43 Phil. 763

[G. R. No. 18413. September 20, 1922]

GERTRUDIS BRIZ, PLAINTIFF AND APPELLEE, VS. VIVENCIA BRIZ AND HER HUSBAND PEDRO REMIGIO, DEFENDANTS AND APPELLANTS.

D E C I S I O N

STREET, J.:

This action was instituted in the Court of First Instance of the Province of Samar in behalf of a minor, one Gertrudis Briz, to recover of the defendants, Vivencia Briz and Pedro Remigio, the parcel of land described in the complaint. Upon the institution of the action, the trial court, in accordance with a request stated in the complaint, named Benita Elleso, mother of Gertrudis Briz, as her guardian *ad litem*, after which the cause proceeded with the usual incidents to a hearing; and judgment was rendered in favor of the plaintiff. From this decision the defendants appealed.

The complaint alleges in substance that the plaintiff, a minor of 11 years, is a recognized natural daughter of Maximo Briz, deceased, from whom she inherited the parcel of land which is the subject of action. It is not disputed that said land belonged in life to Maximo Briz, who died in May, 1909, unmarried and intestate, leaving neither ascendants nor legitimate descendants. It appears, however, that he did leave surviving him other kindred, including at least an uncle, Geronimo Bello, and an aunt, "Vivencia Briz, the latter of whom is one of the defendants in this case. It also appears that the defendants have had continuous possession of the disputed parcel of land since the death of Maximo Briz, and they claim that Vivencia Briz acquired it for a valuable consideration from Maximo Briz before his death.

Though it is alleged in the complaint that Gertrudis Briz is the recognized natural daughter of Maximo Briz, it is not pretended that she has ever been voluntarily acknowledged as the natural child of her father in either of the ways specified in article 131 of the Civil Code; nor is it claimed that she has ever obtained a judicial decree, under article 135 or article 137 of

the same Code, compelling her father or his heirs to recognize her as his natural child. The most that is claimed in her favor is that she has enjoyed the uninterrupted possession of the status of a natural child, as contemplated in subsection 2 of article 135.

The trial judge found that the plaintiff is in fact the natural daughter of Maximo Briz and Benita Elleso, and that after the birth of the plaintiff until her father's death she had heen in the uninterrupted possession of the status of natural child. His Honor further found that the claim to this parcel of land asserted in the answer of the defendants, to the effect that it had been acquired by purchase from Maximo Briz in life, is baseless; and in this connection his Honor held that the note written in Visayan at the foot of the document Exhibit 1, purporting to accredit the fact that the said Maximo Briz intended for his aunt Vivencia to have this land in consideration of P70 received by him from her, is not genuine.

In view of these findings his Honor proceeded to declare, in the dispositive part of his opinion, that the plaintiff, Gertrudis Briz, is entitled to be recognized as the natural daughter of Maximo Briz and that, in default of heirs with better right, she is his sole rightful heir; and he accordingly ordered the defendants to surrender possession of the land to her and to pay to her the sum of P36, which had been received by them as rent Of the same from one Fortunato Aguirre.

While, upon examining the proof presented in the court below, we see no sufficient reason to doubt the correctness of the conclusions of the trial judge upon the questions of fact, nevertheless, as the case must, for error of law, be remanded for further proceedings in which additional defendants may be brought before the court, we abstain from making a conclusive pronouncement upon the controverted question whether Gertrudis Briz has been in the uninterrupted possession of the status of natural child.

Upon the other point, which is concerned exclusively with the special defense of the present defendants, namely, that Vivencia Briz acquired this parcel of land for a valuable consideration from Maximo Briz in life, we do not hesitate to say that the finding of the trial judge is in conformity with the evidence.

Upon the facts above stated a single question of law is presented which in our opinion determines the disposition of the case. That question is, whether it was permissible for the trial judge upon the actual state of the pleadings in this case and in the absence of other parties in interest, to make a judicial declaration to the effect that the minor plaintiff is entitled to be recognized as the natural daughter of Maximo Briz and upon that

pronouncement to found a judgment in her favor, as heir, for the recovery of the land in question. This question must in our opinion be answered in the negative.

In article 939 of the Civil Code it is declared that, in the absence of legitimate descendants or ascendants, the natural children legally acknowledged shall succeed to the entire estate of the decedent. The expression "legally acknowledged," as here used, can only be construed as referring to children who have, somehow or other, acquired the legal status of natural children; and this means that they must either have been voluntarily acknowledged, as contemplated in article 131 of the Civil Code, or they must have procured a decree compelling the natural parent or his heirs to recognize them as having the status of natural children, as contemplated in articles 135 and 137 of the Civil Code.

From this it necessarily follows that the actual attainment of the status of a legally recognized natural child is a condition precedent to the realization of any rights which may pertain to such child in the character of heir. In the case before us, assuming that the plaintiff has been in the uninterrupted possession of the status of natural child, she is undoubtedly entitled to enforce legal recognition; but this does not in itself make her a legally recognized natural child.

The provision of law recognizing the right of a natural child to compel acknowledgment after the death of the alleged natural parent is found in article 137 of the Civil Code. That article is in form a law governing prescription, and it does not expressly declare against whom the action to compel acknowledgment must be brought after the death of the putative parent. But of course the right of action is against the other legitimate heirs or the legitimate kin who would inherit as heirs in case the claim to recognition should not be made good.

In the present case, there being now in existence no legitimate descendants or ascendants of Maximo Briz, his more remote kin, of whom Vivencia Briz is apparently one, would be entitled to inherit his property, in case the plaintiff is not recognized; and it is evident that all persons who might be prejudiced by the recognition of the minor plaintiff as a natural child of Maximo Briz are necessary and indispensable parties to any action to compel judicial recognition of her status as such.

Reverting now to the complaint, it will be noted that it is in the form commonly used in a reivindicatory action for the recovery of land, and the plaintiff seeks to recover solely in her alleged character as heir of Maximo Briz. She does not ask for a decree compelling the

defendants to recognize her as the natural child; and it is not alleged, and does not appear, that the defendant Vivencia Briz is the only person who, as a surviving relative of Maximo Briz, would be prejudiced by a declaration to the effect that the plaintiff is the recognized natural child of that person. On the contrary it would seem that she is not. Under these circumstances the obstacles to the maintenance of the action in the present form are insuperable.

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. For instance, if the plaintiff had in this action impleaded all of the persons who would be necessary parties defendant to an action to compel acknowledgment, and had asked for relief of that character, it would have been permissible for the court to make the judicial pronouncement declaring that the plaintiff is entitled to be recognized as the natural child of Maximo Briz, and at the same time to grant the additional relief sought in this case against the present defendants; that is, a decree compelling them to surrender to the plaintiff the parcel of land sued for and to pay her the damages awarded in the appealed decision.

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 (Siguiong vs. Siguiong, 8 Phil., 5; Tiamson vs. Tiamson, 32 Phil., 62); and the same person may intervene in proceedings for the distribution of the estate of his deceased natural father, or mother (Capistrano vs. Fabella, 8 Phil, 135; Conde vs. Abaya, 13 Phil., 249; Ramirez vs. Gmur, 42 Phil., 855). 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 foregoing discussion leads to the conclusion that the decision appealed from is erroneous and must be reversed. However, in view of the fact that the defects of the complaint may possibly be cured by amendment, it is considered appropriate, for the promotion of justice, that the cause should be remanded for further proceedings, with leave to the plaintiff to amend and bring in additional parties defendant, in so far as may be necessary to a complete determination of the controversy. It will be so ordered, without express pronouncement as to costs of either instance. So ordered.

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

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