Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

[G.R. No. 11796. August 5, 1918.]

In the matter of the estate of Samuel Bischoff Werthmuller. ANA M. RAMIREZ, executrix-appellant, v. OTTO GMUR, as guardian of the minors Esther Renate Mory, Carmen Maria Mory, and Leontina Elizabeth, claimant-appellant.

C. Lozano for executrix and *Appellant*.

Thos. D. Aitken for claimant and *Appellant*.

SYLLABUS

1. PARENT AND CHILD; ILLEGITIMACY; PRESUMPTION AS TO CAPACITY OF PARENTS TO MARRY. — Where an illegitimate child is in fact recognized by the father, the presumption is that the parents had the capacity to marry at the time the child was born or begotten, and that the child is a natural child and therefore capable of recognition. The burden of proof to show the contrary is upon the party impugning the legality of the act of recognition.

2. SUCCESSIONS; RECOGNIZED CHILD AS FORCED HER. — Where a person dies testate but without legitimate descendants or ascendants a recognized natural child for whom no provision is made in the will is a forced heir and as such entitled to one-third of the estate. (Art. 842, Civil Code.)

3. DIVORCE; DOMICILE OF PARTIES; JURISDICTION OF FOREIGN COURT — The court of a country in which neither of the spouses is domiciled and to which one or both of them may resort merely for the purpose of obtaining a divorce has no jurisdiction to determine their matrimonial status; and a divorce granted by such a court is not entitled to recognition elsewhere. The voluntary appearance of the defendant before such a tribunal does not invest the court with jurisdiction.

4. SUCCESSIONS; ADULTEROUS CHILDREN INCAPABLE OF INHERITING. — The right to inherit is limited to legitimate, legitimated, and acknowledged natural children, the offspring of adulterous relations being excluded. The word "descendants," as used in article 941 of the Civil Code, cannot be interpreted to include illegitimates born of adulterous relations.

5. WILLS AND ADMINISTRATION; LEGITIME OF FORCED HEIR; EFFECT OF DECREE OF PROBATE. — The right of a forced heir to his legitime is not divested b~ a decree admitting a will to probate in which no provision is made for him. The decree of probate is conclusive only as regards the due execution of the will. The question of the intrinsic validity of its provisions is in no wise determined thereby.

6. EXECUTORS AND ADMINISTRATORS; DISTRIBUTION OF ESTATE RIGHT OF HEIR TO PARTICIPATE IN FINAL DIVISION. — An heir who is not a party to the proceedings for the probate of a will and the distribution of the testator's estate may intervene at any time while the court yet retains jurisdiction over the estate and establish his right to participate in the final division thereof.

D E C I S I O N

STREET, *J.* :

Samuel Bischoff Werthmuller, native of the Republic of Switzerland, but for many years a resident of the Philippine Islands, died in the city of Iloilo on June 29, 1913, leaving a valuable estate of which he disposed by will. A few days after his demise the will was offered for probate in the Court of First Instance of Iloilo and, upon publication of notice, was duly allowed and established by the court. His is widow, Doña Ana M. Ramirez, was named as executrix in the will, and to her accordingly letters testamentary were issued. By the will everything was given to the widow, with the exception of a piece of real property located in the City of Thun, Switzerland, which was devised to the testator's brothers and sisters.

The first clause of the will contains a statement to the effect that inasmuch as the testator had no children from his marriage with Ana M. Ramirez he was therefore devoid of forced heirs. In making this statement the testator ignored the possible claims of two sets of children, born to his natural daughter, Leona Castro.

The pertinent biographical facts concerning Leona Castro are these: As appears from the original baptismal entry made in the church record of Bacolod, she was born in that pueblo on April 11, 1875, her mother being Felisa Castro, and father "unknown." Upon the margin of this record there is written in Spanish an additional annotation of the following tenor: "According to a public document (escritura) which was exhibited, she was recognized by Samuel Bischoff on June 22, 1877." This annotation as well as the original entry is authenticated by the signature of Father Ferrero, whose deposition was taken in this case. He testifies that the word "escritura" in this entry means a public document; and he says that such document was exhibited to him when the marginal note which has been quoted was added to the baptismal record and supplied the basis for the annotation in question.

