

CARMELITA TAN AND RODOLFO TAN, PETITIONERS, VS. COURT OF APPEALS AND FRANCISCO TAN (ALIAS TAN UH BAK AND TAN SENG KA), RESPONDENTS.

G.R. No. 22793. May 16, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The present is a suit aimed at establishing a children-to-father illegitimate relationship between petitioners and the principal respondent Francisco Tan, and to compel the latter to support petitioners.

The background facts follow:

On July 22, 1955, petitioners, thru their mother Celestina Daldo as guardian ad litem, sued respondent Tan in the Court of First Instance of Manila for acknowledgment and support (Civil Case 26909).

On March 26, 1956, Celestina Daldo - after petitioners had already presented oral and documentary evidence and were about to rest their case - moved to dismiss the foregoing civil case upon the ground that the parties had come to an amicable settlement, and prayed that the same be dismissed with prejudice and without recourse of appeal.

On the same day, March 26, 1956, Celestina Daldo subscribed before the clerk of the Court of First Instance of Manila to an affidavit categorically stating that respondent Francisco Tan, defendant in Civil Case 26909, "is not the father of my said minor children named Carmelita and Rodolfo [herein petitioners] but another person whose name I cannot divulge"; and that she prepared said affidavit precisely 'to record what is true and to correct what misinterpretation may arise in the future'.

On March 26, 1956, the Court of First Instance of Manila issued the following order:

"As prayed for by plaintiffs in their motion filed today for the dismissal of their complaint, on the ground that the parties have already come to an amicable settlement, with the conformity of counsel for defendant, the Court hereby orders this case dismissed with prejudice and without pronouncement as to costs."

On November 25, 1957 - one year and eight months after Civil Case 26909 was dismissed - petitioners, this time thru their maternal grandfather Servillano Daldo as guardian ad litem, commenced the pre-sent action before the Juvenile & Domestic Relations Court [Civil Case 00855] for acknowledgment and support, involving the same parties, causes of action and subject matter.

On September 10, 1960, then Judge Juan P. Enriquez (Judge of the Court of First Instance of Manila detailed to preside over the Juvenile & Domestic Relations Court in the absence of the presiding judge thereof who was on leave) rendered judgment declaring that "the present case is res judicata by reason of the dismissal with prejudice of Civil Case 26909 of the Court of First Instance of Manila; and that, even on the merits, plaintiffs [the present petitioners] have not made out their case with sufficient evidence," and dismissed the complaint, without costs.

On October 8, 1960, petitioners herein, plaintiffs below, moved to reconsider.

On January 31, 1961, then Judge Natividad Almeda Lopez reconsidered the decision of Judge Enriquez of September 10, 1960, and rendered judgment, viz:

"In view of the foregoing considerations, this Court reconsiders its decision of September 10, 1960, and declares the minors Carmelita and Rodolfo Tan to be the illegitimate children of the defendant Francisco Tan alias Tan Uh Bak and Tang Seng Ka; and hereby orders the defendant to support said minors in the amount of P200,00 a month, said amount to be paid within the first five (5) days of each month directly to Carmelita Tan, for herself and for her younger brother Rodolfo; and, to help them defray their matriculation expenses, to pay semi-annually, on June and November of each year, an additional sum of P300; to reimburse Servillano Daldo his expenses in supporting plaintiff minors during the pendency of this case in the amount of P2,000, or at the rate of P50 a month from November 25, 1957; to pay plaintiff minors' attorney's fees of P500; and to pay the costs of this proceedings."

Respondent Francisco Tan appealed to the Court of Appeals.

On February 21, 1964, the Court of Appeals in turn reversed the last-named judgment of Judge Natividad Almeda Lopez, and dismissed the complaint with costs against appellees in both instances.

Petitioners now come to this Court in forma pauperis on appeal by way of certiorari.

1. Threshold question is the admissibility of Exhibits H and I, testimony of petitioners' witnesses in the former case. Petitioners balk at the ruling denying admissibility.

The controlling statute is Section 37, Rule 123 of the 1940 Rules of Court, now Section 41, Rule 130, viz:

"SEC. 41. Testimony at a former trial. - The testimony of a witness deceased or out of the Philippines, or unable to testify, given in a former case between the same parties, relating to the same matter, the adverse party having had an opportunity to cross-examine him, may be given in evidence."

Concededly, the witnesses at the former trial were subpoenaed by the Juvenile & Domestic Relations Court a number of times. These witnesses did not appear to testify.

But are their testimonies in the former trial within the coverage of the rule of admissibility set forth in Section 41, Rule 130? These witnesses are not dead. They are not outside of the Philippines. Can they be categorized as witnesses of the class unable to testify? The Court of Appeals, construing this term, held that "subsequent failure or refusal to appear thereat [second trial] or hostility since testifying at the first trial does not amount to inability to testify, but such inability proceeding from a grave cause, almost amounting to death, as when the witness is old and has lost the power of speech. (*Griffith vs. Sauls*, 77 Tex 630, 14 S. W. 230, 231; section 37 of Rule 123, Rules of Court)."

Here, the witnesses in question were available. Only, they re-fused to testify. No other reason that prevented them from testifying, is cited. Certainly, they do not come within the legal purview of those unable to testify.

Besides, in the situation here presented, petitioners are not at all bereft of remedy. They could have urged the court to have said witnesses arrested, punished for contempt.^[1] After all, these remedies are in the statute books to help litigants in the prosecution of their cases. Petitioners failed to avail of these remedies, went ahead and submitted their case.

