

## **LEONCIA BALOGBOG AND GAUDIOSO BALOGBOG, PETITIONERS, VS. HONORABLE COURT OF APPEALS, RAMONITO BALOGBOG AND GENEROSO BALOGBOG, RESPONDENTS.**

*G.R. No. 83598. March 07, 1997*

Ponente: MENDOZA, J.

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### **MENDOZA, J.:**

This is a petition for review of the decision<sup>[1]</sup> of the Court of Appeals, affirming the decision of the Court of First Instance of Cebu City (Branch IX), declaring private respondents heirs of the deceased Basilio and Genoveva Balogbog entitled to inherit from them.

The facts are as follows. Petitioners Leoncia and Gaudioso Balogbog are the children of Basilio Balogbog and Genoveva Arnibal who died intestate in 1951 and 1961, respectively. They had an older brother, Gavino, but he died in 1935, predeceasing their parents.

In 1968, private respondents Ramonito and Generoso Balogbog brought an action for partition and accounting against petitioners, claiming that they were the legitimate children of Gavino by Catalina Ubas and that, as such, they were entitled to the one-third share of Gavino in the estate of their grandparents.

In their answer, petitioners denied knowing private respondents. They alleged that their brother Gavino died single and without issue in their parents' residence at Tag-amakan, Asturias, Cebu. In the beginning they claimed that the properties of the estate had been sold to them by their mother when she was still alive, but they later withdrew this allegation.

Private respondents presented Priscilo Y. Trazo,<sup>[2]</sup> then 81 years old, mayor of the municipality of Asturias from 1928 to 1934, who testified that he knew Gavino and Catalina to be husband and wife and Ramonito to be their first child. On cross-examination, Trazo explained that he knew Gavino and Catalina because they performed at his campaign rallies, Catalina as "balitaw" dancer and Gavino Balogbog as her guitarist. Trazo said he attended the wedding of Gavino and Catalina sometime in 1929, in which Rev. Father Emiliano Jomao-as officiated and Egmidio Manuel, then a municipal councilor, acted as one of the witnesses.

The second witness presented was Matias Pogoy,<sup>[3]</sup> a family friend of private respondents, who testified that private respondents are the children of Gavino and Catalina. According to him, the wedding of Gavino and Catalina was solemnized in the Catholic Church of Asturias, Cebu and that he knew this because he attended their wedding and was in fact asked by Gavino to accompany Catalina and carry her wedding dress from her residence in Camanaol to the poblacion of Asturias before the wedding day. He testified that Gavino died in 1935 in his residence at Obogon, Balamban, Cebu, in the presence of his wife. (This contradicts petitioners' claim made in their answer that Gavino died in the ancestral house at Tag-amakan, Asturias.) Pogoy said he was a carpenter and he was the one who had made the coffin of Gavino. He also made the coffin of the couple's son, Petronilo, who died when he was six.

Catalina Ubas testified concerning her marriage to Gavino.[4] She testified that after the wedding, she was handed a “receipt,” presumably the marriage certificate, by Fr. Jomao-as, but it was burned during the war. She said that she and Gavino lived together in Obogon and begot three children, namely, Ramonito, Petronilo, and Generoso. Petronilo died after an illness at the age of six. On crossexamination, she stated that after the death of Gavino, she lived in common law relation with a man for a year and then they separated.

Private respondents produced a certificate from the Office of the Local Civil Registrar (Exh. P) that the Register of Marriages did not have a record of the marriage of Gavino and Catalina, another certificate from the Office of the Treasurer (Exh. L) that there was no record of the birth of Ramonito in that office and, for this reason, the record must be presumed to have been lost or destroyed during the war, and a certificate by the Parish Priest of Asturias that there was likewise no record of birth of Ramonito in the church, the records of which were either lost or destroyed during the war. (Exh. M)

On the other hand, as defendant below, petitioner Leoncia Balogbog testified[5] that Gavino died single at the family residence in Asturias. She denied that her brother had any legitimate children and stated that she did not know private respondents before this case was filed. She obtained a certificate (Exh. 10) from the Local Civil Registrar of Asturias to the effect that that office did not have a record of the names of Gavino and Catalina. The certificate was prepared by Assistant Municipal Treasurer Juan Maranga, who testified that there was no record of the marriage of Gavino and Catalina in the Book of Marriages between 1925 to 1935.[6]

Witness Jose Narvasa testified[7]that Gavino died single in 1935 and that Catalina lived with a certain Eleuterio Keriado after the war, although he did not know whether they were legally married. He added, however, that Catalina had children by a man she had married before the war, although he did not know the names of the children. On crossexamination, Narvasa stated that Leoncia Balogbog, who requested him to testify, was also his bondsman in a criminal case filed by a certain Mr. Cuyos.

Ramonito Balogbog was presented[8] to rebut Leoncia Balogbog’s testimony.

On June 15, 1973, the Court of First Instance of Cebu City rendered judgment for private respondents (plaintiffs below), ordering petitioners to render an accounting from 1960 until the finality of its judgment, to partition the estate and deliver to private respondents one-third of the estate of Basilio and Genoveva, and to pay attorney’s fees and costs.

