45 Phil. 362

[G.R. No. 20794. October 30, 1923]

GREGORIO RAMOS, PLAINTIFF AND APPELLEE, VS. DIONISIO RAMOS ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

STREET, J.:

On July 7, 1899, Apolonio Ramos, a resident of the municipality of Mabalacat, in the Province of Pampanga, died intestate, leaving an estate of considerable value, consisting of both real and personal property. Apolonio Ramos had been twice married, and was survived by his second wife, Rufina de los Angeles, and two sets of children. His children of the first marriage were two in number, Florencio and Marta; while those of the second marriage were Rafaela, Dionisio, and Agustin, and as the court below found, still another, named Gregorio Ramos, the plaintiff in this case, whose parentage is in dispute.

Upon the death of Apolonio Ramos his property passed into the possession and management of his widow, Rufina de los Angeles. On June 14, 1911, Rafaela, Dionisio, and Agustin bought out the interest of Florencio Ramos and Marta Ramos in the property of their father; and soon thereafter the widow, Rufina de los Angeles, and her three children (Rafaela, Dionisio, and Agustin) proceeded to partition among themselves the property derived from Apolonio Ramos. The document by which this partition was effected is dated January 13, 1912, and was duly acknowledged by the four parties thereto before a notary public. On February 16, 1912, this deed of partition was given judicial approval by an order entered by Judge Julio Llorente of the Court of First Instance for the Province of Pampanga, in the proceedings relating to the intestacy of Apolonio Ramos, deceased.

In the deed of partition the fact is recited that Rafaela, Dionisio, and

Agustin had purchased the shares of Florencio Ramos and Marta Ramos in the estate of their father for the sum of P12,000, and it is also there stated that Apolonio Ramos left no other heirs for the property pertaining to the conjugal partnership between himself and Rufina de los Angeles than the three children, Rafaela, Dionisio, and Agustin. The document then proceeds to assign to each of the four partitioners mentioned in the deed such parts and portions of the property to be divided as had been agreed upon, consisting chiefly of real property. In the deed no reference whatever is made to the present plaintiff, Gregorio Ramos.

After this division had been effected, the three children entered upon the land assigned to them, and Rufina de los Angeles continued to hold in her own exclusive right the portions assigned to her.

On March 15, 1921, Rufina de los Angeles died; and on August 12, 1922, the present plaintiff, Gregorio Ramos, filed his original complaint in this action against Dionisio Ramos, Agustin Ramos, and Rafaela Ramos (with her husband, Januario Siopongco). In this complaint Gregorio Ramos alleges that he is a legitimate son of Apolonio Ramos and Rufina de los Angeles and that as such he inherited an undivided one-fourth interest in the property held and owned by Rufina de los Angeles at the time of her death. He therefore asks that two large tracts of land described in the complaint be partitioned among the four children of Rufina de los Angeles, including himself. The property of which partition was thus sought consists of the same land that had been assigned to Rufina de los Angeles in the deed of partition of January, 1912, between her and her three children, parties to that deed.

In his supplemental complaint, dated September 22, 1922, the plaintiff asserted a similar right of coownership with respect to an additional tract of land, consisting of 191 hectares that had been assigned in the same deed of partition to Rafaela Ramos and Agustin Ramos.

In their answer, dated September 2, 1922, the defendants, after a formal denial of the allegations of the complaint in general, state that, though Gregorio Ramos had been brought up in the family as if he were their brother, nevertheless he is not such in fact; and it is alleged that he is really a natural child of Marta Ramos, half-sister of the defendants and daughter of

Apolonio Ramos by his first marriage. For this reason alone, so their answer asserts, Gregorio Ramos was not mentioned in the partition deed of 1912.

At the hearing of the cause an agreed statement of facts was submitted, covering practically all material points relative to the origin and duration of possession of the real property of which partition is sought, thus leaving only one disputed question of fact to be tried, namely, whether Gregorio Ramos is the son of Apolonio Ramos and Rufina de los Angeles or the natural son of Marta Ramos. In support of the plaintiff's claim that he is the son of Apolonio Ramos and Rufina de los Angeles a certified copy of an entry in the baptismal book kept by the parish priest of Mabalacat was introduced in evidence, showing that the child, Gregorio Ramos, legitimate son of Apolonio Ramos and Rufina de los Angeles, was baptized on December 30, 1895, at the age of seven days. In addition to this various witnesses were presented in behalf of the plaintiff whose testimony tended to show that Rufina de los Angeles was pregnant with child in the year 1895 and that as a result of this pregnancy she gave birth to Gregorio Ramos on December 23, 1895, at the family home in the municipality of Mabalacat. Among the witnesses so introduced was one Genoveva de Leon, who said that she acted as midwife at the birth. Another was Gregoria Angeles, a niece of Rufina de los Angeles, who testified that she was present in the home of Rufina de los Angeles upon the occasion of her confinement on December 23, 1895, and that Gregorio Ramos was the child then born. Other testimony tending to corroborate the foregoing statements was given by other witnesses; and it cannot be denied that the testimony thus introduced makes out a strong case in favor of the legitimate filiation of the present plaintiff as son and heir of Apolonio Ramos and Rufina de los Angeles.

