4 Phil. 738

[G.R. No. 1884. September 07, 1905]

PRESENTACION INFANTE, GUARDIAN OF THE MINOR CHILD MANUELA INFANTE, PLAINTIFF AND APPELLEE, VS. MANUEL T. FIGUERAS, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:
Article 135 of the Civil Code is as follows:

> "El padre esta obligado a reconocer al hijo natural en los casos siguientes:
>
> "Cuando exista escrito suyo indubitado en que expresamente reconozca su paternidad.
>
> "2.
> Cuando el hijo se halle en la posesion continua del estado de hijo natural del padre demandado, justificada por actos directos del mismo padre o de su familia.
>
> "En los casos de violacion, estupro o rapto, se estara a lo despuesto en el Codigo Penal en cuanto al reconocimiento de la prole."

Manuela Infante was born on the 29th day of May, 1901. Her mother is Presentacion Infante. She, as guardian of her child, brought this action against the defendant, alleging that he is the father of the child, and asking that he be compelled to recognize her as his natural daughter. The complaint is based upon paragraph 2 of said article 135.

The defendant, in his answer, denied all the allegations of the complaint. During the trial Pilar Chavez, the mother of Presentacion Infante and the grandmother of Manuela, was allowed to testify, against the objection and exception of the defendant, to the relations which existed between the defendant and her daughter Presentacion prior to the birth of the latter's child, and that the defendant was the father of the child. The mother, Presentacion, was allowed to testify, against the objection and exception of the defendant, to these same relations, and that defendant was the father of the child. Natividad Coronada de la Cruz, the *ama de leche* of the child, was allowed to testify to the same thing, against the objection and exception of the defendant. Judgment was rendered by the court below against the defendant, and he has brought the case here, alleging as error the admission of the evidence above referred to.

The case presents the question whether in actions under paragraphs 1 and 2 of section 135 evidence of this character is admissible. Article 5 of the Law of Bases of May 11, 1888, is in part as follows:

> "No se admitira la investigacion de la paternidad si no en los casos de delito o cuando existe escrito del padre en el que conste su voluntad indubitada de reconocer por suyo al hijo, deliberadamente expresada con ese fin, o cuando medie posesion de estado. Se permitira la investigacion de la maternidad."

This law was passed to govern the action of the commission appointed to prepare the Civil Code, and that commission provided in the code, by article 129, that the father and mother together, or separately, might recognize a natural child,, and in article 131 that this recognition must be made in the record of the birth, in a will, or in some other public document. In article 132 it was provided that when the recognition was made separately, the person making it could not reveal the name of the person with whom the child was had, nor state any circumstance which would enable such person to be identified, and public functionaries who took part in the preparation of any document

of recognition were subject to a fine if they allowed any such statement to be made.

Article 140 treats of the right of illegitimate children who have not the quality of natural children, and article 141 is as follows:

> "Fuera de los casos expresados en los numeros primero y segundo del articulo anterior, no se admitira en juicio demanda alguna que directa ni directamente, tenga por objeto investigar le paternidad de los hijos ilegitimos en quienes no concurra la condicion legal de naturales."

It is thus seen that following the Law of Bases the code permits the investigation of paternity in the cases therein mentioned, but the question is, How far does it permit that investigation to go? When the recognition is sought upon the ground that there exists a document undoubtedly in the handwriting of the alleged father, does the code permit evidence to show that the defendant was in fact the father of the child? In the second case of article 135, does the code permit the plaintiff to produce evidence as to the relations existing between the mother and the defendant prior to the birth of the child, for the purpose of proving that the defendant is, in fact, its father?

It is well settled that at least since the enactment of the Civil Code the mere fact of birth imposes no obligation whatever upon the father, and gives no legal right whatever to the child, except in those cases arising under the Penal Code which are referred to in said article 135, and in this opinion such cases are always considered as excepted from any statements that are made. Any obligation which the father may incur, and any right which the child may acquire, must arise from something else than the fact of birth. This, of course, is not true as to the mother, for by the express terms of article 136, the fact of birth does impose upon the mother the obligation of recognizing the child. But as to the father such obligation only arises upon proof of the facts stated in paragraphs 1 and 2 of article 135. The claim of the plaintiff, however, is that in cases arising either under paragraph