As the years passed Leona Castro was taken into the family of Samuel Bischoff and brought up by him and his wife as a member of the family; and it is sufficiently shown by the evidence adduced in this case that Samuel Bischoff tacitly recognized Leona as his daughter and treated her as such. In the year 1895 Leona Castro was married to Frederick von Kauffman, a British subject, born in Hongkong, who had come to live in the city of Iloilo. Three children were born of this marriage, namely, Elena, Federico, and Ernesto, the youngest having been born on November 10, 1898. In the month of April 1899, Leona Castro was taken by her husband from Iloilo to the City of Thun, Switzerland, for the purpose of recuperating her health. She was there placed in a sanatorium, and on August 20th the husband departed for the Philippine Islands, where he arrived on October 10, 1899.

Leona Castro continued to remain in Switzerland, and a few years later informed her husband, whom she had not seen again, that she desired to remain free and would not resume life in common with him. As a consequence, in the year 1904, Mr. Kauffman went to the City of Paris, France, for the purpose of obtaining a divorce from his wife under the French laws; and there is submitted in evidence in this case a certified copy of an extract from the minutes of the Court of First Instance of the Department of the Seine, from which it appears that a divorce was there decreed on January 5, 1905, in favor of Mr. Kauffman and against his wife, Leona, in default. Though the record recites that Leona was then in fact residing at No. 6, Rue Donizetti, Paris, there is no evidence that she had acquired a permanent domicile in that city.

The estrangement between the von Kauffman spouses is explained by the fact that Leona Castro had become attracted to Dr. Ernest Emil Mory, the physician in charge of the sanatorium in Switzerland where she was originally placed; and soon after the decree of divorce was entered, as aforesaid, Doctor Mory and Leona Castro repaired to the City of London, England, and on May 5, 1905, in the registrar's. office in the district of Westminster, went through the forms of a marriage ceremony before an officer duly qualified to celebrate marriages under the English law. It appears that Doctor Mory himself had been previously married to one Helena Wolpman, and had been divorced from her; but how or under what circumstances this divorce had been obtained does not appear.

Prior to the celebration of this ceremony of marriage a daughter, named Leontina Elizabeth, had been born (July 21, 1900) to Doctor Mory and Leona Castro, in Thun, Switzerland. On July 2, 1906, a

second daughter, named Carmen Maria, was born to them in Berne, Switzerland, now the place of their abode; and on June 10, 1909, a third daughter was born, named Esther. On October 6, 1910, the mother died.

In the present proceedings Otto Gmur has appeared as the guardian of the three Mory claimants, while Frederick von Kauffman has appeared as the guardian of his own three children, Elena, Federico, and Ernesto.

As will be surmised from the foregoing statement, the claims of both sets of children are founded upon the contention that Leona Castro was the recognized natural daughter of Samuel Bischoff and that as such she would, if living, at the time of her father's death, have been a forced heir of his estate and would have been entitled to participate therein to the extent of a one-third interest. Ana M. Ramirez, as the widow of Samuel Bischoff and residuary legatee under his will, insists — at least as against the Mory claimants, — that Leona Castro had never been recognized at all by Samuel Bischoff.

In behalf of Leontina, the oldest of the Mory claimants, it was originally insisted in the court below, that, having been born while her mother still passed as the wife of Frederick von Kauffman, she was to be considered as a legitimate daughter of the wedded pair. This contention has been abandoned on this appeal as untenable; and it is now contended here merely that, being originally-the illegitimate daughter of Doctor Mory and Leona Castro, she was legitimated by their subsequent marriage.

In behalf of Carmen Maria and Esther Renate, the two younger of the Mory claimants, it is argued that the bonds of matrimony which united Frederick von Kauffman and Leona Castro were dissolved by the decree of divorce granted by the Paris court on January 5, 1905; that the marriage ceremony which was soon thereafter celebrated between Doctor Mory and Leona in London was in all respects valid; and that therefore these claimants are to be considered the legitimate offspring of their mother.

