

CORITO OCAMPO TAYAG, PETITIONER, VS. HON. COURT OF APPEALS AND EMILIE DAYRIT CUYUGAN, RESPONDENTS.

G.R. No. 95229. June 09, 1992

Ponente: REGALADO, J.

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REGALADO, J.:

The instant petition seeks to reverse and set aside the decision[1] of respondent Court of Appeals in CA-G.R. SP No. 20222, entitled "Corito Ocampo Tayag vs. Hon. Norberto C. Ponce, Judge, Regional Trial Court of San Fernando, Pampanga and Emilie Dayrit Cuyugan," promulgated on May 10, 1990, and its resolution denying petitioner's motion for reconsideration.[2] Said decision, now before us for review, dismissed petitioner's Petition for Certiorari and Prohibition with Preliminary Injunction on the ground that the denial of the motion to dismiss Civil Case No. 7938 of the court a quo is an interlocutory order and cannot be the subject of the said special civil action, ordinary appeal in due time being petitioner's remedy.

In said Civil Case No. 7938, herein private respondent, in her capacity as mother and legal guardian of minor Chad D. Cuyugan, filed on April 9, 1987 a complaint denominated "Claim for Inheritance" against herein petitioner as the administratrix of the estate of the late Atty. Ricardo Ocampo. The operative allegations in said complaint are as follows:

x x x

"2. Plaintiff is the mother and legal guardian of her minor son, Chad Cuyugan, by the father of the defendant, the late Atty. Ricardo Ocampo; and the defendant is the known administratrix of the real and personal properties left by her deceased father, said Atty. Ocampo, who died intestate in Angeles City on September 28, 1983;

"3. Plaintiff has been estranged from her husband, Jose Cuyugan, for several years now and during which time, plaintiff and Atty. Ricardo Ocampo had illicit amorous relationship with each other that, as a consequence thereof, begot a child who was christened Chad Cuyugan in accordance with the ardent desire and behest of said Atty. Ocampo;

"4. Chad, the son of plaintiff by the late Atty. Ricardo Ocampo, who was born in Angeles City on October 5, 1980 had been sired, showered with exceptional affection, fervent love and care by his putative father for being his only son as can be gleaned from indubitable letters and documents of the late Atty. Ocampo to herein plaintiff, excerpts from some of which are hereunder reproduced:

'x x x Keep good keep faith keep Chad and yourself for me alone and for me all the time. As I have now I shall save my heart to you and to Chad.'

'x x x Please take good care and pray to Sto. Niño for our sake and for the child sake.'

'x x x Keep him. Take good care of him.'

'x x x I'm proud that you are his mother ...I'm proud of him and you. Let me bless him by my name and let me

entitle him to all what I am and what I've got.'

'x x x I have vowed to recognize him and be my heir.'

'x x x How is CHAD and you...'

'x x x Why should we not start now to own him, jointly against the whole world. After all we love each other and CHAD is the product of our love.'

"5. The minor, Chad D. Cuyugan, although illegitimate is nevertheless entitled to a share in the intestate estate left by his deceased father, Atty. Ricardo Ocampo as one of the surviving heirs;

"6. The deceased Atty. Ricardo Ocampo, at the time of his death was the owner of real and personal property, located in Baguio City, Angeles City and in the Province of Pampanga with approximate value of several millions of pesos;

"7. The estate of the late Atty. Ocampo has not as yet been inventoried by the defendant and the inheritance of the surviving heirs including that of said Chad has not likewise been ascertained;

"8. The only known surviving heirs of the deceased Atty. Ricardo Ocampo are his children, namely: Corito O. Tayag, Rivina O. Tayag, Evita O. Florendo, Felina Ocampo, and said minor Chad, for and in whose behalf this instant complaint is filed;

"9. Plaintiff has no means of livelihood and she only depends on the charity of friends and relatives for the sustenance of her son, Chad, such that it is urgent, necessary and imperative that said child be extended financial support from the estate of his putative father, Atty. Ricardo Ocampo;

"10. Several demands, verbal and written, have been made for defendant to grant Chad's lawful inheritance, but despite said demands, defendant failed and refused and still fails and refuses to satisfy the claim for inheritance against the estate of the late Atty. Ocampo;"[3]

x x x

Plaintiff thereafter prays, among others, that judgment be rendered ordering defendant to render an inventory and accounting of the real and personal properties left by Atty. Ricardo Ocampo; to determine and deliver the share of the minor child Chad in the estate of the deceased; and to give him support pendente lite.