On the part of the defendants the principal witness testifying before the court was Rafaela Ramos, herself a defendant in the case. She was 46 years of age at the time of the trial in the court below and therefore about 20 years old at the time Gregorio Ramos was born. Rafaela says that Gregorio is the son of her half-sister Marta, and that she (Rafaela) was present in the house when Gregorio was born. In explanation of the fact that Gregorio was baptized as the son of Apolonio Ramos and Rufina de los Angeles, the witness says that this was done in order to prevent publicity from being given to the family disgrace. She further states that the woman who acted as midwife on the occasion of Gregorio's birth was not Genoveva de Leon, as claimed by the latter, but one Tomasa

Carlos.

The defendant Agustin Ramos also testified for the defendants and stated that Gregorio was the son of Marta and not of Apolonio Ramos. But this witness was only 8 or 9 years of age when Gregorio was born and therefore could not be expected to have any personal knowledge of the incidents connected with the birth.

It is an admitted fact that Gregorio Ramos was brought up with the other children of Apolonio Ramos as if he were one of the second set, and he appears to have had the same advantages in respect to maintenance and education as the other children. He called Rufina de los Angeles mother; and, so far as appears, the three defendants treated him in every respect as a brother, with the noteworthy exception that when the property of Apolonio Ramos was divided in 1912 Gregorio was not counted in. But the circumstance that Gregorio Ramos was treated as a brother of the defendants in his bringing up is not of much weight upon the controverted question whether he was the son of Apolonio Ramos and Rufina de los Angeles or the natural child of Marta; for if the explanation given by the defendants be true, he would have received the same treatment under the one supposition as under the other.

It appears that there were present in court a number of other witnesses who might possibly have been utilized to advantage by the defendants, but these witnesses were reduced to mere ciphers by the course which was taken by the attorney then representing the defendants. The incident is one which we think should be clearly explained, as it involves a point of trial practice of considerable importance.

In numerous cases that have come before us we have noticed a disposition on the part of attorneys to agree upon what certain persons would testify to if introduced and sworn as a witness in court. This practice has been disapproved by this court in several criminal cases, but so far as we are aware the authority of an attorney to make such an agreement in a civil case has never been questioned. Indeed there are certain situations in which the practice is to be commended as desirable, if not indeed necessary, as where a witness is absent and cannot be produced in court. But the use of this device to abridge the labor of attorneys and of the court is not to be commended in a case where the

witnesses are available for examination in court. The inevitable result of making such an agreement is to emasculate the testimony, since it deprives the court of the benefit of the reflections upon the intelligence and veracity of the witnesses which can only arise in the process of examination and cross-examination in court. No case has come before us in which this practice has been indulged in with such questionable effect as in this case.

To be more specific, the following witnesses for the defendants were present in court at the trial of this cause and ready if they had been called upon to testify in the case, namely, (1) Tomasa Carlos, of the age of 80 years, claiming to be the midwife who attended upon the young mother Marta when the child Gregorio Ramos was born; (2) Rafaela Aquino, of the age of 46 years, who was employed in the home of Apolonio Ramos at the time Gregorio was born and served as his nurse; (3) Agustina Castro, of the age of 60 years, a niece of Apolonio Ramos by marriage, and frequent visitor at his home at the time Gregorio Ramos was born; (4) Bernabe Salunga, of the age of 56 years, a servant in the house of Apolonio Ramos at the time Gregorio Ramos was born; (5) Marcelo Tiglao, of the age of 53 years, and one of the principal residents of the municipality; and finally (6) Emilio Gonzales, whose personal conditions and relations are not stated.

All these witnesses, it is agreed, were prepared to testify that Gregorio Ramos is the son of Marta Ramos and not the son of Apolonio Ramos and Rufina de los Angeles; but instead of examining them and turning them over to his adversary for cross-examination, Mr. Pineda, the attorney for the defendants below, caused these witnesses to defile successively before the court, and after their personal conditions and relations had been noted in the record, the attorney made a statement as to what each particular witness would testify in case he were examined. This statement was at once met by an announcement from the attorney for the plaintiff to the effect that it was admitted that if such witness were to testify he would testify as stated. The course thus followed may be illustrated by the following excerpt from the record relative to the witness Bernabe Salunga, and the same process was substantially repeated in relation with the other witnesses above mentioned:

> "The defendant presents Bernabe Salunga as witness, who, after being duly

sworn, testified as follows:

"Direct examination by Mr. PINEDA:

"Q. Tell your name and other personal circumstances.—A. Bernabe Salunga, 56 years old, married, laborer, resident of Mabalacat, Pampanga.

