obtained the consent of his father. He stayed in the United States from 1901 to 1910 as a self-supporting student.

On January 16, 1884, that is to say, nine months after Fortunato's birth, Antonio Jayme married Genoveva Gamboa, by whom he had four children named Angela, Antonio, Emilia, and Carlos. Angela and Antonio were born prior to December 8, 1889, when the present Civil Code went into effect in the Philippines.

After Fortunato's return to the Philippines in the year 1910 until Antonio Jayme's death, which occurred on October 19, 1937, he continued to be recognized and treated as a son not only by Antonio Jayme but also by the latter's legitimate children. Besides other acts and conduct of theirs, letters and photographs addressed and dedicated to him by Antonio Jayme and his legitimate children furnish eloquent and undisputed testimony to that

effect.

After hearing the evidence Judge Solero Rodas, in an order dated July 10, 1939, declared Fortunato Jayme an acknowledged natural son of the deceased Antonio Jayme, with the right to inherit from him. But upon motion for new trial filed by counsel for the oppositors, the same judge, on September 21, 1939, modified the said order by holding that although Fortunato Jayme is a legally acknowledged natural son of the deceased Antonio Jayme, he is not entitled to inherit from the latter because "his rights as a natural acknowledged son of the decedent cannot be enforced." From that order both parties appealed—the oppositors attacking it insofar as it declares that the claimant is a legally acknowledged natural son of the deceased, and the claimant insofar as it declares that he is not entitled to inherit.

I

We shall first consider the appeal of the oppositors. They contend (1) that Fortunato Jayme has failed to prove that he is a natural son of the deceased Antonio Jayme; (2) that even if he were a natural son, he nevertheless did not acquire the civil status of an acknowledged natural son of Antonio Jayme at any time prior to December 8, 1889, in accordance with the laws then in force in the Philippines; and (3) that Fortunato Jayme never acquired the civil status of an acknowledged natural son of Antonio Jayme on or at any time after December 8, 1889, in accordance with the provisions of the Civil Code.

1. Under Law 11 of the Laws of Toro, which was the law in force here at the time Fortunato Jayme was born, natural children were those who at the time of their birth or conception were of fathers who could have married their mothers justly without dispensation. Counsel for the oppositors contend that the mere fact that Antonio Jayme was married to Genoveva Gamboa on January 16, 1884, does not prove (a) that he was an unmarried man in 1882 and 1883 and (b) that there was no legal impediment, such as close blood relationship, to his marrying Efigenia Enriquez, the mother of Fortunato.

Fortunato Jayme testified without contradiction that his father had never been married before he was married to Genoveva Gamboa. Aside from such testimony, which has not been impeached, we think that from the fact that Antonio Jayme lawfully contracted marriage with Genoveva Gamboa on January 16, 1884, in the absence of any evidence to the contrary it may be presumed that he was an unmarried man on April 17, 1883, when Fortunato Jayme was born; for otherwise we would have to assume that he either committed bigamy or contracted a second marriage immediately or soon after a supposed first marriage was dissolved; and both hypotheses are contrary to the presumptions established by paragraphs 1 and 26, section 334 of Act No. 190, now paragraphs (a) and (z), section 69, Rule 123 of the new Rules of Court. Likewise, in the absence of any evidence to the contrary, it may be presumed that he had no such relationship of consanguinity with Efigenia Enriquez as that of brother and sister or uncle and niece; for otherwise he would have been guilty of incest. Once it has been proved that the father, Antonio Jayme, could legally marry without dispensation at the time Fortunato was born, there is no need to prove that Efigenia Enriquez, 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. (See *Ramirez vs. Gmur*, 42 Phil., 855, 861, 862; *Allarde vs. Abaya*, 57 Phil., 909, 923, and cases therein cited; *Lajom vs. Viola*, 1 Off. Gaz., August 1942, 452, 459, 460.) Aside, however, from such legal presumption, the claimant testified without contradiction that his mother never got married.

We find, therefore, that Fortunato Jayme is a natural son of Antonio Jayme. Oppositors' first contention is overruled.

2, 3. Oppositors' second and third contentions may be discussed together. Counsel for the oppositors contend that Fortunato Jayme did not acquire the status of an acknowledged natural child of Antonio Jayme at any time prior

to December 8, 1889, in accordance with the laws then in force in the Philippines, and that neither did he acquire such status at any time after the said date, in accordance with the provisions of the Civil Code.