Petitioner, as defendant therein, filed her answer with counterclaim on June 3, 1987, disputing the material allegations in the complaint. She maintained by way of affirmative defenses, inter alia, that the complaint states no cause of action; that the action is premature; that the suit is barred by prescription; that respondent Cuyugan has no legal and judicial personality to bring the suit; that the lower court has no jurisdiction over the nature of the action; and that there is improper joinder of causes of action.[4]

After the hearing of the motion to dismiss on the grounds asserted as affirmative defenses, the trial court issued the following order on October 20, 1987:

x x x

"The Court is of the considered opinion that there is a need of further proceedings to adduce evidence on the various claims of the parties so as to hear their respective sides.

"WHEREFORE, resolution on the preliminary hearing which partakes of the nature of a motion to dismiss requiring additional evidence is in the meantime held in abeyance. The Motion to Dismiss is hereby denied and the case is set for pre-trial x x x ."[5]

With the denial of her motion for reconsideration of said order on November 19, 1987,[6] petitioner filed on December 10, 1987 a petition for certiorari and prohibition before the Court of Appeals, docketed therein as CA-G.R. SP No. 13464, which was granted by the Sixth Division of respondent court on August 2, 1989 and enjoined respondent judge to resolve petitioner's motion praying for the dismissal of the complaint based on the affirmative defenses within ten (10) days from notice thereof.[7]

In compliance with said decision of respondent court, the trial court acted on and thereafter denied the motion to dismiss, which had been pleaded in the affirmative defenses in Civil Case No. 7938, in an order dated October 24, 1989, resolving the said motion in the following manner:

x x x

"The Court now resolves:

No. 1. The complaint sufficiently shows that a cause of action exists in favor of the plaintiff. A cause of action being the 'primary right to redress a wrong' (Marquez vs. Valera, 48 OG 5272), which apparently on the face of the complaint, plaintiff has a right to enforce through this case. Defendant's protestation that there is no sufficient cause of action is therefore untenable.

No. 2. The present action, despite the claim of defendant is not premature. It is exactly filed in order to prove filiation, and then recognition. To go about the step by step procedure outlined by the defendant by filing one action after another is definitely violative of the prohibition against splitting a cause of action.

No. 3. It is not the plaintiff that is now bringing the case before the Court. It is (her) spurious child that she represents as natural guardian that is instituting the action.

No. 4. Prescription has not set in if we consider that a spurious child may file an action for recognition within four years from his attainment of majority (New Civil Code, Art. 285, No. 2). Whether the letters of the putative father, Atty. Ocampo, is evidence, that should be inquired into in a hearing on the merits.

No. 5. Several causes of action may be joined in one complaint as was done in this case. The defendant's claim that there was a misjoinder is untenable.

No. 6. The Court being a court of general jurisdiction, and of special jurisdiction, such as a probate court has capacity to entertain a complaint such as the one now before it.

"The nature of the case 'CLAIM FOR INHERITANCE' does not control the body of the complaint.

"From all the foregoing, the Court finds that the complaint is sufficient in form and substance and, therefore, the motion to dismiss could not be granted until after trial on the merits in which it should be shown that the allegations of the complaint are unfounded or a special defense to the action exists.

"WHEREFORE, the Motion to Dismiss is hereby DENIED."[8]

Petitioner's motion for reconsideration of said order was denied by the trial court on January 30, 1990.[9] As a consequence, another petition for certiorari and prohibition with preliminary injunction was filed by petitioner on March 12, 1990 with respondent court, docketed as CA-G.R. SP No. 20222, praying that the orders dated October 24, 1989 and January 30, 1990 of the trial court be annulled and set aside for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

On May 10, 1990, as earlier stated, respondent court promulgated its decision dismissing the petition, and likewise denied petitioner's motion for reconsideration in a resolution dated September 5, 1990, hence the present petition for review on certiorari.

In elevating the case before us, petitioner relies on these grounds:

"a. The Honorable Respondent Court of Appeals dismissed Petitioner's Petition for Certiorari and Prohibition in **UTTER DISREGARD OF APPLICABLE DECISIONS OF THIS HONORABLE COURT** providing clear exceptions to the general rule that interlocutory orders may not be elevated by way of the special civil action of certiorari;

"b. Respondent Court refused to resolve certain issues raised by Petitioner before the Regional Trial Court and before Respondent Court of Appeals involving **QUESTIONS OF SUBSTANCE** not theretofore determined by this Honorable Court, such as the interpretation and application of Art. 281 of the Civil Code requiring judicial approval when the recognition of an illegitimate minor child does not take place in a record of birth or in a will; of Art. 175, Par. 2, in relation to Art. 172, Par. 2 of the Family Code, providing for the prescriptive period with respect to the action to establish illegitimate filiation; and of Art. 285 of the Civil Code, providing for the prescriptive period with respect to the action for recognition of a natural child; and