In behalf of the children of Frederick von Kauffman it is insisted that the decree of divorce was wholly invalid, that all three of the Mory children are the offspring of adulterous relations, and that the von Kauffman children, as the legitimate offspring of Leona Castro, are alone entitled to participate in the division of such part of the estate of Samuel Bischoff as would have been inherited by their mother, if living.

We are of the opinion that the status of Leona Castro as a recognized natural daughter of Samuel Bischoff is fully and satisfactorily shown. It is proved that prior to her marriage with Frederick von Kauffman she was in an uninterrupted enjoyment of the de facto status of a natural child and was treated as such by Samuel Bischoff and his kindred. The proof of tacit recognition is full and complete.

From the memorandum made by Padre Ferrero in the record of the birth, as well as from the testimony of this priest, taken upon the deposition, it also appears that Samuel Bischoff had executed a document, authenticated by a notarial act, recognizing Leona as his daughter, that said document was presented to the priest, as custodian of the church records, and upon the faith of that document the marginal note was added to the baptismal record, showing the fact of such recognition. The original document itself was not produced in evidence but it is shown that diligent search was made to discover its whereabouts, without avail. This was sufficient to justify the introduction of secondary evidence concerning its contents; and the testimony of the priest shows that the fact of recognition was therein stated. Furthermore, the memorandum in the baptismal record itself constitutes original and substantive proof of the facts therein recited.

It will be observed that the recognition of Leona Castro as the daughter of Samuel Bischoff occurred prior to the date when the Civil Code was put in force in these Islands; and consequently her rights as derived from that recognition must be determined under the law as it then existed, that is, under Law 11 of Toro, which afterwards became Law 1, title 5, book 10, of the Novisima Recopilacion. (See Capistrano v. Estate of Gabino, 8 Phil., 135, 139, where this statute is quoted in the opinion written

by Mr. Justice Torres.) Under that law recognition could be established by proof of acts on the part of the parent unequivocally recognizing the status of his offspring. (Cosio v. Pili, 10 Phil., 72, 77.) In other words at tacit recognition was sufficient. Under article 131 of the present Civil Code, the acknowledgment of a natural child must be made in the record of birth, by will, or in other public instrument. We are of the opinion that the recognition of Leona Castro is sufficiently shown whether the case be judged by the one provision or the other.

But it is contended by counsel for Doña Ana Ramirez that only children born oœ persons free to marry may possess the status of recognized natural children, and there is no evidence to show that Felisa Castro was either a single woman or widow at the time of the conception or birth of Leona. In the absence of proof to the contrary, however, it must be presumed that she was a single woman or a widow.

Relative to this presumption of the capacity of the parents to marry, the author Sanchez Roman makes the following comment:

"Furthermore, viewing the conception of natural child in connection with two mutually interrelated circumstances, to wit, the freedom of the parents to intermarry, with or without dispensation, at the time of the conception of the offspring stigmatized as natural, the first of these, or freedom to marry, is a point upon which there is, according to the jurisprudence of our former law, whose spirit is maintained in the Code, an affirmative presumption which places the burden of proving the contrary upon those who are interested in impugning the natural filiation." (Vol. 5, Derecho Civil, pp. 1018-1019.)

The contrary presumption would be that Felisa Castro was guilty of adultery, which cannot be entertained. If such had in fact been the case, the burden of proving it would have been upon the persons impugning the recognition of the child by her father. (Sec. 334, par. 1, Code of Civil Procedure.)

From the fact that Leona Castro was an acknowledged natural daughter of her father, it follows that had she survived him she would have been his forced heir, he having died after the Civil Code took effect. (Civil Code, article 807 [3], art. 939; Civil Code, first transitory disposition); and as such forced heir she would have been entitled to one-third of the inheritance (art. 842, Civil Code).

With reference to the rights of the von Kauffman children, it is enough to say that they are legitimate children, born to their parents in lawful wedlock; and they are therefore entitled to participate in the inheritance which would have devolved upon their mother, if she had survived the testator.

