

LOTH R. AYCO, PETITIONER, VS. LOURDES S. FERNANDEZ, FOR HERSELF AND IN HER CAPACITY AS NATURAL GUARDIAN AND MOTHER OF BENJAMIN AYCO, AND COURT OF APPEALS, ELEVENTH DIVISION, RES...

G.R. No. 84770. March 18, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking the reversal of the decision[*] of the Court of Appeals in CA-G.R. No. 09745 - CV, entitled: "LOURDES S. FERNANDEZ, for herself and in her capacity as natural guardian and mother of BENJAMIN AYCO vs. LOTH R. AYCO", affirming the decision[**] of the Regional Trial Court of Negros Occidental, with the modification that, in addition to what was granted by the lower court, the defendant-appellant Loth R. Ayco has to pay subject natural child the sum of P21,000.00, plus interest thereon of six (6) percent per annum from the date of the filing of the complaint on October 20, 1962.

The antecedent facts of the case are as follows:

Private respondent Lourdes S. Fernandez, a seamstress, was wooed and won by petitioner Loth R. Ayco while both of them were still single. Their amorous relationship culminated in the birth of a child on January 27, 1949 in Bacolod City. Records of the Occidental Negros Provincial Hospital where the child was delivered show that he was named after petitioner (Loth Ayco, Jr.) who was indicated therein as the father of Lourdes S. Fernandez's child (Exhibit "A"; Record, 275).

The child was baptized in Talisay, Negros Occidental on January 31, 1950 as Benjamin Ayco instead of Loth Ayco, Jr. inasmuch as Loth considered his own first name as effeminate. Loth was, however, also named as Benjamin's father in the baptismal certificate (Exhibit "B"; Record, p. 276). The baptismal party was held at Loth's residence.

Loth gave P40.00 a month as support for the child. Meanwhile, the relationship between Loth and Lourdes flourished and resulted in the birth of another child on March 23, 1950. Said child died two days later. Loth continued supporting Benjamin until six months after his marriage to Amparo Alemany in June, 1952. He also rented a room in the house of Soledad Uberas for the use of Lourdes.

Benjamin was later supported and sent to school by Loth's brother, Jesus, although there was a time when he lived with Loth whose father, Leon Ayco, recognized him as his grandson.

Because Loth refused to acknowledge the child and discontinued the support, Lourdes, for herself and as natural guardian of Benjamin, filed as pauper litigant, a complaint against Loth praying inter alia, that Benjamin be acknowledged as the natural child of Loth; and be given educational support of P200.00 a month, and that Lourdes be paid P50,000.00 by way of actual and compensatory damages plus attorney's fees of P5,000.00 (Civil Case No. 6812).

In his answer, Loth denied that he sired Benjamin and asserted that he had no legal obligation to support said child. He alleged that the complaint did not state any cause of action and, even assuming that the narration Lourdes in her complaint had some basis, there was no legal ground for him to acknowledge Benjamin as his child. Lourdes and Benjamin testified during the trial and their testimonies were supported by that of Loth's second cousin, Fortunato Basco. On the other hand, the defense presented Amparo Alemany Ayco, Loth's wife, who testified that she did not know the complainants and that she never saw Benjamin in the house of her father-in-law, Leon Ayco. The latter's former secretary, Emilia Gallego, also denied having known Benjamin. Loth did not take the stand.

On July 11, 1966, through counsel, Lourdes filed a motion to dismiss the case. Attached to the motion was her affidavit categorically stating that Benjamin was her son "with somebody else whose name (she would) rather prefer not to mention." She also stated therein that she wanted Civil Case No. 6812 to be dismissed "with prejudice" and that she considered herself forever barred "from filing any similar suit against the defendant and his successor-in-interest." (Exhibit "2"; Record, p. 121).

The lower court[***] granted the motion (Exhibit "3"; Record, p. 122) and a few days later Lourdes requested that Exhibits "A", "B", "C", "C-1" and "D" to "D-10" be detached from the records as she needed them for "personal use" (Exhibit "4"; Record, p. 123).

On July 25, 1966, Lourdes informed the court that she had terminated the services of her counsel (Exhibit "6"; Record, p. 124) and, at the same time, she filed a motion to set aside the order dismissing Civil Case No. 6812. She prayed therein for the resumption of the trial of the case. She alleged that she did not intend to have the case dismissed as she was signing the papers only "for the purpose of effecting a compromise in order that the accrued support due her son" could be paid to them (Record, p. 125). The lower court denied the motion (Exhibit "7"; Record, p. 231). Undaunted, Lourdes and Benjamin appealed to the Court of Appeals (CA-G.R. No. 39212-R). On February 18, 1972, said appellate court rendered a decision[****] the dispositive portion of which reads:

"WHEREFORE, the order of dismissal dated July 11, 1966 appealed from is hereby affirmed as to plaintiff Lourdes S. Fernandez in so far as her claim for damages is concerned and reversed as to plaintiff Benjamin F. Ayco, without pronouncement as to costs.