1 or paragraph 2, evidence of the relationship and evidence tending to show that the defendant is in fact the father of the child is competent and admissible as throwing light upon his subsequent conduct in the treatment of the child. It is very clear that in every case such evidence would have great weight. Evidence having been received in this case to show that the defendant was in fact the father of the child, the court was easily led to the decision that the defendant had so treated the child as to give the latter the continuous possession of the status of a natural child. Its influence was undoubtedly preponderating upon this point, but the question is, Can it under the law have such influence? Does the law allow the judge, in his decision on the question of the existence of a writing under paragraph 1, or the possession of status under paragraph 2, to be influenced by evidence showing that the defendant in fact was the father of the child? Let us suppose that the facts showing the possession of the status of a natural child are in themselves insufficient to prove such possession, but when proof of the parentage is introduced for the purpose of explaining the evidence in regard to the possession of the status of a natural child, the latter evidence becomes sufficient for that purpose. In such case it is seen, of course, that the judgment against the defendant rests, not upon the evidence that the child possessed the status of a natural child, but upon the evidence that the defendant was in fact its father, and the effect of such a holding would be to compel the defendant to recognize the child, not because the child had possessed continuously the status of a natural child, but because the plaintiff had proved that the defendant was in fact its father. This is a result which the Civil Code does not authorize. If it had been the intention of the legislators to have allowed this kind of evidence to turn the scale, the code might as well have provided, as was done in the case of the mother, that proof of this fact would compel a recognition. In this particular case evidence was introduced to show that the defendant had sent money and medicine to Presentacion Infante, the mother. That evidence, standing by itself, has no significance. It acquires all its force by reason of the evidence previously introduced to the effect that the defendant was the father of Presentacion’s child.

The authorities support the proposition that in a case like the present the evidence offered should not have been received. In the judgment of the supreme court of Spain of the 21st of May, 1896, it is said:

> "Considerando que prohibida por nuestro derecho moderno la investigacion de la paternidad, puesto que el Codigo Civil, en su articulo 135, solo obliga al padre a reconocer al hijo natural, fuera de los casos de violacion, estupro o rapto, en que ha de estarse a lo dispuesto en el Codigo Penal cuando exista escrito suyo indubitado en que expresamente lo reconozca, o cuando el hijo se halle en posesion continua de tal estado, justificada por actos directos del padre o de su familia; no autorizando este precepto la prueba de la filiacion como lo autoriza el articulo siguiente con relacion a la madre, es claro que debiendo ajustarse a estos moldes rigorosos los pleitos sobre reconocimiento paterao, la Sala sentenciadora ha podido y debido prescindir, como impertinente, de toda la prueba que en el presente litigio se practico con la mira de demostrar el origen de la nina L.C.,y concretar sus apreciaciones a aquella parte de la prueba testifical, encaminada propiamente a la justificacion de la posesion de estado en que la parte actora fundo su demanda, sin faltar por ,ello a la doctrina de la jurisprudencia citada en el tercer motivo del recurso, e inaplicable a este caso, ni tampoco a lo establecido en el articulo 659 de la Ley de Enjuiciamiento Civil invocado en el primero, en el concepto de que la facultad que este articulo concede a los tribunales para apreciar la prueba testifical no les autoriza para prescindir de los otros medios probatorios utilizados por las partes, cuyo principio, si es de notoria evidencia por regla general, no rige cuando la ley sustantiva rechaza esas otras probanzas, o prohiba, como sucede en el caso presente, la investigacion de los hechos que mediante ella se intente depurar."

Manresa, in his commentaries on this article 135, says:

> "Los redactores del Codigo, segun hemos dicho, han debido someterse a la Ley

de Bases, y por lo tanto, han rechazado la libre investigacion de la, paternidad. Los casos de reconocimiento forzoso que en los numeros 1.° y 2.° de este articulo se expresan, no la comprenden, porque en suma no se impone en ellos al padre mas que la ratificacion de su reconocimiento anterior, expresado en uri documento privado o en los actos que constituyen 1a posesion de estado de hijo natural; viniendo en ultimo termino a ser mera ampliacion del articulo 131, en que se establecen las formas de reconocimiento. A las alli admitidas hay que anadir ahora el documento privado y los actos de la vida familiar que implican aquel mismo hecho. Por lo tanto, el articulo no se aparta de la Ley de Bases, ni de la tradicion de nuestro derecho, en la cual 'el reconocimiento del padre debia ser espontaneo, libre y legalmente hecho y probado.' Todos estos requisites se encuentran en el hecho real del reconocimiento anterior que los hijos no tienen mas que presentar para que su autenticidad se confirme ante los tribunales, (Manresa, Vol. I, p. 504.)

