3 Phil. 697

[G.R. No. 1362. April 15, 1904]

ROSA LLORENTE, PLAINTIFF AND APPELLANT, VS. CEFERINO RODRIGUEZ, ADMINISTRATOR OF THE ESTATE OF JACINTA LLORENTE, DEFENDANT AND APPELLEE.

D E C I S I O N

COOPER, J.:

This was an action brought by the plaintiff, Doña Rosa Llorente, against the defendant, Ceferino Rodriguez, as administrator of the estate of Jacinta Llorente, who died intestate on August 11, 1901.

It is alleged in the complaint that the deceased, Jacinta Llorente, left the following heirs, to wit: Rosa Llorente, the plaintiff, her legally recognized natural daughter; Mariano Rodriguez, Remedios Orbeta, Flora Orbeta, Juan Orbeta, and Ceferino Rodriguez, legitimate children; that the defendant, Ceferino Rodriguez, was the duly qualified administrator of the estate; that all the debts against the estate have been paid and that the property is now in a condition for distribution, and prayed that a division and distribution might be made and that the shares of the estate be assigned to each one entitled to the same, in accordance with their respective interests.

A judgment was entered dismissing the petition of the plaintiff, and the case has been appealed to this court in accordance with the provisions of Chapter XLII of the Code of Civil Procedure relating to appeals in special proceedings.

Many exceptions were taken on the trial of the case to the ruling of the court in excluding evidence offered by the plaintiff.

The ruling of the court in rejecting the evidence, as well as in the final decision of the court, was based upon the view that the recognition of a natural child must be made in accordance with the provisions of article 131 of the Civil Code and that such recognition can not be shown in any other manner than that prescribed in said article. This article reads as follows:

> "The recognition of a natural child shall be made in the record of birth, by will, or by any other public instrument".

The evidence which was excluded tended to show a tacit recognition by the acts of the mother, such as that Jacinta Llorente, the deceased, had reared Rosa Llorente, and had educated her; and that Rosa Llorente had, by the express authority of Jacinta Llorente, received baptism as the natural child of the latter, in proof of which fact the baptismal certificate, as well as the testimony of witnesses, was offered and was excluded by the court; and proof was also made, by persons who were present at the birth of Rosa Llorente, that she was the child of Jacinta Llorente.

The evidence shows that Rosa Llorente was born on the 4th day of September, 1872, and that the intestate, Jacinta Llorente, died August 11, 1901. The Civil Code was adopted on the 8th day of December, 1889.

The questions presented for determination are:

(1) Do the provisions of the Civil Code, to wit, article 131, enacted subsequent to the birth of Rosa Llorente and subsequent to the acts of recognition by Jacinta Llorente of Rosa Llorente as her natural child, govern? If not, and—

(2) If the law in force in 1872 at the date of the birth of the plaintiff is to be applied, had the mother the power under the law to make legal recognition of a natural child; or was such right to make legal recognition confined to the father?

(3) If the mother had a right to make such legal recognition, was

the proof excluded by the court sufficient, if admitted, to establish legal recognition of a natural child?

In the transitory provisions of the Civil Code contained in article 1976, it is provided that—

> "Changes introduced in the code to the injury of rights acquired under preceding legislation, shall have no retroactive effect. To apply the corresponding legislation in cases not expressly specified in this code, the following rules shall be observed :
>
> "1.
> Rights arising under the legislation preceding this code, from acts realized under its rules, shall be governed by such preceding legislation, even when this code regulates them in another manner, or does not recognize the same. But when such rights appear declared for the first time in this code, they shall at once he effective, even when the facts which originated them have been accomplished under the preceding legislation, provided that they do not injure other acquired rights having the same origin * * *.
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> "4. Actions and rights
> arising before this code was in force and not exercised shall subsist with the extension, and according to the terms acknowledged by the preceding legislation, but shall be subject, in regard to the exercise, duration, and proceedings for enforcing them, to the provisions of this code. If the exercise of the right or of the action should depend on official proceedings begun under prior legislation and they should be different from those established in this code the persons interested may choose the one or the other. * * * "

If by the recognition as a natural child a right was vested in plaintiff from acts realized under the legislation preceding the Civil Code; that is, if such acts as were performed or such acts as occurred gave her the status of legal recognition, then it is clear from the provisions of the code that the legislation preceding the code must govern.

The recognition of a natural child relates to the civil status of such person. The legal recognition of a natural child confers certain rights and advantages, and when once made the child has a certain civil status, to wit, that of affiliation.

Under the Civil Code the right to this status may be enforced by suit; and under the civil law the child could not be deprived of this status when once created.

Escriche says:

> "The father being free to recognize or not to recognize his natural child, can not, although he may be a minor, revoke the recognition which he has legally made. This recognition in effect is not properly an act of liberality, but a declaration of a fact to which the law attaches certain advantages; but this declaration of paternity once made, the child acquires the status of affiliation, of which he can no longer be deprived." (3 Escriche, p. 59.)