It is well known that under the Laws of Toro, which was the legislation in force here prior to the Civil Code, the tacit acknowledgment of a natural child on the part of his father was in itself sufficient to give him the status of an acknowledged natural child. (*Larena vs. Rubio*, 43 Phil., 1017.) No form of acknowledgment was prescribed. (*Requejo vs. Rabalo*, 34 Phil., 14.) The recognition was open to such proof as would support the fact in any ordinary action. (*Llorente vs. Rodriguez*, 3 Phil., 697.) But under the Civil Code the acknowledgment of a natural child must be made in the record of birth, in a will, or in some other public document (article 131). Since this is not an action to compel the father to acknowledge his natural child upon either of the grounds specified in article 135 of the Civil Code, but a claim to inherit based on the allegation that the claimant is an acknowledged natural son of the decedent in accordance with Law 11 of Toro, it is contended for the oppositors that the acts and conduct of the father and of his legitimate children that took place subsequent to the repeal of the Laws of Toro by the Civil Code should not be taken into consideration for the purpose of determining whether the father had acknowledged the natural child while the prior legislation was still in force, for the reason that the acts performed by the father after the Civil Code took effect must be governed by the latter.

The arguments adduced by counsel for the oppositors are ingenious but, we think, unavailing. If, before the Civil Code took effect, Antonio Jayme had done nothing in relation to Fortunato but to beget him—if he had not performed any act whatsoever tending to show that he recognized the boy as his natural child until after the Civil Code had repealed and superseded, the Laws of Toro—counsel's contention might prevail, on the theory that the mere fact of birth, without recognition of the status of a natural child, did not, even under the prior legislation, vest in Fortunato Jayme any right to inherit from his father; and that the father's acts of recognition performed after the Civil Code had taken effect should be governed by the latter. But after Fortunato was conceived and even before he was born, Antonio Jayme began to perform acts tending to show tacit acknowledgment of the former as a natural child of the latter. Thus in pregnancy Efigenia Enriquez was brought by Antonio Jayme from Manila to his home town, Bacolod, where she gave birth to Fortunato on April 17, 1883. He caused his younger brother Lucio to act as godfather at the child's baptism on April 21, 1883. He visited the boy in the house of his mother two or three times a week, used to kiss him and was in turn kissed by him. He also used to take him to the corner store of a Chinaman where he gave him money and candies. The boy came to know him as his father.

It is, however, contended that all these acts, which took place during the first six and a half years of the boy's life, if completely dissociated from the acts of Antonio Jayme and the members of his family which took place since December 8, 1889, until he died intestate on October 19, 1937, are not sufficient to prove that Antonio Jayme had acknowledged Fortunato as his natural child. We do not share this view. We are of the opinion that those pre-Civil Code acts of Antonio Jayme, taken together, are sufficient to establish tacit recognition by him of Fortunato as his natural child. In the case of *Allarde vs. Abaya* (57 Phil, 909, 919, 920), the sole act of the father in writing to his mother so that she would send for his daughter was held by this Court sufficient proof of acknowledgment of such daughter in accordance with Law 11 of Toro.

Moreover, we are further of the opinion and so hold that the subsequent acts performed by Antonio Jayme during the rest of his life in relation to Fortunato, which were established during the hearing of this case without any objection on the part of the oppositors, may be considered as corroborative evidence confirmatory of his previous acts of recognition. So even if we should entertain any doubt as to the sufficiency of the pre-Civil Code acts to constitute tacit acknowledgment of Fortunato Jayme as a natural son of Antonio Jayme, we could not but allow such doubt to be completely dispelled by the subsequent events that were duly proven. We could not close our eyes to the indubitable truth established by the record.

The trial court committed no error in finding that the claimant is a legally acknowledged natural son of the deceased Antonio Jayme.

II

We now come to consider the claimant's appeal from the order of the trial court which declares that he is not entitled to inherit.

Article 134 of the Civil Code provides that an acknowledged natural child is entitled "to receive the hereditary portion determined by this Code." Among the forced heirs mentioned in article 807 are "natural children legally acknowledged." Article 942 provides that in case legitimate descendants survive, the natural children shall receive from the inheritance only the portion granted them by article 840. This in turn provides that "when the testator leaves legitimate children or descendants, and also natural children, legally acknowledged, each of the latter shall be entitled to one half of the portion pertaining to each of the legitimate children who have not received any betterment, provided that a sufficient amount remains of the disposable portion, from which it must be taken, after the burial and funeral expenses have been paid."