As regards the Mory claimants, it is evident that their rights principally depend upon the effect to be given by this court to the decree of divorce granted to von Kauffman by the Court of First Instance of the City of Paris. If this decree is valid, the subsequent marriage of Doctor Mory and Leona Castro must also be conceded to be valid; and as a consequence the two younger children, born after said marriage, would be the legitimate offspring of their mother, and would be entitled to participate in their mother's portion of Mr. Bischoff's estate. With respect to Leontina Elizabeth, the older one of the Mory claimants, there would in the case still be the insuperable obstacle which results from the fact that she was the offspring of adulterous intercourse and as such was incapable of legitimation (art. 119, Civil Code).

We are of the opinion that the decree of divorce upon which reliance is placed by the representation of the Mory children cannot be recognized as valid in the courts of the Philippine Islands. The French tribunal has no jurisdiction to entertain an action for the dissolution of a marriage contracted in these Islands by persons domiciled here, such marriage being indissoluble under the laws then prevailing in this country.

The evidence shows conclusively that Frederick von Kauffman at all times since earliest youth has been, and is now, domiciled in the city of Iloilo in the Philippine Islands; that he there married Leona Castro, who was a citizen of the Philippine Islands, and that Iloilo was their matrimonial domicile; that

his departure from Iloilo for the purpose of taking his wife to Switzerland was limited to that purpose alone, without any intent to establish a domicile elsewhere; and finally that he went to Paris in 1904, for the sole purpose of getting a divorce, without any intention of establishing a permanent residence in that city. The evidence shows that the decree was entered against the defendant in default, for failure to answer, and there is nothing to show that she had acquired, or had attempted to acquire, a permanent domicile in the City of Paris. It is evident of course that the presence of both the spouses in that city was due merely to the mutual desire to procure a divorce from each other.

It is established by the great weight of authority that the court of a country in which neither of the spouses is domiciled and to which one or both of them may resort merely for the purpose of obtaining a divorce has no jurisdiction to determine their matrimonial status; and a divorce granted by such a court is not entitled to recognition elsewhere. (See Note to Succession of Benton, 59 L. R. A., 143) The voluntary appearance of the defendant before such a tribunal does not invest the court with jurisdiction. (Andrews v. Andrews, 188 U. S., 14; 47 L ed 366)

It follows that, to give a court jurisdiction on the ground of the plaintiffs residence in the State or country of the judicial forum, his residence must be bona fide. If a spouse leaves the family domicile and goes to another State for the sole purpose of obtaining a divorce, and with no intention of remaining, his residence there is not sufficient to Confer jurisdiction on the courts of that State. This is especially true where the cause of divorce is one not recognized by the laws of the State of his own domicile (14 Cyc., 817, 818.)

As has been well said by the Supreme Court of the United States marriage is an institution in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there could be neither civilization nor progress. (Maynard v. Hill 125 U. S., 210; 31 L. ed., 659.) Until the adoption of 'Act No. 2710 by the Philippine Legislature (March 11 1917) it had been the law of these Islands that marriage, validly contracted, could not be dissolved absolutely except by the death of one of the parties; and such was the law in this jurisdiction at the time when the divorce in question was procured The Act to which we have referred permits an absolute divorce to be granted where the wife has been guilty of adultery or the husband of concubinage. The enactment Of this statute undoubtedly reflects a change in the policy of our laws upon the subject of divorce, the exact effect and bearing of which need not be here discussed. But inasmuch as the tenets of the Catholic Church absolutely deny the validity of marriages where one of the parties is divorced, it is evident that the recognition of a divorce obtained under the conditions revealed in this case would be as repugnant to the moral sensibilities of our people as it is contrary to the well-established rules of law.

As the divorce granted by the French court must be ignored, it results that the marriage of Doctor Mory and Leona Castro, celebrated in London in 1905, could not legalize their relations; and the circumstance that they afterwards passed for husband and wife in Switzerland until her death is wholly without legal significance. The claims of the Mory children to participate in the estate of Samuel Bischoff must therefore be rejected. The right to inherit is limited to legitimate, legitimated, and acknowledged natural children. The children of adulterous relations are wholly excluded. The word "descendants," as used in article 941 of the Civil Code cannot be interpreted to include illegitimates born of adulterous relations.