Petitioners filed a motion for new trial and/or reconsideration, contending that the trial court erred in not giving weight to the certification of the Office of the Municipal Treasurer of Asturias (Exh. 10) to the effect that no marriage of Gavino and Catalina was recorded in the Book of Marriages for the years 1925-1935. Their motion was denied by the trial court, as was their second motion for new trial and/or reconsideration based on the church records of the parish of Asturias which did not contain the record of the alleged marriage in that church.

On appeal, the Court of Appeals affirmed. It held that private respondents failed to overcome the legal presumption that a man and a woman deporting themselves as husband and wife are in fact married, that a child is presumed to be legitimate, and that things happen according to the ordinary course of nature and the ordinary habits of life.[9] Hence, this petition.

We find no reversible error committed by the Court of Appeals.

First. Petitioners contend that the marriage of Gavino and Catalina should have been proven in accordance with Arts. 53 and 54 of the Civil Code of 1889 because this was the law in force at the time the alleged marriage was celebrated. Art. 53 provides that marriages celebrated under the Civil Code of 1889 should be proven only by a certified copy of the memorandum in the Civil Registry, unless the books thereof have not been kept or have been

lost, or unless they are questioned in the courts, in which case any other proof, such as that of the continuous possession by parents of the status of husband and wife, may be considered, provided that the registration of the birth of their children as their legitimate children is also submitted in evidence.

This Court noted long ago, however, that Arts. 42 to 107 of the Civil Code of 1889 of Spain did not take effect, having been suspended by the Governor General of the Philippines shortly after the extension of that code to this country.[10] Consequently, Arts. 53 and 54 never came into force. Since this case was brought in the lower court in 1968, the existence of the marriage must be determined in accordance with the present Civil Code, which repealed the provisions of the former Civil Code, except as they related to vested rights,[11] and the rules on evidence. Under the Rules of Court, the presumption is that a man and a woman conducting themselves as husband and wife are legally married.[12] This presumption may be rebutted only by cogent proof to the contrary.[13] In this case, petitioners' claim that the certification presented by private respondents (to the effect that the record of the marriage had been lost or destroyed during the war) was belied by the production of the Book of Marriages by the assistant municipal treasurer of Asturias. Petitioners argue that this book does not contain any entry pertaining to the alleged marriage of private respondents' parents.

This contention has no merit. In *Pugeda v. Trias*,[14] the defendants, who questioned the marriage of the plaintiffs, produced a photostatic copy of the record of marriages of the Municipality of Rosario, Cavite for the month of January, 1916, to show that there was no record of the alleged marriage. Nonetheless, evidence consisting of the testimonies of witnesses was held competent to prove the marriage. Indeed, although a marriage contract is considered primary evidence of marriage,[15] the failure to present it is not proof that no marriage took place. Other evidence may be presented to prove marriage.[16] [Here, private respondents proved, through testimonial evidence, that Gavino and Catalina were married in 1929; that they had three children, one of whom died in infancy; that their marriage subsisted until 1935 when Gavino died; and that their children, private respondents herein, were recognized by Gavino's family and by the public as the legitimate children of Gavino.

Neither is there merit in the argument that the existence of the marriage cannot be presumed because there was no evidence showing in particular that Gavino and Catalina, in the presence of two witnesses, declared that they were taking each other as husband and wife.[17] An exchange of vows can be presumed to have been made from the testimonies of the witnesses who state that a wedding took place, since the very purpose for having a wedding is to exchange vows of marital commitment. It would indeed be unusual to have a wedding without an exchange of vows and quite unnatural for people not to notice its absence.

The law favors the validity of marriage, because the State is interested in the preservation of the family and the sanctity of the family is a matter of constitutional concern. As stated in *Adong v. Cheong Seng Gee*: [18]

The basis of human society throughout the civilized world is that of marriage. Marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply interested. Consequently, every intendment of the law leans toward legalizing matrimony. Persons dwelling together in apparent matrimony are presumed, in the absence of any counter-presumption or evidence special to the case, to be in fact married. The reason is that such is the common order of society, and if the parties were not what they thus hold themselves out as being, they would be living in the constant violation of decency and of law. A presumption established by our Code of Civil Procedure is "that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage." (Sec. 334, No. 28) *Semper praesumitur pro matrimonio* — Always presume marriage. (*U.S. vs. Villafuerte and Rabano* [1905], 4 Phil., 476; *Son Cui vs. Guepangco*, supra; *U.S. vs. Memoracion and Uri* [1916], 34 Phil., 633; *Teter vs. Teter* [1884], 101 Ind., 129.)