We note petitioners' argument that to follow strictly the law of admissibility of testimony in former trials, is to permit party litigants to buy witnesses to dissuade them from testifying again. Nothing extant in the record will as much as intimate that respondent was responsible for the non-appearance of these witnesses. The danger of tampering with witnesses is a problem that attends trials in many a time and in a number of imaginable situations. And, petitioners' argument works both ways. Because, witnesses at the former trial can be bought not to testify at

the second trial, in just the same way that they could have been bought to give their original testimony. Solution of this problem lies elsewhere - not in the non-enforcement of Section 41, Rule 130 of the Rules of Court.

2. The procedural problem out of the way, we go direct to the merits.

Petitioners tried to prove that Celestina Daldo and respondent Francisco Tan lived together as husband and wife for more than eight years commencing from 1936 to 1944. Petitioners Carmelita Tan and Rodolfo Tan are allegedly the fruits of such cohabitation. Respondent stoutly denies this claim, avers that he is very much a married man with several children. Celestina Daldo, by her own admission, had been a nursemaid (yaya) in respondent's residence but for a short period of not less than one year in 1939. Carmelita was born on May 8, 1942 and Rodolfo, on September 11, 1944. The validity of the testimony of petitioners' witnesses in the present case was considerably downgraded by the affidavit of Celestina Daldo, heretofore adverted to, attached to the record of the former Case 26909. In that affidavit, Celestina deposed that petitioners were not fathered by Francisco Tan, but, in Celestina's own words, by "another person whose name I cannot divulge." Striking is the fact that this affidavit was executed after petitioners in the former case had finished with their oral and documentary evidence and were about to submit their case. By then, their counsel had a grasp of the situation. Petitioners and their guardian ad litem could have known whether they had reasonably made out a case against respondent.

Correctly then did the Court of Appeals rule out the probative value of petitioners' evidence and found for respondent. On this point the Court of Appeals said:

"x x x we now come to the resolution of the second point: i.e., whether or not the plaintiffs have sufficiently proved their case. We have gone over and examined thoroughly the arguments and evidence of the parties, and we find that the evidence for the plaintiffs-appellees fall short of the requirement of clear, strong and convincing evidence. Such evidence is necessary whether to prove legitimate or illegitimate paternity and filiation, considering the seriousness of the relationship and its far-reaching consequences. As aptly expressed in the case of *Serrano v. Aragon*, (22 Phil. 10),

'Public policy, indeed public necessity, demands that before an illegitimate child be admitted into a legitimate family, every requisite of the law be completely and fully complied with. No one should ever be permitted upon doubtful evidence to take from legitimate children the property which they and their parents have, by industry, fidelity, and frugality, acquired. x x x'

We agree with the findings of the trial court in its original decision correctly appreciating the evidence of the plaintiffs as unsatisfactory and insufficient, in view of the following considerations:

1) That Exhibits B and I, former testimonies of witnesses in Civil Case No. 26909, are inadmissible. x x x.

2) That the baptismal certificates, Exhs. A and C are not admissible proofs of filiation (*Malonda vs. Malonda*, 81 Phil., 149; 45 Off. Gaz. 5468; *Pareja vs. Pareja*, 95 Phil., 167; *Capistrano vs. Gabino*, 8 Phil. 135; *Adriano vs. de Jesus*, 23 Phil. 350; *Madrado vs. Leon*, 55 Phil. 1). The birth certificate Exhibit B is likewise inadmissible against the defendant because it failed to comply with Section 5 of Act 3753. The alleged illegitimate father did not sign under oath the said birth certificate (*Roces vs. Local Civil Registrar of Manila*, 102 Phil., 1050; *Crisolo vs. Macadaeg*, G.R. L-7017, prom. April 29, 1954).

It should be noted that said baptismal certificates are also useless to prove the dates of birth of the appellees-minors, considering that the period of cohabitation or any intimate relations at all between their mother and the appellant has been denied and that same has not been satisfactorily proved. Stated in another way, the date of birth as appearing in the birth certificate would be material only if it coincides with the period of cohabitation as admitted or sufficiently proved. To reason otherwise would be to put the cart before the horse, so to speak.

3. The oral evidence for the plaintiffs, consisting principally of the testimonies of the grandfather and of the mother of the minors, are unsatisfactory, being inconsistent and contradictory on material points, and unbelievable. The loose character of the mother of the minors who admittedly had lived and begotten children with several men of different nationalities, cannot also be overlooked. Weighed against each other, the evidence for the plaintiffs do not tip the scales in their favor as against the defendant-appellant. We are not convinced, by preponderance of evidence, that appellant is the father of the minor appellees. x x x"

Section 2, Rule 45 of the Rules of Court, formerly Section 2, Rule 46 of the 1940 Rules, employs the commanding language that "[o]nly questions of law may be raised" in an appeal by certiorari from a judgment of the Court of Appeals. That judgment, jurisprudence teaches, is conclusive as to the facts. We are not to alter said facts - they bind us, or to review the questions of fact.[2]

Having reached the conclusion that, on the merits, petitioners made no case, it is unnecessary for us to pass upon the other questions raised on appeal.

For the reasons given, we vote to affirm the judgment of the Court of Appeals under review. No costs in all instances.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

[1] Sections 11 and 12, Rule 29 of the 1940 Rules of Court; Sections 11 and 12, Rule 23 of the new Rules of Court.

[2] *Air France vs. Carrascoso*, L-21438, September 28, 1966, citing *Medel, et al., vs. Calasanz, et al.*, L-14835, August 31, 1960; *Astraquillo, et al., vs. Javier, et al.*, L-20034, January 30, 1965.

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