

THE NON-CHRISTIAN GULIB ET AL., PLAINTIFFS AND APPELLEES, VS. THE NON-CHRISTIAN BUCQUIO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 5477. August 12, 1910

Ponente: JOHNSON, J.

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JOHNSON, J.:

The plaintiffs being wife and husband, commenced an action in the Court of First Instance of the Province of Ilocos Norte, to recover the possession of six parcels of land alleged to be in the possession of the defendants, together with the sum of P1,155, as damages.

After hearing the evidence, the lower court found that the plaintiffs were entitled to a portion of the land in question and ordered the defendants to deliver the same to the plaintiffs. From that decision the defendants appealed.

To the complaint filed in the lower court the defendants demurred upon the grounds:

First. That the plaintiffs were without personality to commence the action;

Second. That there was a confusion of parties; and, Third, That the complaint was ambiguous, unintelligible, and vague.

The lower court overruled the demurrer, and the defendants answered.

In this court the appellants insist that the lower court should have sustained the demurrer upon the ground that the plaintiffs were minors and therefore could not bring an action in their own name without the intervention of a guardian. This defect of parties did not appear upon the face of the complaint and therefore the objection could not be made by demurrer. None of the grounds of demurrer enumerated in section 91 of the Code of Procedure in Civil Actions can be raised by a demurrer unless such defects appear upon the face of the complaint. Section 92 of said code provides that "When any of the matters enumerated in section 91 do not appear upon the face of the complaint, the objection can only be taken by answer."

The objection of minority not appearing upon the face of the complaint, it could not be raised by a demurrer. The lower court, therefore, properly sustained the demurrer. However, in the answer filed by the defendants in the lower court, after the demurrer was overruled, it was alleged that the plaintiffs were minors. This allegation, however, was neither denied nor proved during the trial of the case. It was proved, however, that the lands in question were inherited by the plaintiff, Gulib, from her father, Damasco. It also appears in evidence that the plaintiff, Gulib, had a minor sister called Idada (alias Idang), who was but 10 years of age at the time of the trial. If it be true that Damasco, at the time of his death, left other children besides Gulib, it will be presumed, until the contrary is shown, that the other children inherited with her. In an action, therefore, to recover possession of such inherited lands, the other coparceners must be made either plaintiffs or defendants, in order that their rights may be protected. The minor child should have been a party to the present action through her guardian. It appears also

that the plaintiff, being a minor, was allowed to maintain the present action without the appointment of a guardian. This was also an error on the part of the lower court.

For the reason, therefore, that all of the necessary parties are not parties to the present action, the decision of the lower court is hereby reversed, without any finding as to costs, and the cause is remanded to the lower court in order that the pleadings may be amended and guardians appointed, so that all of the interested parties may be heard.

Arellano, C. J., Torres, Moreland, and Trent, JJ., concur.

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