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THIRD DIVISION

[G.R. No. 142877, October 02, 2001]

JINKIE CHRISTIE A. DE JESUS AND JACQUELINE A. DE JESUS, MINORS, REPRESENTED BY THEIR MOTHER, CAROLINA A. DE JESUS, PETITIONERS, VS. THE ESTATE OF DECEDENT JUAN GAMBOA DIZON, ANGELINA V. DIZON, CARLOS DIZON, FELIPE DIZON, JUAN DIZON, JR. AND MARYLIN DIZON AND AS PROPER PARTIES: FORMS MEDIA CORP., QUAD MANAGEMENT CORP., FILIPINAS PAPER SALES CO., INC. AND AMITY CONSTRUCTION & INDUSTRIAL ENTERPRISES, INC., RESPONDENTS.

D E C I S I O N

VITUG, J.:

The petition involves the case of two illegitimate children who, having been born in lawful wedlock, claim to be the illegitimate scions of the decedent in order to enforce their respective shares in the latter's estate under the rules on succession.

Danilo B. de Jesus and Carolina Aves de Jesus got married on 23 August 1964. It was during this marriage that Jacqueline A. de Jesus and Jinkie Christie A. de Jesus, herein petitioners, were born, the former on 01 March 1979 and the latter on 06 July 1982.

In a notarized document, dated 07 June 1991, **Juan G. Dizon** acknowledged Jacqueline and Jinkie de Jesus as being his own illegitimate children by Carolina Aves de Jesus. Juan G. Dizon died intestate on 12 March 1992, leaving behind considerable assets consisting of shares of stock in various corporations and some real property. It was on the strength of his notarized acknowledgment that petitioners filed a complaint on 01 July 1993 for "Partition with Inventory and Accounting" of the Dizon estate with the Regional Trial Court, Branch 88, of Quezon City.

Respondents, the surviving spouse and legitimate children of the decedent Juan G. Dizon, including the corporations of which the deceased was a stockholder, sought the dismissal of the case, arguing that the complaint, even while denominated as being one for partition, would nevertheless call for altering the status of petitioners from being the legitimate children of the spouses Danilo de Jesus and Carolina de Jesus to instead be the illegitimate children of Carolina de Jesus and deceased Juan Dizon. The trial court denied, due to lack of merit, the motion to dismiss and the subsequent motion for reconsideration on, respectively, 13 September 1993 and 15 February 1994. Respondents assailed the denial of said motions before the Court of Appeals.

On 20 May 1994, the appellate court upheld the decision of the lower court and ordered the case to be remanded to the trial court for further proceedings. It ruled

that the veracity of the conflicting assertions should be threshed out at the trial considering that the birth certificates presented by respondents appeared to have effectively contradicted petitioners' allegation of illegitimacy.

On 03 January 2000, long after submitting their answer, pre-trial brief and several other motions, respondents filed an omnibus motion, again praying for the dismissal of the complaint on the ground that the action instituted was, in fact, made to compel the recognition of petitioners as being the illegitimate children of decedent Juan G. Dizon and that the partition sought was merely an ulterior relief once petitioners would have been able to establish their status as such heirs. It was contended, in fine, that an action for partition was not an appropriate forum to likewise ascertain the question of paternity and filiation, an issue that could only be taken up in an independent suit or proceeding.

Finding credence in the argument of respondents, the trial court, ultimately, dismissed the complaint of petitioners for lack of cause of action and for being improper.[1] It decreed that the declaration of heirship could only be made in a special proceeding inasmuch as petitioners were seeking the establishment of a status or right.