To the same effect is a decision of the supreme court of Spain of the 8th of November, 1893 (74 *Jurisprudence Civil,* p. 301). It is held in this decision that where a party acquired the condition of legitimation, the defects of birth are thereby effaced; that the party acquired the juridical capacity in succession of hereditary rights, and that the provisions of the Civil Code, as contained in the transient provisions, expressly reserved the rights thus acquired under the previous law.

We reach the conclusion that the law in force in the year 1872, the date of the birth of the plaintiff, with reference to the recognition of natural children, is to govern in this case and not the provisions contained in articles 129 and 131 of the Civil Code now in force.

The law in force at the date of the birth of the plaintiff was Law 11 of Toro, by the provisions of which a child is said to be natural when, at the time at which it was born or was conceived, the father and

the mother could be married without dispensation, provided that the father recognized it as his child, notwithstanding the mother may not have lived in the house.

The question remains to be determined whether the mother had the power, according to the law of Toro, to make recognition of a natural child; or, was the right to make legal recognition confined to the father? This law gives the right expressly to the father but is silent as to the mother.

The reason why this difference exists, as stated by the commentators, is that the fact of the birth of the child was as to the mother a sufficient certainty of the matter, certainty being the main point to be considered.

Under the Roman law this certainty was insured by reason of the relationship that existed between the parents, to wit, concubinage. This relation existed where the parents resided permanently together. Concubinage constituted a legal status, and, as the paternity of the children in such state was certain, the child was regarded as having known parents as well as a known family and the legal status of a natural child was given the children without any formal, express, or tacit recognition. All other children, born out of matrimony, were regarded as illegitimate and not possessing the status of a natural child.

Afterwards, under the laws of the partidas a similar relation was recognized in Spain to that of concubinage under the Roman law. This relation was called that of *barragania.* To constitute this relation it was not necessary, as under the Roman law, that the parents should reside continuously with each other. The only requirement was that the parties should publicly appear before witnesses and the woman should receive the man under this relation. The children thus born to the parties were regarded as natural children because the publicity of the agreement and its authenticity were considered as sufficient guaranty of the certainty of the issue. There was no necessity under the laws of the partidas, in cases where this relation existed, that

there should be a recognition of the children. They acquired the status of natural children without express or tacit recognition. Afterwards when public sentiment no longer countenanced the condition known as *barragania,* and this relation which was regarded as sufficient to give certainty to the issue no longer existed, it became necessary that there should be some provision made by law for the recognition of natural children, and as a consequence Law 11 of Toro was enacted.

Under the laws of Toro numerous decisions have been made by the supreme court of Spain, in which it is invariably held that the recognition of a natural child need not be expressly made, but may be tacit; that recognition is open to such proof as would be sufficient to prove any other fact in an ordinary suit.

Under these decisions the testimony offered by the plaintiff and rejected by the Court of First Instance was admissible to show a tacit recognition, if such recognition had been made by the father.

It can not very well be understood why in a case where recognition is made by the mother, it should not be equally valid and efficacious as where it is made by the father. The fact that additional certainty is furnished by proof of birth of the child should give additional support to the status of a natural child when a recognition is made by the mother, rather than destroy the right upon the part of the mother to make recognition of a natural child.

The majority of the court have reached the conclusion that the mere proof of the birth of a natural child is sufficient to give it the status of a recognized natural child such as is mentioned in article 840 of the Civil Code. Others are of the opinion that there should be proof of recognition by the mother, either expressly or tacitly made, in order to bring the case within the provisions of article 840 of the Civil Code. To comply with these views the judgment of the lower court should be reversed and the proof offered by the plaintiff and excluded by the Court of First Instance, tending to prove tacit or express recognition by Jacinta Llorente of the plaintiff, Rosa Llorente, should be received in evidence. In addition to this, proof should be made as

to the birth of the plaintiff by those who were present and who testified to this fact on the previous trial.

In the event that judgment shall be given for the plaintiff, on another trial, and it should be held that the plaintiff is entitled to participate in the distribution of the estate of Jacinta Llorente, we are of the opinion that the provisions contained in article 840 of the Civil Code—the law in force at the date of the death of Jacinta Llorente—should govern in such distribution.

While the status of the plaintiff as a natural child must be determined by the law in force at the date of the birth of Rosa Llorente, the laAvs relating to the distribution of an estate in force at the date of the death of intestate, should govern in the distribution. See Mijares *vs.* Nery [1] recently decided by this court, and the decision of the supreme court of Spain of date June 24, 1897.

The judgment of the lower court is reversed and the cause is remanded for a new trial. Cost of the appeal is adjudged against the defendant as administrator of the estate of Jacinta Llorente.

Arellano, C. J., Torres, Mapa, McDonough, and *Johnson, JJ.,* concur.

Judgment reversed and new trial ordered.

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[1] Page 195, *supra.*

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