An important question arises in connection with the time within which the claims of the two sets of children were presented to the court. In this connection it appears that the will of Samuel Bischoff was probated in August, 1913. A committee on claims was appointed and its report was filed and accepted February 20, 1914. About the same time Otto Gmur entered an appearance for the Mory claimants and petitioned the court to enter a decree establishing their right to participate in the distribution of the estate. The executrix, Doña Ana Ramirez, answered the petition denying that said minors were the legitimate children of Leona Castro and further denying that the latter was the recognized natural daughter of Samuel Bischoff. Upon the issues thus presented a trial was had before the Honorable Fermin Mariano, and on December 29, 1915, he rendered a decision in which he held (1) that Leona Castro was the recognized natural daughter of Samuel Bischoff; (2) that the minor, Leontina Elizabeth, is a legitimate daughter of Leona Castro; and (3) that the minors Carmen

Maria and Esther Renate are illegitimate children of Leona Castro.

From these facts the court drew the conclusion that Leontina Elizabeth was entitled to one-third of the estate of the late Samuel Bischoff, and that his widow, Doña Ana Ramirez, was entitled to the remaining two-thirds. From this decision both Doña Ana Ramirez and Otto Gmur, as guardian, appealed.

Shortly after the appeals above-mentioned were taken, Mr. Frederick von Kauffman made application to the Court of First Instance of Iloilo by petition filed in the proceedings therein pending upon the estate of the late Samuel Bischoff for appointment as guardian ad litem of his minor children, the von Kauffman heirs, which petition was granted by order dated March 24, 1916. Thereafter, on April 1, 1916, von Kauffman, on behalf of the said minors, filed in the cause a petition setting forth their rights to share in the estate. This petition was answered by Mr. Otto Gmur, guardian, on April 26, 1916, the sole contention of said answer being that the matter to which the petition relates had been disposed of by the decision of the Court of First Instance rendered in said proceedings by Judge Mariano on December 29, 1915. Doña Ana Ramirez answered denying all the allegations of von Kauffman's petition.

The trial of the petition of von Kauffman, as guardian, came on for hearing before the Court of First Instance of Iloilo on the 10th day of August, 1916. Upon the evidence taken at that hearing the Honorable J. S. Powell, as judge then presiding in the Court of First Instance of Iloilo, rendered a decision under date of November 14, 1916, in which he found as a fact that Leona Castro was the acknowledged natural daughter of Samuel Bischoff and that the minors, Elena, Fritz, and Ernesto, are the legitimate children of Frederick von Kauffman and the said Leona Castro, born in lawful wedlock. Upon the facts so found, Judge Powell based his conclusion that all that portion of the estate of Samuel Bischoff pertaining to Leona Castro should be equally divided among the children Federico, Ernesto, and Elena, thereby excluding by inference the Mory claimants from all participation in the estate.

From this judgment an appeal was taken by Mr. Otto Gmur as guardian, no appeal having been taken by Doña Ana Ramirez.

Though the circumstance is now of no practical importance, it may be stated in passing that the appeals of Dofia Ana Ramirez and of Otto Gmur, guardian, from the decision of Judge Mariano of December 29, 1915, and the appeal of Otto Gmur, guardian, from the decision of Judge Powell, of November 14, 1916, were brought to this court separately; but the causes were subsequently consolidated and have been heard together. The parties to the litigation have also stipulated that all the "evidence, stipulations and admissions in each of the two proceedings above-mentioned may be considered for all purposes by this court in the other." The case is therefore considered here as though there had been but one trial below and all the issues of law and fact arising from the contentions of the opposing claimants had been heard at the same time.

Upon the facts above stated it is insisted for Ana M. Ramirez that her rights to the estate under the will of Samuel Bischoff were at the latest determined by the final decree of December 29, 1915; and that it was thereafter incompetent for the court to take cognizance of the application of the Mory claimants. If this contention is sustainable, the same considerations would operate to defeat the later application filed on behalf of the von Kauffman children — and indeed with even greater force, — since this application was not made until the appeals from the decree of December 29, 1915, had actually been perfected and the cause had been transferred to the Supreme Court.

