# TENTH DIVISION

# [ CA-G.R. CV NO. 96731, May 27, 2014 ]

## ADORACION FADEROGAO, PLAINTIFF-APPELLEE, VS. CELIA M. DE LEON, DEFENDANT-APPELLANT.

## D E C I S I O N

**PERALTA, JR., E. B., J.:**

Unlike a rose's name in the aphorism: "(W)hat's in a name, as the Bard of Avon has written, since a rose by any other name would smell as sweet,"[1] an individual's name is one's most cherished possession and is a significant chunk of personality that can subsist beyond the grave. Necessarily, individuality is the hallmark of dichotomy from the rest of society and after demise, the name can ordinarily trigger successional rights.

Along this line, the Court will resolve the instant appeal of the defendant who sought relief from the Decision dated February 21, 2011 of the *court a quo*[2] primarily on the assessment that plaintiff is a collateral heir of Simeon Faderogao.[3]

In her Complaint[4] dated June 19, 2000, plaintiff Adoracion Faderogao (Adoracion) claimed that she is the surviving daughter of Vicente Fetalver (Vicente), the brother of Simeon Faderogao (Simeon). On the other hand, defendant Celia M. de Leon is the alleged adopted child of Simeon and his wife Paz. When Juan Faderogao (Juan), the alleged father of Vicente and Simeon, died only Simeon inherited the three parcels of land belonging to Juan. Plaintiff thus, asserted that she was eligible to inherit from Simeon since her uncle and Paz died without any legitimate issue.[5]

In her *Answer with Counterclaim*,[6] the defendant averred that she is the legal child of Simeon and Paz. During her lifetime, Paz executed a *Deed of Partition and Adjudication of Parcels of Land*[7] in favor of defendant, whom she considered as her adopted child.

To prove her eligibility to inherit, the plaintiff, together with her siblings Magdalena and Juanita,[8] both allegedly surnamed Faderogao, testified. Adelina Selodio (Adelina) and Fernando Fetalver (Fernando) likewise gave their testimony to fortify plaintiff's qualification as an heir of Simeon.

After rejection of defendant's demurrer to evidence, Rosario Rotoni and Rosario Fesarillo successively sat on the witness stand.

In the meantime, and before the defendant can terminate the presentation of her evidence, the plaintiff died. Per the Order[9] dated October 30, 2008, upon manifestation by plaintiff's counsel of the death of his client and for substitution of the party, the court a quo directed him to submit the necessary pleading within thirty days from receipt thereof.

On February 21, 2011, a Decision[10] was rendered by the court a quo in this wise:

> *WHEREFORE, premises considered, the Court hereby renders decision in favor of the plaintiff and against the defendant, thus:*
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> 1. Declaring that plaintiff, Adoracion Faderogao is a collateral heir of the late Simeon Faderogao;
> 2. *Herein plaintiff and defendant are declared co- owners of all the properties as described in the Deed of Partition and Adjudication executed by the late Paz Faderogao in favor of the defendant, Celia M. de Leon dated December 1980 with an undivided one-fourth (¼) and three-fourth (¾) share therein, respectively;*
> 3. *To pay the plaintiff the amount of Ten Thousand Pesos (P10,000.00) as nominal damages.*

On appeal, the defendant's redress focused on three items insofar as the declaration of the plaintiff's heirship, consequent co-ownership of pieces of property, and damages.[11]

Before We tackle matters aired by the defendant on appeal, the question of substitution of a party will initially be discussed in the light of the death of the plaintiff prior to completion of defendant's evidence.

It must be stressed that on October 30, 2008, the plaintiff's counsel manifested the demise of his client before the court a quo and the trial court later prodded the plaintiff's counsel to submit the necessary pleading to effect the substitution.