Petitioners assail the foregoing order of the trial court in the instant petition for review on *certiorari*. Basically, petitioners maintain that their recognition as being illegitimate children of the decedent, embodied in an authentic writing, is in itself sufficient to establish their status as such and does not require a separate action for judicial approval following the doctrine enunciated in *Divinagracia vs. Bellosillo*.[2]

In their comment, respondents submit that the rule in *Divinagracia* being relied by petitioners is inapplicable to the case because there has been no attempt to impugn legitimate filiation in *Divinagracia*. In praying for the affirmance of dismissal of the complaint, respondents count on the case of *Sayson vs. Court of Appeals*,[3] which has ruled that the issue of legitimacy cannot be questioned in a complaint for partition and accounting but must be seasonably brought up in a direct action frontally addressing the issue.

The controversy between the parties has been pending for much too long, and it is time that this matter draws to a close.

The filiation of illegitimate children, like legitimate children, **is established** by (1) the record of birth appearing in the civil register or a final judgment; or (2) an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned. In the absence thereof, filiation **shall be proved** by (1) the open and continuous possession of the status of a legitimate child; or (2) any other means allowed by the Rules of Court and special laws.[4] **The due recognition of an illegitimate child in a record of birth, a will, a statement before a court of record, or in any authentic writing is, in itself, a consummated act of acknowledgment of the child, and no further court action is required**.[5] In fact, any authentic writing is treated not just a ground for compulsory recognition; it is in itself a voluntary recognition that does not require a separate action for judicial approval.[6] **Where, instead, a claim for recognition is predicated on other evidence merely tending to prove paternity, i.e., outside of a record of birth, a will, a statement before a court**

of record or an authentic writing, judicial action within the applicable statute of limitations is essential in order to establish the child's acknowledgment.[7]

A scrutiny of the records would show that petitioners were born during the marriage of their parents. The certificates of live birth would also identify Danilo de Jesus as being their father.

There is perhaps no presumption of the law more firmly established and founded on sounder morality and more convincing reason than the presumption that children born in wedlock are legitimate.[8] This presumption indeed becomes **conclusive** in the absence of proof that there is physical impossibility of access between the spouses during the first 120 days of the 300 days which immediately precedes the birth of the child due to (a) the physical incapacity of the husband to have sexual intercourse with his wife; (b) the fact that the husband and wife are living separately in such a way that sexual intercourse is not possible; or (c) serious illness of the husband, which absolutely prevents sexual intercourse.[9] Quite remarkably, upon the expiration of the periods set forth in Article 170,[10] and in proper cases Article 171,[11] of the Family Code (which took effect on 03 August 1988), the action to impugn the legitimacy of a child would no longer be legally feasible and the status conferred by the presumption becomes fixed and unassailable.[12]

Succinctly, in an attempt to establish their illegitimate filiation to the late Juan G. Dizon, petitioners, in effect, would impugn their legitimate status as being children of Danilo de Jesus and Carolina Aves de Jesus. This step cannot be aptly done because the law itself establishes the legitimacy of children conceived or born during the marriage of the parents. **The presumption of legitimacy fixes a civil status for the child born in wedlock, and only the father,[13] or in exceptional instances the latter's heirs,[14] can contest in an appropriate action the legitimacy of a child born to his wife. Thus, it is only when the legitimacy of a child has been successfully impugned that the paternity of the husband can be rejected.**

Respondents correctly argued that petitioners hardly could find succor in *Divinagracia*. In said case, the Supreme Court remanded to the trial court for further proceedings the action for partition filed by an illegitimate child who had claimed to be an acknowledged spurious child by virtue of a private document, signed by the acknowledging parent, evidencing such recognition. It was not a case of legitimate children asserting to be somebody else's illegitimate children. Petitioners totally ignored the fact that it was not for them, given the attendant circumstances particularly, to declare that they could not have been the legitimate children, clearly opposed to the entries in their respective birth certificates, of Danilo and Carolina de Jesus.

The rule that the written acknowledgment made by the deceased Juan G. Dizon establishes petitioners' alleged illegitimate filiation to the decedent cannot be validly invoked to be of any relevance in this instance. This issue, i.e., whether petitioners are indeed the acknowledged illegitimate offsprings of the decedent, cannot be aptly adjudicated without an action having been first been instituted to impugn their