

MANUEL DE ASIS, PETITIONER, VS. COURT OF APPEALS, HON. JAIME T. HAMOY, BRANCH 130, RTC, KALOOKAN CITY AND GLEN CAMIL ANDRES DE ASIS REPRESENTED BY HER MOTHER/GUARDIAN VIRCEL D. ...

G.R. No. 127578. February 15, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

Petition for certiorari under Rule 65 of the Revised Rules of Court seeking to nullify the decision of the Court of Appeals which affirmed the trial court's Orders, dated November 25, 1993 and February 4, 1994, respectively, denying petitioner's Motion to Dismiss the Complaint in Civil Case No. C-16107, entitled "Glen Camil Andres de Asis, etc. vs. Manuel de Asis", and the motion for reconsideration.

The pertinent facts leading to the filing of the petition at bar are, as follows:

On October 14, 1988, Vircel D. Andres, (the herein private respondent) in her capacity as the legal guardian of the minor, Glen Camil Andres de Asis, brought an action for maintenance and support against Manuel de Asis, docketed as Civil Case No. Q-88-935 before the Regional Trial Court of Quezon City, Branch 94, alleging that the defendant Manuel de Asis (the petitioner here) is the father of subject minor Glen Camil Andres de Asis, and the former refused and/or failed to provide for the maintenance of the latter, despite repeated demands.

In his Answer, petitioner denied his paternity of the said minor and theorized that he cannot therefore be required to provide support for him.

On July 4, 1989, private respondent Vircel D. Andres, through counsel, sent in a manifestation the pertinent portion of which, reads;

- "1. That in his proposed Amended Answer, defendant (herein petitioner) has made a judicial admission/declaration that "1) defendant denies that the said minor child (Glen Camil) is his child; 2) he (petitioner) has no obligation to the plaintiff Glen Camil xxx."
2. That with the aforesaid judicial admissions/declarations by the defendant, it seems futile and a useless exercise to claim support from said defendant."
3. That under the foregoing circumstances it would be more practical that plaintiff withdraws the complaint against the defendant subject to the condition that the defendant should not pursue his counterclaim in the above-entitled case, xxx." [1]

By virtue of the said manifestation, both the plaintiff and the defendant agreed to move for the dismissal of the case. Acting thereupon, the Regional Trial Court a quo issued the following Order of August 8, 1989, dismissing Civil Case No. Q-88-935 with prejudice, to wit:

"Acting on the manifestation of Atty. Romualdo C. delos Santos, counsel for the defendant, that counsel for the

plaintiff Atty. Ismael J. Andres has no objection that this case be withdrawn provided that the defendant will withdraw the counterclaim, as prayed for, let the case be dismissed with prejudice.

SO ORDERED."[2]

On September 7, 1995, another Complaint for maintenance and support was brought against Manuel A. de Asis, this time in the name of Glen Camil Andres de Asis, represented by her legal guardian/mother, Vircel D. Andres. Docketed as Civil Case No. C-16107 before Branch 130 of the Regional Trial Court of Kalookan, the said Complaint prayed, thus:

"WHEREFORE, premises considered, it is respectfully prayed that judgment be rendered ordering defendant:

- To pay plaintiff the sum of not less than P2,000.00 per month for every month since June 1, 1987 as support in arrears which defendant failed to provide plaintiff shortly after her birth in June 1987 up to the present;
- To give plaintiff a monthly allowance of P5,000.00 to be paid in advance on or before the 5th of each and every month;
- To give plaintiff by way of support pendente lite, a monthly allowance of P5,000.00 per month, the first monthly allowance to start retroactively from the first day of this month and the subsequent ones to be paid in advance on or before the 5th of each succeeding month;
- To pay the costs of suit.

Plaintiff prays for such other relief just and equitable under the premises."[3]

On October 8, 1993, petitioner moved to dismiss the Complaint on the ground of res judicata, alleging that Civil Case C-16107 is barred by the prior judgment which dismissed with prejudice Civil Case Q-88-935.

In the Order dated November 25, 1993 denying subject motion to dismiss, the trial court ruled that res judicata is inapplicable in an action for support for the reason that renunciation or waiver of future support is prohibited by law. Petitioner's motion for reconsideration of the said Order met the same fate. It was likewise denied.

Petitioner filed with the Court of Appeals a Petition for Certiorari. But on June 7, 1996, the Court of Appeals found the said Petition devoid of merit and dismissed the same.

Undaunted, petitioner found his way to this court via the present petition, posing the question whether or not the public respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction in upholding the denial of the motion to dismiss by the trial court, and holding that an action for support cannot be barred by res judicata.

To buttress his submission, petitioner invokes the previous dismissal of the Complaint for maintenance and support, Civil Case Q-88-935, filed by the mother and guardian of the minor, Glen Camil Andres de Asis, (the herein private respondent). In said case, the complainant manifested that because of the defendant's judicial declaration denying that he is the father of subject minor child, it was "futile and a useless exercise to claim support from defendant". Because of such manifestation, and defendant's assurance that he would not pursue his counterclaim anymore, the parties mutually agreed to move for the dismissal of the complaint. The motion was granted by the Quezon City Regional Trial Court, which then dismissed the case with prejudice.

Petitioner contends that the aforecited manifestation, in effect, admitted the lack of filiation between him and the minor child, which admission binds the complainant, and since the obligation to give support is based on the existence of paternity and filiation between the child and the putative parent, the lack thereof negates the right to claim for support. Thus, petitioner maintains that the dismissal of the Complaint by the lower court on the basis of

the said manifestation bars the present action for support, especially so because the order of the trial court explicitly stated that the dismissal of the case was with prejudice.