Inasmuch as the right thus given to an acknowledged natural child is recognized for the first time by the Civil Code, it is contended by the oppositors, and the trial court held, that under rule 1 of the transitory provisions and the case of *Rocha vs. Tuason* (39 Phil., 976), the claimant is not entitled to inherit because the exercise by him of such right would prejudice "other vested rights having the same origin," namely, those of Angela Jayme and Antonio Jayme, who, like the claimant, were born before December 8, 1889. Said rule 1 of the transitory provisions reads as follows:

"1. Rights vested under the legislation prior to this code by virtue of acts which transpired while it was in force, shall be governed by such prior legislation even if the code should otherwise provide with respect thereto, or should not recognize such rights. But if any such right is recognized for the first time by this code, it shall be effective at once, even though the act which gave rise thereto may have taken place under the prior legislation, provided it does not conflict with other vested rights having the same origin."

The claimant, on the other hand, invokes rule 12 of the same transitory provisions, which reads as follows:

"12. Rights to the inheritance of a person who may have died, with or without a will, before this code was in force, shall be governed by the prior legislation. The inheritance of those who die after that time, with or without a will, shall be allotted and divided in accordance with this code, but in harmony, in so far as the latter permits it, with the testamentary dispositions. Therefore the legitimes, betterments, and legacies shall be respected; but their amounts shall be reduced when it is not possible in any other manner to give to each participant in the inheritance the share pertaining to him, according to this code."

The question to determine, then, is whether rule 1 or rule 12 should be applied.

In the case of *De Gala vs. De Gala* (51 Phil., 480, 485, 486), this Court, commenting on these two rules, said that No. 1 is of a more general nature than No. 12, since the latter provides a particular rule for the distribution of estates of persons dying after the Code enters into effect, while No. 1 states a general rule for harmonizing certain competing rights, and that, in accordance with the rule that the particular governs the general, No. 12 must control over No. 1. The Court also noted that in *Rocha vs. Tuason* (supra), in which three justices dissented, "a circumstance which detracts in some measure from the weight of the precedent," no reference was made to rule 12 of the transitory provisions, "which if reflectively weighed, might have been found pertinent to the decision."

We think both reason and authority sustain the contention of the claimant that rule 12 of the transitory provisions is the one applicable. The circumstance that the claimant and the first two legitimate children of the deceased

were born before the present Civil Code went into effect constitutes no legal obstacle against the exercise by the claimant of the right recognized by said Code. The decedent died long after it entered into effect. Both the claimant and the oppositors base their right to inherit upon the provisions of the Civil Code. The claimant and the oppositors acquired no vested right to the decedent's inheritance until the moment of his death. That is another reason why rule 1 of the transitory provisions is not applicable. Articles 657 and 661 of the Civil Code read as follows:

"Art. 657. The rights to the succession of a person are transmitted from the moment of his death."

"Art. 661. Heirs succeed to all the rights and obligations of the decedent by the mere fact of his death."

As noted by this Court in *De Gala vs. De Gala* (supra), the Supreme Court of Spain, in decisions dated respectively March 20 and June 24, 1897, recognized that rule 12 of the transitory provisions is applicable to the estates of persons dying after the Civil Code went into effect, "because in the matter of succession there is no vested right until the succession is opened, that is, till the death of the person whose inheritance is in question." (See also *Mijares vs. Nery*, 3 Phil., 195, 203, 204; *Sy Joe Lieng vs. Sy Quia*, 16 Phil., 137, 138.)

Rule 12 of the transitory provisions expressly ordains that the inheritance of those who died after the Civil Code was in force "shall be allotted and divided in accordance with this code"; even if a decedent made a will under the prior legislation and the testamentary dispositions should conflict with the provisions of the Code, the former should be harmonized with the latter; "the legitimes, betterments, and legacies shall be respected, but their amounts shall be reduced when it is not possible in any other manner to give to each participant in the inheritance the share pertaining to him, according to this code."

We find inescapable the application herein of rule 12 invoked by the claimant-appellant. Accordingly, we declare that the latter is entitled to participate in the inheritance of the deceased Antonio Jayme in accordance with article 840 of the Civil Code, as declared modified in the case of *Concepcion vs. Jose* (46 Phil., 809), insofar as the same provides that the burial and funeral expenses must be taken from the disposable portion.

The order appealed from is affirmed insofar as it declares Fortunato E. Jayme an acknowledged natural son of the deceased Antonio Jayme but reversed insofar as it declares that he is not entitled to inherit from said deceased. The oppositors shall pay the costs in this instance. So ordered.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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