"c. Respondent Court has sanctioned a **DEPARTURE** by the Regional Trial Court from the accepted and usual course of judicial proceedings." [10]

Petitioner contends that the action to claim for inheritance filed by herein private respondent in behalf of the minor child, Chad Cuyugan, is premature and the complaint states no cause of action. She submits that the recognition of the minor child, either voluntarily or by judicial action, by the alleged putative father must first be established before the former can invoke his right to succeed and participate in the estate of the latter. Petitioner asseverates that since there is no allegation of such recognition in the complaint denominated as "Claim for Inheritance," then there exists no basis for private respondent's aforesaid claim and, consequently, the complaint should be dismissed.

The instant case is similar to the case of *Paulino vs. Paulino, et al.*, [11] wherein the petitioner, as plaintiff, brought an action against the private respondents, as defendants, to compel them to give her share of inheritance in the estate of the late Marcos Paulino, claiming and alleging, inter alia, that she is the illegitimate child of the deceased; that no proceedings for the settlement of the deceased's estate had been commenced in court; and that the defendants had refused and failed to deliver her share in the estate of the deceased. She accordingly prayed that the defendants therein be ordered to deliver her aforesaid share. The defendants moved for the dismissal of her complaint on the ground that it states no cause of action and that, even if it does, the same is barred by prescription.

The only difference between the aforesaid case and the case at bar is that at the time of the filing of the complaint therein, the petitioner in that case had already reached the age of majority, whereas the claimant in the present case is still a minor. In *Paulino*, we held that an illegitimate child, to be entitled to support and successional rights from the putative or presumed parent, must prove his filiation to the latter. We also said that it is necessary to allege in the complaint that the putative father had acknowledged and recognized the illegitimate child because such acknowledgment is essential to and is the basis of the right to inherit. There being no allegation of such acknowledgment, the action becomes one to compel recognition which cannot be brought after the death of the putative father. The ratio decidendi in *Paulino*, therefore, is not the absence of a cause of action for failure of the petitioner to allege the fact of acknowledgment in the complaint, but the prescription of the action.

Applying the foregoing principles to the case at bar, although petitioner contends that the complaint filed by herein private respondent merely alleges that the minor Chad Cuyugan is an illegitimate child of the deceased and is actually a claim for inheritance, from the allegations therein the same may be considered as one to compel recognition. Further, that the two causes of action, one to compel recognition and the other to claim inheritance, may be joined in one complaint is not new in our jurisprudence.

As early as 1922, we had occasion to rule thereon in *Briz vs. Briz, et al.*,^[12] wherein we said:

"The question whether a person in the position of the present plaintiff can in any event maintain a complex action to compel recognition as a natural child and at the same time to obtain ulterior relief in the character of heir, is one which in the opinion of this court must be answered in the affirmative, provided always that the conditions justifying the joinder of the two distinct causes of action are present in the particular case. In other words, there is no absolute necessity requiring that the action to compel acknowledgment should have been instituted and prosecuted to a successful conclusion prior to the action in which that same plaintiff seeks additional relief in the character of heir. Certainly, there is nothing so peculiar to the action to compel acknowledgment as to require that a rule should be here applied different from that generally applicable in other cases. x x x .

"The conclusion above stated, though not heretofore explicitly formulated by this court, is undoubtedly to some extent supported by our prior decisions. Thus, we have held in numerous cases, and the doctrine must be considered well settled, that a natural child having a right to compel acknowledgment, but who has not been in fact legally acknowledged, may maintain partition proceedings for the division of the inheritance against his coheirs x x x; and the same person may intervene in proceedings for the distribution of the estate of his deceased natural father, or mother x x x. In neither of these situations has it been thought necessary for the plaintiff to show a prior decree compelling acknowledgment. The obvious reason is that in partition suits and distribution proceedings the other persons who might take by inheritance are before the court; and the declaration of heirship is appropriate to such proceedings."

The next question to be resolved is whether the action to compel recognition has prescribed.