Second. Petitioners contend that private respondents' reliance solely on testimonial evidence to support their

claim that private respondents had been in the continuous possession of the status of legitimate children is contrary to Art. 265 of the Civil Code which provides that such status shall be proven by the record of birth in the Civil Register, by an authentic document or by final judgment. But in accordance with Arts. 266 and 267, in the absence of titles indicated in Art. 265, the filiation of children may be proven by continuous possession of the status of a legitimate child and by any other means allowed by the Rules of Court or special laws. Thus the Civil Code provides:

ART. 266. In the absence of the titles indicated in the preceding article, the filiation shall be proved by the continuous possession of status of a legitimate child

ART. 267. In the absence of a record of birth, authentic document, final judgment or possession of status, legitimate filiation may be proved by any other means allowed by the Rules of Court and special laws.

Petitioners contend that there is no justification for presenting testimonies as to the possession by private respondents of the status of legitimate children because the Book of Marriages for the years 1928-1929 is available.

What is in issue, however, is not the marriage of Gavino and Catalina but the filiation of private respondents as their children. The marriage of Gavino and Catalina has already been shown in the preceding discussion. The treasurer of Asturias, Cebu certified that the records of birth of that municipality for the year 1930 could not be found, presumably because they were lost or destroyed during the war (Exh. L). But Matias Pogoy testified that Gavino and Catalina begot three children, one of whom, Petronilo, died at the age of six. Catalina testified that private respondents Ramonito and Generoso are her children by Gavino Balogbog. That private respondents are the children of Gavino and Catalina Balogbog cannot therefore be doubted.

Moreover, the evidence in the record shows that petitioner Gaudioso Balogbog admitted to the police of Balamban, Cebu that Ramonito is his nephew. As the Court of Appeals found:

Ironically, it is appellant Gaudioso himself who supplies the clincher that tips the balance in favor of the appellees. In an investigation before the Police Investigating Committee of Balamban, Cebu, held on March 8, 1968, conducted for the purpose of inquiring into a complaint filed by Ramonito against a patrolman of the Balamban police force, Gaudioso testified that the complainant in that administrative case is his nephew. Excerpts from the transcript of the proceedings conducted on that date (Exhs. "N", "N-1", "N-2", "N-3" and "N-4") read:

"Atty. Kiamco - May it please this investigative body.

"Q.- Do you know the complainant in this Administrative Case No. 1?

"A.- Yes I know.

"Q.- Why do you know him?

"A.- I know because he is my nephew.

"Q.- Are you in good terms with your nephew, the complainant?

"A.- Yes.

"Q.- Do you mean to say that you are close to him?

"A.- Yes. We are close.

"Q.- Why do you say you are close?

"A.- We are close because aside from the fact that he is my nephew we were also leaving (sic) in the same house in Butuan City, and I even barrow (sic) from him money in the amount of P300.00, when I return to Balamban, Cebu.

x x x x x x x x

“Q.- Why is Ramonito Balogbog your nephew?

“A.- Because he is the son of my elder brother.”

This admission of relationship is admissible against Gaudioso although made in another case. It is considered as a reliable declaration against interest (Rule 130, Section 22). Significantly, Gaudioso did not try to offer any explanation to blunt the effects of that declaration. He did not even testify during the trial. Such silence can only mean that Ramonito is indeed the nephew of Gaudioso, the former being the son of Gavino.

WHEREFORE, the decision appealed from is AFFIRMED.  
SO ORDERED.

Regalado, (Chairman), Romero, Puno, and Torres, Jr., JJ., concur

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[1] Per Justice Alfredo L. Benipayo, J., concurred in by Justices Ricardo J. Francisco and Jose C. Campos, Jr.

[2] TSN, December 3, 1969, pp. 2-6.

[3] TSN, July 9, 1970, pp. 3-28.

[4] TSN, July 25, 1980, pp. 3-28.

[5] TSN, Aug. 12, 1972, pp. 5-18.

[6] TSN, Aug. 28, 1972, p. 13.

[7] TSN, Sept. 16, 1972, pp. 4-20.

[8] TSN, July 7, 1983, pp. 3-5.

[9] 1964 Rules of Court, Rule 131, §5 (z), (bb), and (cc).

[10] *Benedicto v. De la Rama*, 3 Phil. 34 (1903).

[11] Civil Code, Art. 2270.

[12] 1964 Rules of Court, Rule 131, §5(bb).

[13] *Alavado v. City Government of Tacloban*, 139 SCRA 230, 235 (1985); *Perido v. Perido*, 63 SCRA 97, 102-103 (1975).

[14] 4 SCRA 849 (1962). See *Madridejo v. De Leon*, 55 Phil. 1 (1930); *Jones v. Hortiguella*, 64 Phil. 179 (1937); *People v. Borromeo*, 133 SCRA 106 (1984).

[15] *Lim Tanhu v. Ramolete*, 66 SCRA 425 (1975).

[16] *Tolentino v. Paras*, 122 SCRA 525 (1983); *United States v. Memoracion*, 34 Phil. 633 (1916); *People v. Borromeo*, 133 SCRA 106 (1984).

[17] Civil Code, Art. 55.

[18] 43 Phil. 43, 56 (1922). Accord, *Perido v. Perido*, 63 SCRA 97 (1975).

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