

43 Phil. 903

[ G. R. No. 18415. October 07, 1922 ]

**GLORIA SUAREZ, PLAINTIFF AND APPELLANT, VS. FELIX SUAREZ AND HIS WIFE FELICIDAD LACSON, MARCOS SUAREZ AND HIS WIFE ENGRACIA GAMBOA, ELVIRA SUAREZ AND HER HUSBAND ENRIQUE AZCONA, AND EMILIA SUAREZ, DEFENDANTS AND APPELLEES.**

## **D E C I S I O N**

### **STREET, J.:**

This is an appeal from the Court of First Instance of the Province of Occidental Negros, in an action wherein the plaintiff, Gloria Suarez, alleged recognized natural daughter of Manuel Suarez, seeks to obtain a division of the estate pertaining to the said Manuel Suarez, deceased, and to recover from his legitimate children, four of the defendants herein, the proportionate part pertaining to the plaintiff as one of his heirs. After hearing the cause his Honor, Judge Antonio Villa-Real, presiding in the Court of First Instance of the province, aforesaid, absolved the defendants from the complaint, with costs against the plaintiff. From this judgment the plaintiff appealed.

It appears in evidence that Manuel Suarez, the alleged natural father of the plaintiff, was assassinated by revolutionary partisans on August 1, 1897, and that he died leaving a large landed estate, which in December of the year 1898 was extra judicially divided among his four legitimate children of the surname of Suarez, named as defendants in this action. Since that date each of said heirs, and their successors in interest as to such portions as have been alienated, have been in continuous and undisturbed possession of the portions respectively assigned to them, in the character of owner, and exclusive of any other right.

The plaintiff does not claim that she has ever been acknowledged as a natural child of Manuel Suarez in either of the ways prescribed in article 131 of the Civil Code; neither has she ever obtained any judicial decree compelling recognition, as contemplated in article 137 of the Civil Code, her claim being rested on the alleged circumstance that she has been in the uninterrupted possession of the status of a natural child of said Manuel Suarez, justified

by the conduct of her father himself or of his family, as contemplated in No. 2 of article 135 of said Code.

The present action must therefore be considered in the nature of a complex action in which the plaintiff seeks to obtain a judicial declaration of her status as a recognized natural child and at the same time to procure a division of the estate and the allotment to her of the portion appropriate to her as a natural child of Manuel Suarez and coheir of his legitimate children. An action of this complex character can undoubtedly be maintained, provided all the conditions are present which are necessary to justify relief in both aspects of the case. (Briz vs. Briz and Remigio, p. 763, *ante*.)

Upon the question whether the plaintiff has in fact enjoyed the continuous possession of the status of natural child of Manuel Suarez, justified by the acts of Manuel Suarez, or his family, the trial judge found adversely to the plaintiff; and he also found that, even supposing that she had enjoyed the possession of such status, her action to enforce partition of the estate of Manuel Suarez is barred by the statute of limitations.

In the view that we take of the case, the question of prescription is absolutely determinative of the case in two different aspects; and it therefore becomes unnecessary for us to consider the question whether the plaintiff has in fact enjoyed continuous possession of the status of a natural child, as claimed.

In this connection the trial judge found that the plaintiff was born between the 18th and 25th of July, 1896, a finding which, in the light of the evidence, is in our opinion incontrovertible. This being true, she arrived at the age of majority not later than July 25, 1917 (Act No. 1891). Under section 45 of the Code of Civil Procedure, the plaintiff had two full years from that date within which she was at liberty to institute an action to compel acknowledgment. We say two years, and two years only, because it is clear that the provisions now governing the prescription of the action to compel acknowledgment under No. 1 of article 137 of the Civil Code, are found in sections 44 and 45 of the Code of Civil Procedure, with the result that such action must be instituted at the latest within two years after the attainment of majority, the alleged natural parent being dead.

The original action in this case was instituted on July 28, 1920, or one year and three days after the expiration of the two years within which the plaintiff could have instituted an action to compel acknowledgment. It results that at the time this complaint was filed, any action on the part of the plaintiff to compel acknowledgment had prescribed.

But, even supposing that the plaintiff's right to compel acknowledgment has not prescribed, it is very clear that the legitimate children of Manuel Suarez, and their successors in interest, have obtained an indefeasible title to the respective portions of their father's estate assigned to them in the deed of partition of December, 1898, by acquisitive adverse possession, exerted in all respects in conformity with section 41 of the Code of Civil Procedure. It is true that section 42 of the Code of Civil Procedure contains an exception in favor of a person under the disability of nonage, nevertheless, this reservation also ceased to be available to the plaintiff upon the expiration of three years after she reached majority, with the result that the prescriptive right of the defendants had become completely effective before the original complaint was filed.

There being no error in the decision appealed from, the same must be affirmed, and it is so ordered, with costs against the appellant.

*Araullo, C. J., Johnson, Malcolm, Avaceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.*