Two questions are here involved, one as to the effect of the probate of a will upon the rights of forced heirs who do not appear to contest the probate, and the other as to the conclusiveness and finality of an order for the distribution of an estate, as against persons who are not before the court.

Upon the first of these questions it is enough to say that the rights of forced heirs to their legitime are not divested by the decree admitting a will to probate, — and this regardless of the fact that no provision has been made for them in the will, for the decree of probate is conclusive only as regards

the due execution of the will, the question of its intrinsic validity not being determined by such decree. (Code of Civil Procedure, sec. 625; Castañeda v. Alemany, 3 Phil., 426; Sahagun v. De Gorostiza, 7 Phil., 347; JocSoy v. Valio, 8 Phil., 119; Limjuco v. Ganara, 11 Phil., 393, 395; Austria v. Ventenilla, 21 Phil., 180.)

Indeed it is evident, under the express terms of the proviso to section 753 of the Code of Civil Procedure, that the forced heirs cannot be prejudiced by the failure of the testator to provide for them in his will; and regardless of the intention of the testator to leave all his property, or practically all of it, to his wife, the will is intrinsically invalid so far as it would operate to cut of their rights.

The question as to the conclusiveness of the order of distribution can best be considered with reference to the von Kauffman children, as the solution of the problem as to them necessarily involves the disposition of the question as to the Mory claimants.

It is evident that the von Kauffman children cannot be considered to have been in any sense parties to the proceeding at the time Judge Mariano rendered his decision. So far as the record shows the court was then unaware even of their existence. No notice of any kind was served upon them; nor was any person then before the court authorized to act in their behalf. Nevertheless, as we have already shown, upon the death of Samuel Bischoff, the right to participate in his estate vested immediately in this children, to the extent to which their mother would have been entitled to participate had she survived her father. If the right vested upon the death of Samuel Bischoff, how has it been since divested?

The record shows that the decision of December 29, 1915, in which Judge Mariano holds that the estate should be divided between Leontina Elizabeth and the residuary legatee Doña Ana Ramirez, was made without publication of notice, or service of any kind upon other persons who might consider themselves entitled to participate in the estate.

The law in force in the Philippine Islands regarding the distribution of estates of deceased persons is to be found in section 753 et seq., of the Code of Civil Procedure. In general terms the law is that after the payment of the debts and expenses of administration the court shall distribute the residue of the estate among the persons who are entitled to receive it, whether by the terms of the will or by operation of law. It will be noted that while the law (sec. 754) provides that the order of distribution may be had upon the application of the executor or administrator, or of a person interested in the estate, no provision is made for notice, by publication or otherwise, of such application. The proceeding, therefore, is to all intents and purposes ex parte. As will be seen our law is very vague and incomplete; and certainly it cannot be held that a purely ex parte proceeding, had without notice by personal service or by publication, by which the court undertakes to distribute the property of deceased persons, can be conclusive upon minor heirs who are not represented therein.

Section 41 of the Code of Civil Procedure provides that ten years actual adverse possession by "occupancy, grant, descent, or otherwise" shall vest title in the possessor. This would indicate that a decree of distribution under which one may be placed in possession of land acquired by descent, is not in itself conclusive, and that, as held in Layre v. Pasco (5 Rob. [La.], 9), the action of revindication may be brought by the heir against the persons put in possession by decree of the probate court at any time within the period allowed by the general statute of limitations.

Our conclusion is that the application of the von Kauffman children was presented in ample time and that the judgment entered in their favor by Judge Powell was correct. The Mory claimants, as already stated, are debarred from participation in the estate on other grounds.

So much of the judgment entered in the Court of First Instance, pursuant to the decision of Judge Mariano of December 29, 1915, as admits Leontina Elizabeth Mory to participate in the estate of Samuel Bischoff is reversed; and instead the von Kauffman children will be admitted to share equally in one-third of the estate as provided in the decision of Judge Powell of November 14, 1916. In other respects the judgment of Judge Mariano is affirmed. The costs of this instance will be paid out of the estate. So ordered.

Arellano, *C.J.*, Torres, Johnson, Malcolm, and Avanceña, *JJ.*, concur.