The purpose behind the substitution rule is to protect the right to due process of every party to the litigation who may be affected by the intervening death. "The deceased litigant is herself or himself protected as he/she continues to be properly represented in the suit through the duly appointed legal representative of his estate."[12] The underlying principle of the general rule requiring the formal substitution of heirs is not because substitution of heirs is a jurisdictional requirement, but because non-compliance therewith results in the undeniable violation of the right to due process of those who, though not duly notified of the proceedings, are substantially affected by the decision rendered therein.[13]

Corollary thereto, a primary consideration in the application of the substitution rule is the determination of whether the cause of action of the plaintiff survived her death. It must be underscored that Section 16, Rule 3[14] of the 1997 Rules of Civil Procedure will "apply where the claim survives and regardless of whether either the plaintiff or the defendant dies or whether the case is in the trial or appellate courts." [15]

In a catena of cases,[16] the issue of whether an action survives or not was settled: "The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive, the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental. . . ." Considering that the primordial issue at hand referred to property and property rights of the plaintiff *vis-a-vis* the defendant,

the cause of action undeniably survived and the substitution rule will assume legal resonance.

Even as the plaintiff's counsel did not heed the Order below on October 8, 2008 as a prelude to substitution, it appeared from the record that deceased plaintiff was still represented by her counsel. While there was a caveat for possible disciplinary action against a lawyer in Section 16, Rule 3, it did not necessarily suggest that the lawyer will thereafter be devoid of personality to appear as counsel in the proceedings for the benefit of his/her client or the latter's heirs.[17]

Additionally, two of the plaintiff's only living siblings participated when they testified before the *court a quo* in order to fortify plaintiff's position as the rightful heir of Simeon. Although the suit was at the plaintiff's initiative, her siblings, who are similarly situated as her, would likewise benefit therefrom if she is adjudged as heir of Simeon. As such, the voluntary and active participation by the plaintiff's siblings in this case who, significantly, maybe her only heirs, clearly negated any breach of the plaintiff's right to due process.

Viewed in its proper perspective therefore, the *court a quo's* jurisdiction subsisted despite the death of the party.[18]

Shifting Our focus now on the merits of the appeal, the defendant ascribed reversible error against the *court a quo* when it declared that there was preponderance of evidence to show that plaintiff is the niece of Simeon Faderogao. [19]

It is hornbook precept in evidentiary law that it is the plaintiff who has the burden of proving his cause of action and that he cannot rely on the weakness of the defense of the adverse party.[20] "Burden of proof is the duty of any party to present evidence to establish his claim or defense by the amount of evidence required by law, which is preponderance of evidence in civil cases. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Therefore, the party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of proof to obtain a favorable judgment. For the plaintiff, the burden of proof never parts. For the defendant, an affirmative defense is one which is not a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will be a good defense *i.e.*, an avoidance of the claim."[21]

In so ruling against the defendant, the *court a quo* attached greater weight to the plaintiff's evidence on account of the plaintiff's testimony and of her witnesses whose declarations allegedly established her pedigree to Simeon, when juxtaposed with the defendant's denials.

As basis for the plaintiff's cause of action, she capitalized on the idea that her father, Vicente, was the brother of Simeon amidst disparate surnames.

According to Magdalena, the plaintiff's sister, Vicente told her that he was using before the surname Faderogao and not Fetalver. Additionally, when she secured her birth certificate from the local civil registrar, she was told that she was not registered.[22] On cross examination, she stated that her name was Magdalena

Faderogao. She did not have a Certificate of Live Birth because she was not registered. Neither was she baptized nor legally married. Although she was made to bring to court any document that would prove that she was Magdalena Faderogao, she failed to do so.[23]

Adelina claimed that her father was a laborer at the house of Simeon. It was Simeon who changed Vicente's surname to Fetalver, the maternal surname of Vicente's mother, and the surname used by Vicente's children.[24]

Fernando, the plaintiff's uncle, testified that Vicente's children were all surnamed Fetalver and that not one of them used the surname Faderogao. It was only when the plaintiff filed the Complaint against defendant that she used the surname Faderogao. Before the Japanese occupation, Fernando's father told him that Vicente's children were using the surname Faderogao.[25]

