

CARIDAD CRUZ VDA. DE SY-QUIA, PETITIONER, VS. COURT OF APPEALS AND JOSE PEDRO REYNALDO SY-QUIA, RESPONDENTS.

G.R. No. 62283. November 25, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the necessity of taking the testimony of Doctor Ernesto Medina Cue on the sero-logical tests which he took in 1961 regarding the blood types of Jose Sy-Quia, Pedro Sy-Quia and Remedios Borres and which are covered by his deposition of January 25, 1975 taken in his clinic at Pasay City over the objection of Jose Sy-Quia.

The Court of Appeals in its decision of March 31, 1982 ordered that Doctor Cue should testify before the trial court in Pasig, Rizal. His testimony should be admitted in lieu of his deposition.

Pedro M. Sy-Quia died in Mandaluyong, Rizal with an estate of over one and a half million pesos (P1,500,000). He was survived by his wife, Caridad, and his five legitimate children named Noel, Pedro, Jr., Asuncion, Mauricio and Francisco.

He left a holographic will dated March 18, 1966, wherein he divided equally one-half of his net estate among his widow and five children. The other half or free portion was divided equally among Pedro, Jr., Asuncion, Mauricio and Francisco after setting aside the amount necessary to allow Asuncion, Mauricio and Francisco to complete their education on the same level as Pedro, Jr.'s. The widow was designated executrix.

On October 20, 1967, his widow Caridad Cruz filed Special Proceeding No. 5473 with the Pasig Court of First Instance for the probate of his will. After the requisite publication and hearing, the will was probated in Judge Herminio Mariano's order of May 10, 1968.

More than three years later, Jose Pedro Reynaldo Sy-Quia filed a motion in the probate proceeding wherein he alleged that he was an acknowledged natural child of the testator, Pedro M. Sy-Quia, begotten with Remedios Borres (who later married Pedro Perolina in articulo mortis in 1949, Exh. X). He was born on October 31, 1937 as shown in his birth certificate wherein he was represented to be "legitimate", his parents being Pedro Sy-Quia, 33, and Remedios Borres, 24, both residing at 140 A. Mabini (Exh. V).

He prayed in his motion that being the testator's voluntarily acknowledged natural child, his preterition nullified Pedro M. Sy-Quia's will and, therefore, his estate should be settled under the rules of intestacy.

The widow opposed the motion on the ground that Jose was asking for compulsory recognition which could not be entertained under article 285 of the Civil Code. This incident was duly heard by the trial court.

Jose Sy-Quia presented Leopoldo Sy-Quia, Pedro's brother, who testified that Jose was Pedro's acknowledged natural child. He also offered in evidence his school records at De la Salle College containing the signatures of P.M. Sy-Quia, particularly Exhibit Y dated July 1, 1954, which was an authorization addressed to Brother Jerome

signed by Pedro M. Sy-Quia. It reads:

"This is to certify that I authorize the school doctor to administer the C.D.T. (Cholera Dysentery Typhoid) vaccine to my son Jose P. Sy-Quia of advisory 2-D."

On the other hand, Caridad Cruz Vda. de Sy-Quia filed a motion for the taking of the deposition of Doctor Cue, Clinical Laboratory, Pasay City. The motion was granted by the lower court. The deposition was taken on January 25, 1975 over the opposition of Jose Sy-Quia's counsel. He objected to its presentation in court as evidence since Doctor Cue could have testi-fied in court.

Doctor Cue's deposition purportedly proved that taking into account the blood groups and types of Jose Sy-Quia, Pedro M. Sy-Quia and Remedios Borres, which, as already noted, he examined in 1961, Jose could not have been the son of Pedro and Remedios.

The lower court in its order of May 14, 1975 found that there is no indubitable writing showing that Jose was an acknowledged natural child of Pedro M. Sy-Quia, that his action for compulsory recogni-tion should have been brought during Pedro's lifetime and that the result of the blood tests explains why Pedro omitted Jose in his will.

Jose appealed to the Court of Appeals which in its aforementioned 1982 decision held that Jose's theory was that he was already a voluntarily acknow-ledged natural child under article 278 of the Civil Code.

However, the Appellate Court ruled that the deposition of Doctor Cue was inadmissible evidence. It remanded the case to the trial court and directed it to subpoena Doctor Cue to testify on the subject of his deposition and to be cross-examined by Jose Sy-Quia's counsel.

Mrs. Sy-Quia appealed to this Court. Lawyer Manuel B. Tomacruz, Jose's counsel, did not submit his comment although he was given three extensions expiring on March 25, 1983. He is censured for his unexplained failure to submit his comment.

We hold that whether Jose was a voluntarily recognized natural child should be decided under article 278 of the Civil Code of the Philippines. Article 2260 of that Code provides that "the voluntary recognition of a natural child shall take place accord-ing to this Code, even if the child was born before the effectivity of this body of laws" or before August 30, 1950. Hence, article 278 may be given re-troactive effect (p. 169, Report of Code Commission; 7 Padilla, Civil Code, 1975, p. 709).

Voluntary recognition "in any authentic writing" under article 278 means any genuine or indubitable writing sufficient for compulsory recognition under article 135 of the Spanish Civil Code (De Jesus vs. Syquia, 58 Phil. 866; 1 Tolentino, Civil Code, 1974, p. 585, 586).

The status of a person as a voluntarily acknowledged natural child "could be established by the ordinary means of evidence without any limitations as to time" (Larena vs. Rubio, 43 Phil. 1017, 1019). "An action based on voluntary acknowledgment may be brought after the death of the father" (Javelona vs. Monteclaro, 74 Phil. 393, 400; Guariña vs. Guariña-Casas, 109 Phil. 1111). Hence, Jose's motion in the testate proceeding to claim his alleged hereditary share is proper.

We agree with the Court of Appeals that Doctor Cue's deposition is inadmissible under section 4, Rule 24 of the Rules of Court. But he should testify before the Appellate Court which is now authorized to receive evidence by section 9 of the Judiciary Reog-ganization Law, Batas Pambansa Blg. 129.

WHEREFORE, the Appellate Court's' decision is set aside. It is directed to receive the testimony of Doctor Cue within thirty days from notice of the finality of this resolution and thereafter to render a new deci-sion as may be warranted under the facts and the law of the case. No costs.

SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.
Makasiar, J., (Chairman), in the result.

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