The petition is not impressed with merit.

The right to receive support can neither be renounced nor transmitted to a third person. Article 301 of the Civil Code, the law in point, reads:

Art. 301. The right to receive support cannot be renounced, nor can it be transmitted to a third person. Neither can it be compensated with what the recipient owes the obligor. xxx

Furthermore, future support cannot be the subject of a compromise.

Article 2035, *ibid*, provides, that:

"No compromise upon the following questions shall be valid:

- (1) The civil status of persons;
- (2) The validity of a marriage or legal separation;
- (3) Any ground for legal separation
- (4) Future support;
- (5) The jurisdiction of courts;
- (6) Future legitime.

The *raison d'être* behind the proscription against renunciation, transmission and/or compromise of the right to support is stated, thus:

"The right to support being founded upon the need of the recipient to maintain his existence, he is not entitled to renounce or transfer the right for this would mean sanctioning the voluntary giving up of life itself. The right to life cannot be renounced; hence, support, which is the means to attain the former, cannot be renounced.

xxx

To allow renunciation or transmission or compensation of the family right of a person to support is virtually to allow either suicide or the conversion of the recipient to a public burden. This is contrary to public policy.[4]

In the case at bar, respondent minor's mother, who was the plaintiff in the first case, manifested that she was withdrawing the case as it seemed futile to claim support from petitioner who denied his paternity over the child. Since the right to claim for support is predicated on the existence of filiation between the minor child and the putative parent, petitioner would like us to believe that such manifestation admitting the futility of claiming support from him puts the issue to rest and bars any and all future complaint for support.

The manifestation sent in by respondent's mother in the first case, which acknowledged that it would be useless to pursue its complaint for support, amounted to renunciation as it severed the vinculum that gives the minor, Glen Camil, the right to claim support from his putative parent, the petitioner. Furthermore, the agreement entered into between the petitioner and respondent's mother for the dismissal of the complaint for maintenance and support conditioned upon the dismissal of the counterclaim is in the nature of a compromise which cannot be countenanced. It violates the prohibition against any compromise of the right to support.

"Thus, the admission made by counsel for the wife of the facts alleged in a motion of the husband, in which the latter prayed that his obligation to support be extinguished cannot be considered as an assent to the prayer, and much less, as a waiver of the right to claim for support." [5]

It is true that in order to claim support, filiation and/or paternity must first be shown between the claimant and the parent. However, paternity and filiation or the lack of the same is a relationship that must be judicially established and it is for the court to declare its existence or absence. It cannot be left to the will or agreement of the parties.

"The civil status of a son having been denied, and this civil status, from which the right to support is derived being in issue, it is apparent that no effect can be given to such a claim until an authoritative declaration has been made as to the existence of the cause." [6]

Although in the case under scrutiny, the admission may be binding upon the respondent, such an admission is at most evidentiary and does not conclusively establish the lack of filiation.

Neither are we persuaded by petitioner's theory that the dismissal with prejudice of Civil Case Q-88-935 has the effect of *res judicata* on the subsequent case for support. The case of *Advincula vs. Advincula* [7] comes to the fore. In *Advincula*, the minor, Manuela Advincula, instituted a case for acknowledgment and support against her putative father, Manuel Advincula. On motion of both parties and for the reason that the "plaintiff has lost interest and is no longer interested in continuing the case against the defendant and has no further evidence to introduce in support of the complaint", the case was dismissed. Thereafter, a similar case was instituted by Manuela, which the defendant moved to dismiss, theorizing that the dismissal of the first case precluded the filing of the second case.

In disposing such case, this Court ruled, thus:

"The new Civil Code provides that the allowance for support is provisional because the amount may be increased or decreased depending upon the means of the giver and the needs of the recipient (Art. 297); and that the right to receive support cannot be renounced nor can it be transmitted to a third person; neither can it be compensated with what the recipient owes the obligator (Art. 301). Furthermore, the right to support can not be waived or transferred to third parties and future support cannot be the subject of compromise (Art. 2035; *Coral v. Gallego*, 38 O.G. 3135, cited in IV Civil Code by Padilla, p. 648, 1956 Ed.). This being true, it is indisputable that the present action for support can be brought, notwithstanding the fact the previous case filed against the same defendant was dismissed. And it also appearing that the dismissal of Civil Case No. 3553, was not an adjudication upon the merits, as heretofore shown, the right of herein plaintiff-appellant to reiterate her suit for support and acknowledgment is available, as her needs arise. Once the needs of plaintiff arise, she has the right to bring an action for support, for it is only then that her cause of action accrues.xxx

x x x

It appears that the former dismissal was predicated upon a compromise. Acknowledgment, affecting as it does the civil status of persons and future support, cannot be the subject of compromise. (pars. 1 & 4, Art. 2035, Civil Code). Hence, the first dismissal cannot have force and effect and can not bar the filing of another action, asking for the same relief against the same defendant." (emphasis supplied)

Conformably, notwithstanding the dismissal of Civil Case 88-935 and the lower court's pronouncement that such dismissal was with prejudice, the second action for support may still prosper.

WHEREFORE, the petition under consideration is hereby DISMISSED and the decision of the Court of Appeals AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Romero, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, p. 7.

[2] Ibid. p. 18.

[3] Ibid. pp. 18-19.

[4] Arturo Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. 1, p. 596, 601.

[5] Ibid., p. 596-597, citing Coral vs. Gallego, 39 Official Gazette 3150.

[6] Tolentino, p. 579 citing Francisco vs. Zandueta, 61 Phil. 752; Garcia vs. CA, 4 SCRA 689.

[7] 10 SCRA 189.

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