Juanita, the plaintiff's sibling, testified that her surname is Faderogao and that her father was Fetalver. It was Pacing, Simeon's wife, who instructed Simeon to change Vicente's surname to Fetalver. When Juanita left Odiongan, she used the surname Faderogao instead of Fetalver. Although she claimed that she had a marriage contract,[26] she did not present it before the *court a quo*. When she left for Manila, she used the surname Faderogao. However, she had no document to prove that she was indeed using the surname Faderogao, which was spelled with a letter "P" and not with an "F". The priest who solemnized her marriage made her husband sign a document while she affixed her signature thereto. Yet, she claimed that she had no marriage contract because she was still a minor when she got married. She claimed, too, that she is Juanita Paderogao.[27]

The plaintiff stated that when Simeon returned to Romblon from Manila, he was already with Paz. When Paz inquired who was Vicente, Simeon told her that he is his brother. Paz remarked that it could not be so and that Vicente could not stay at the house. Upon the instruction of Paz, who did not want Vicente to inherit from Juan, Vicente changed his surname to Fetalver.[28] The plaintiff's siblings were using the surname Faderogao.[29] On cross examination, plaintiff failed to show the document that would prove her filiation to Simeon because it was with her companion albeit she did not know the document.[30]

***A judicious evaluation of the plaintiff's evidence failed to convince Us on the question of onus probandi.***

Significantly, the testimony of the plaintiff's witnesses as to why Simeon and Vicente had different surnames were far from credible. "The experience of courts and the general observation of humanity teach us that the natural limitations of our inventive faculties are such that if a witness undertakes to fabricate and deliver in court a false narrative containing numerous details, he is almost certain to fall into fatal inconsistencies, to make statements which can be readily refuted, or to expose in his demeanor the falsity of his message."[31]

Apparently, plaintiff would want the Court to believe her incredible postulation that because of the plain instruction from Simeon to Vicente to change his family name, Vicente readily abandoned the surname Faderogao. Implausible, too, was that plaintiff and her siblings could not show a single document that would prove that they have been using the surname Faderogao. And if only to stress that, in actuality,

the plaintiff and her siblings have not used the surname Faderogao, Juanita, the plaintiff's sibling, did not even know the correct spelling of her family name.

A person can neither change his name by his mere whim and caprice nor upon the instruction of anyone. "'The subject of rights must have a fixed symbol for individualization which serves to distinguish him from all others; this symbol is his name.' Understandably, therefore, no person can change his name or surname without judicial authority. This is a reasonable requirement for those seeking such change because a person's name necessarily affects his identity, interests and interactions. The State must be involved in the process and decision to change the name of any if its citizens."[32]

It is fitting to echo jurisprudential jottings:

> It is necessary to reiterate in this discussion that a person's name is a word or combination of words by which he is known and identified, and distinguished from others, for the convenience of the world at large in addressing him, or in speaking of or dealing with him. It is both of personal as well as public interest that every person must have a name. The name of an individual has two parts:
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> > "The given or proper name and the surname or family name. The given or proper name is that which is given to the individual at birth or at baptism, to distinguish him from other individuals. The surname or family name is that which identifies the family to which he belongs and is continued from parent to child. **The given name may be freely selected by the parents for the child, but the surname to which the child is entitled is fixed by law.**"
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> By Article 408 of the Civil Code, a person's birth must be entered in the civil register. The official name of a person is that given him in the civil register. That is his name in the eyes of the law. And once the name of a person is officially entered in the civil register, Article 376 of the same Code seals that identity with its precise mandate: **no person can change his name or surname without judicial authority. This statutory restriction is premised on the interest of the State in names borne by individuals and entities for purposes of identification**.
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> **By reason thereof, the only way that the name of person can be changed legally is through a petition for change of name under Rule 103 of the Rules of Court. For purposes of an application for change of name under Article 376 of the Civil Code and correlatively implemented by Rule 103, the only name that may be changed is the true or official name recorded in the civil register. As earlier mentioned, a petition for a change of name being a proceeding *in rem*, impressed as it is with public interest, strict compliance with all the requisites therefor in order to vest the court with jurisdiction is essential, and failure therein renders the proceedings a nullity.**
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> It must likewise be stressed once again that a change of name is a privilege, not a matter of right, addressed to the sound discretion of the