"No puede, pues, prosperar la demanda para obligar al padre al reconocimiento de un hijo natural, aunque so1o se limite a pedir alimentos, si no se funda en el reconocimiento expreso del padre hecho por escrito, en la posesion constante de estado de hijo natural, o en sentencia firme recaida en causa por delito de violacion, estupro o rapto. El escrito y la sentencia habran de acompanarse a la demanda, y no puede admitirse otra prueba que la conducente a justificar que el escrito es indubitadamente del padre que en el reconozca su paternidad, o la relativa a los actos directos del mismo padre o de su familia, que demuestren la posesion continua de dicho estado. Para la prueba de estos dos hechos podran utilizarse todos los medios que pennite la Ley de Enjuiciamiento Civil, debiendo el Juez rechazar la que por cualquier otro concepto se dirija a la investigacion de la paternidad." (Manresa, Vol. I, p. 508.)

Alcubilla says:

"De la prohibicion impuesta por el articulo 141 cabria deducir que el legislador espanol permite la investigacion de la paternidad natural;

pero el atento examen de ese precepto y de los articulos.134, 135 y 140 nos persuade de que el Codigo prohibe en todo caso la investigacion de la paternidad y consiente la de la maternidad unicamente en el 2.° del articulo 136; pues en el numero 1.° de este articulo y en todos los del 135, el legislador, mas que investigar la paternidad o maternidad, permite comprobar la autenticidad de escritos o actos que entranan el reconocimiento espontaneo del hijo por el padre o por la madre, o se limita a hacer encaces en que se impone como pena el reconocimiento de la prole, conforme al articulo 464 del Codigo Penal." (Diccionario de la administracion Espanola, vol. 6,pag.l4.)

Comas says :

"El
Codigo no quiso y en este punto hizo bien, admitir la investigacion de la paternidad. Coraprendio sin duda que cuando existen los documentos o han tenido lugar los actos a que hace referencia el articulo 135 y se trata de hacer su prueba para que recaiga sobre ellos resolucion judicial, la materia juridica no consiste en la llamada investigacion, sino en obtener la declaracion correspondiente a la paternidad y filiacion que ya son conocidas." (La Revision del Codigo Civil Espanol, vol. 2, pag. 317.)

Scaevola says in his commentaries upon this article 135 (vol. 3, p. 183):

"Tocante
al caso 2.°, el hijo debe probar el goce de la posesion constante del estado de hijo natural, esto es, los actos ejecutados por el padre y su familia expresivos de la paternidad, tales como el vivir con aquel o con esta, el haber atendido a su subsistencia y educacion, etc. Ademas, tan to en este caso, como en el anterior, tendra que acreditar su cualidad de natural, demostrando la libertad de su padre al tiempo de la concepcion. Debera probar tambien la de la madre y la relacion carnal de esta con el pretendido padre? El Codigo no lo exige, y tampoco la naturaleza de los casos del articulo que hacen relacion directa y especial al padre sobre todo en el de la posesion de estado, que tiene un valor meramente externo. Ademas, si la ley permite hacer

> el reconocimiento *voluntario* separadamente, y aun prohibe en este caso al que reconoce revelar el nombre o alguna circunstancia de la persona con la que tuvo el hijo, no hay razon que justifique el que rija otra disposicion en el forzoso."

We hold, both on principle and authority, that the court below committed error in receiving the evidence referred to.

The plaintiff introduced in evidence twenty-four letters signed by the defendant and addressed to the mother. It is not claimed that in any one of these letters the defendant expressly recognized the child as his natural child, in conformity with the provisions of paragraph 1 of this article.

There was no motion for a new trial in the case, and all the evidence is not before us. We therefore have no power to examine the decision of the court below for the purpose of ascertaining if his findings of fact to the effect that this child was in possession of the status of a natural child, is or is not sustained by the evidence. As has been said before, it is apparent that the evidence which was improperly admitted induced the judge to arrive at that conclusion, and consequently the error in receiving it was prejudicial.

The judgment of the court below is reversed, and after the expiration of twenty days judgment should be entered in accordance herewith, and the cause remanded for a new trial; and the rule which should govern the court in the new trial in regard to the kind of evidence necessary to prove the possession of the status of a natural child, is laid down in the case of Buenaventura *vs*. Urbano,[1] decided with this case. Costs in this court will not be allowed to either party. So ordered.

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

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[1] *See* 5 Phil. Rep., 1.

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