"The case is remanded to the lower court which shall continue with the trial as to the causes of action of Benjamin F. Ayco."

Said decision became final and executory on May 8, 1972 (Exhibit "J"; Record, p. 264).

Consequently, the case was returned to the lower court for further proceedings and the plaintiff presented Soledad Uberas as rebuttal witness. The defendant did not present further evidence.

On April 16, 1986, the trial court promulgated the aforementioned decision declaring Benjamin F. Ayco as the natural child of Loth R. Ayco with Lourdes S. Fernandez citing as legal basis therefor Article 283 (2) of the Civil Code which states that a father is obliged to recognize the child as his natural child "when the child is in continuous possession of the status of a child of the alleged father by the direct acts of the latter or that of his family." The decretal portion of the decision states:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff Benjamin F. Ayco and against the defendant Loth Ayco declaring the former as the natural son of the latter, and:

- To pay moral damages to plaintiff Benjamin F. Ayco the amount of P20,000.00;
- To pay attorney's fees in the amount of P5,000.00;

- To pay the costs of this suit."

Both Loth and Benjamin elevated the case to the Court of Appeals with Benjamin claiming that he should have been granted the support due him as a natural child during his minority until his 21st birthday. On July 29, 1988, the Court of Appeals rendered the herein questioned decision affirming that of the lower court with the modification that Loth Ayco should pay his natural son the sum of P21,000.00 plus interest thereon of six (6) percent per annum from October 20, 1962 representing the amount of support due to the latter (CA-G.R. No. 09745).

Hence, Loth Ayco interposed the instant petition for review on certiorari contending that the Court of Appeals erred in declaring Benjamin Ayco as his natural son as such declaration is "diametrically opposed" to the "declaration" of Lourdes Fernandez in her affidavit attached to the motion to dismiss Civil Case No. 6812 that Loth is not the father of Benjamin (Rollo, p. 9).

The petition is devoid of merit. Petitioner's reliance on Lourdes' affidavit is misplaced. Affidavits are not considered the best evidence if the affiants are available as witnesses (Vallarta v. Court of Appeals, 163 SCRA 587 [1988]). In this case, Lourdes could have been called by the petitioner as his witness at the resumption of the proceedings in the lower court if there really was a solid basis for her "revelation" on the paternity of Benjamin. As it were, petitioner even failed to present any other witness to prove the truth of his denial that he fathered Benjamin. He himself is the best person to affirm or deny Benjamin's filiation yet he chose to remain silent by not testifying on the witness stand. Consequently, he let two chances to prove his disclaimer under oath pass him by: first, at the original hearings where he presented only two witnesses and second, at the resumption of the proceedings after the Court of Appeals had remanded the case.

Verily, there is a need to apply the established principle that on factual matters, the findings of the trial courts, especially when affirmed by the appellate court, must be accorded the greatest respect in the absence of any showing that they ignored, overlooked, or failed to properly appreciate matters of substance or importance likely to affect the results of the litigation (Centino v. Court of Appeals, 169 SCRA 206 [1989]).

Petitioner's contention that the result of the case has been affected by the fact that several judges handled its proceedings likewise does not deserve favorable consideration. The continuity of a court and the efficacy of its proceedings are not affected by the death, resignation or cessation from the service of the judge presiding it. Hence, a judge may validly render a decision although he has only partly heard the testimony of the witnesses (People v. Narajaos, 149 SCRA 399 [1987]).

On the merits of the case, it clear that whether this case be decided under the Civil Code or the Family Code the result will be the same. Thus, Benjamin may prove his illegitimate filiation under Article 175 of the Family Code in relation to Article 172 thereof. Article 175 provides that "illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children" and, under the second paragraph of Article 172, legitimate filiation shall be proved by "the open and continuous possession of the status of a legitimate child."

The trial court and the Court of Appeals have found that Benjamin has amply proved his continuous possession of the status of a natural child of Loth R. Ayco.

PREMISES CONSIDERED, the petition is hereby DENIED for lack of merit.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Penned by Associate Justice Fidel P. Purisima, concurred in by Associate Justices Segundino G. Chua and Nicolas P. Lapena, Jr.

[**] Penned by Judge Quirico C. Calasara.

[***] Presided over by Judge Jose F. Fernandez.

[****] Penned by Associate Justice Ramon C. Fernandez and concurred in by Associate Justices Hermogenes Concepcion, Jr. and Cecilia Munoz Palma.

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