"PINEDA. This witness is first cousin of the defendants, and has been living as a servant with Mr. Apolonio Ramos in his lifetime, probably from the age of twelve years and is still there as a servant up to the present time, and if he be allowed to testify about the birth of Gregorio Ramos, he would testify that he (Gregorio Ramos) is not a child of Apolonio Ramos and Rufina de los Angeles, but of Marta Ramos, daughter of Apolonio Ramos in his first marriage.

"GUEVARA. We admit that if this witness is allowed to testify, he would testify to what Mr. Pineda has stated."

It is impossible for a court to breathe the breath of life into these dummies. Of course where facts are not controverted, agreed statements of this sort may be accepted as sufficient to serve as the basis of judgment; but where witnesses testifying to the contrary, and who are credited by the court, are actually examined as witnesses, little or no weight can be conceded to such statements. From the hesitancy of an attorney to subject his witnesses to examination it may be fairly assumed that their testimony would be weak or that something might be brought out upon cross-examination which would be hurtful to the client's cause.

It results that we must sustain the trial judge in holding that the plaintiff, Gregorio Ramos, is the son of Apolonio Ramos and Rufina de los Angeles, as indicated in the certificate of baptism and testified to clearly by the witnesses for the plaintiff. We are not unconscious of the fact that there is one strong moral consideration in support of the contention of the defendants, which is, that it is difficult to see how Rufina de los Angeles, if really the mother of Gregorio Ramos, could have been brought to participate in a partition of the property of Apolonio Ramos which left her youngest son out of account; also it is not easy to believe that, if the defendants had considered Gregorio Ramos to be their brother, they would have participated in a fraudulent

partition which deprived him of his share in the paternal estate. But this moral reflection is not in our opinion of sufficient force to justify a court in ignoring the certificate of birth and the other testimony tending to show filiation as claimed.

From what has been said it necessarily follows that the plaintiff is entitled to share equally with Dionisio, Agustin and Rafaela Ramos in the property of which their mother, Rufina de los Angeles, was possessed at the time of her death, and the trial judge committed no error in so declaring. In this connection it must be borne in mind that the plaintiff seeks partition of the land thus held by his mother, *i. e.,* the lands described in the original complaint, by right of his descent from her, and not as heir of his father. As Rufina de los Angeles died only in 1921, no question of the prescription of the plaintiff's right can arise in favor of the defendants, his coheirs.

It is different with respect to the tract of land described in the supplemental complaint, as to which plaintiff's claim is planted on title by descent from his father, Apolonio Ramos, who, as already stated, died in the year 1899. After the father's death this land remained in the possession of the widow, Rufina de los Angeles, until partition was effected in January, 1912, when the occupation of Rafaela Ramos and Agustin Ramos began. Since that time these defendants have exercised all the rights of owners to the exclusion of all other persons. The division thus accomplished, sanctioned by judicial approval, became a new and distinctive source of title, and it supplies a sufficient basis for the acquisition of title by adverse possession.

It is undoubtedly a general rule of jurisprudence, recognized in article 1965 of the Civil Code, that prescription under the civil law cannot ordinarily become effective from mere possession by one coheir or coowner as against his coheirs and coowners; and the same idea is fully recognized in the common law. The reason for this is that the possession of one coheir or coowner ordinarily inures to the benefit of his fellows. His possession is therefore not adverse. But when the occupant ceases to hold in the character of coheir or coowner and holds or claims by some other right or title, prescription becomes effective to the same extent as in other cases (De Castro *vs*. Echarri, 20 Phil., 23; Bargayo *vs*. Camumot, 40 Phil., 857). The occupation which was begun by Rafaela and Agustin Ramos in 1912 continued adversely to all the world for more

than ten years prior to the initiation of the present action, and as a consequence they have acquired a valid title by acquisitive adverse possession under section 41 of the Code of Civil Procedure. It was not necessary that this prescriptive title should be specially pleaded in the defendants' answer. (Corporacion de PP. Agustinos Recoletos *vs*. Crisostomo, 32 Phil., 427.)

The plaintiff was a minor when the adverse possession of his brother and sister with respect to this parcel of land had its commencement, and section 42 contains a saving in favor of a minor by virtue of which he is entitled to bring his action within three years after disability is removed. By this statute the minor is given the designated period after attaining majority within which to bring suit, if the period of prescription has expired. But the plaintiff became of age on December 23, 1916, and the action was not instituted until more than three years thereafter, and not until the full ten years of adverse possession had been completed. It results that the action cannot be maintained as to the parcel of land described in the supplemental complaint. (Suarez *vs*. Suarez, 43 Phil., 903.) The trial judge was therefore in error in declaring that the plaintiff had any interest in this parcel.

From what has been said it follows that so much of the appealed decision as declares the plaintiff to be coowner with the defendants of the land described in the original complaint and orders a division thereof must be affirmed; but so much of the same judgment as declares the plaintiff to be coowner of the land described in the supplemental complaint must be reversed, and the defendants will be absolved from said supplemental complaint, without special pronouncement as to costs. So ordered.

Johnson, Malcolm, Avanceña, Villamor, Johns, and *Romualdez, JJ.,* concur.

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