Petitioner argues that assuming *arguendo* that the action is one to compel recognition, private respondent's cause of action has prescribed for the reason that since filiation is sought to be proved by means of a private handwritten instrument signed by the parent concerned, then under paragraph 2, Article 175 of the Family Code, the action to establish filiation of the illegitimate minor child must be brought during the lifetime of the alleged putative father. In the case at bar, considering that the complaint was filed after the death of the alleged parent, the action has prescribed and this is another ground for the dismissal of the complaint. Petitioner theorizes that Article 285 of the Civil Code is not applicable to the case at bar and, instead, paragraph 2, Article 175 of the Family Code should be given retroactive effect. The theory is premised on the supposition that the latter provision of law being merely procedural in nature, no vested rights are created, hence it can be made to apply retroactively.

Article 285 of the Civil Code provides:

"Art. 285. The action for the recognition of natural children may be brought only during the lifetime of the presumed parents, except in the following cases:

(1) If the father or mother died during the minority of the child, in which case the latter may file the action before the expiration of four years from the attainment of his majority;"

x x x

On the other hand, Article 175 of the Family Code reads:

"Art. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent."

Under the last-quoted provision of law, therefore, if the action is based on the record of birth of the child, a final

judgment, or an admission by the parent of the child's filiation in a public document or in a private handwritten signed instrument, then the action may be brought during the lifetime of the child. However, if the action is based on the open and continuous possession by the child of the status of an illegitimate child, or on other evidence allowed by the Rules of Court and special laws, the view has been expressed that the action must be brought during the lifetime of the alleged parent.[13]

Petitioner submits that Article 175 of the Family Code applies in which case the complaint should have been filed during the lifetime of the putative father, failing which the same must be dismissed on the ground of prescription. Private respondent, however, insists that Article 285 of the Civil Code is controlling and, since the alleged parent died during the minority of the child, the action for filiation may be filed within four years from the attainment of majority of the minor child.

Article 256 of the Family Code states that "[t]his Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws." It becomes essential, therefore, to determine whether the right of the minor child to file an action for recognition is a vested right or not.

Under the circumstances obtaining in the case at bar, we hold that the right of action of the minor child has been vested by the filing of the complaint in court under the regime of the Civil Code and prior to the effectivity of the Family Code.[14] We herein adopt our ruling in the recent case of *Republic of the Philippines vs. Court of Appeals, et al.*[15] where we held that the fact of filing of the petition already vested in the petitioner her right to file it and to have the same proceed to final adjudication in accordance with the law in force at the time, and such right can no longer be prejudiced or impaired by the enactment of a new law.

Even assuming *ex gratia argumenti* that the provision of the Family Code in question is procedural in nature, the rule that a statutory change in matters of procedure may affect pending actions and proceedings, unless the language of the act excludes them from its operation, is not so pervasive that it may be used to validate or invalidate proceedings taken before it goes into effect, since procedure must be governed by the law regulating it at the time the question of procedure arises especially where vested rights may be prejudiced. Accordingly, Article 175 of the Family Code finds no proper application to the instant case since it will ineluctably affect adversely a right of private respondent and, consequentially, of the minor child she represents, both of which have been vested with the filing of the complaint in court. The trial court is, therefore, correct in applying the provisions of Article 285 of the Civil Code and in holding that private respondent's cause of action has not yet prescribed.

Finally, we conform with the holding of the Court of Appeals that the questioned order of the court below denying the motion to dismiss is interlocutory and cannot be the subject of a petition for certiorari. The exceptions to this rule invoked by petitioner and allegedly obtaining in the case at bar, are obviously not present and may not be relied upon.

WHEREFORE, the petition at bar is DENIED and the assailed decision and resolution of respondent Court of Appeals are hereby AFFIRMED in toto.

SO ORDERED.

Narvasa, C.J., (Chairman), Paras, and Padilla, JJ., concur
Nocon, J., on leave.

[1] Penned by Associate Justice Asaali S. Isnani, with the con-currence of Associate Justices Oscar M. Herrera

and Luis L. Victor; Rollo, 119-124.

[2] Rollo, 142.

[3] Rollo, 43-45.

[4] Ibid., 48-52.

[5] Ibid., 68.

[6] Rollo, CA-G.R. SP No. 20222, 64.

[7] Ibid., id., 65-68.

[8] Rollo, 69-70.

[9] Ibid., 81-83.

[10] Ibid., 8-9.

[11] 3 SCRA 730 (1961).

[12] 43 Phil. 763 (1922).

[13] Sempio-Diy, The Family Code of the Philippines, 1989 ed., 249.

[14] The Family Code took effect on August 3, 1988, pursuant to the clarification in Memorandum Circular No. 85 of the Office of the President, dated November 7, 1988.

[15] G. R. No. 92326, January 24, 1992.

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