5 Phil. 187

[G.R. No. 1207. November 02, 1905]

PIA BASA ET AL., PLAINTIFFS AND APPELLANTS, VS. JOSE CLARO ARQUIZA ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

ARELLANO, C.J.:

1. Dalmacio Arquiza died on the 29th of June, 1896, at the age of 45 years, according to the certificates presented during the trial. (Exhibits Nos. 5 and 6,pp.12 and 157 of the bill of exceptions.)

2. His wife and daughters, the plaintiffs, filed the petition in this case, on the 15th of October, 1901. (P.2 of the bill of exceptions.)

3. By their petition they seek the division of a piece of town property, described in the said petition as follows: "A certain block of land, situate in the suburb of Ermita, city of Manila, and bounded by Calle Nueva, Calle Isaac Peral, Calle del Padre Faura, and Calle Taran, together with all its parts and with, the improvements and dependencies existing on the said land." (P. 3 of the bill of exceptions.)

4. Point 4 of the complaint establishes: "That the plaintiffs are the owners and proprietors of one-third part, undivided, of the aforesaid block of land." (P.3 of the bill of exceptions.)

5. And in point 5: "That each of the defendants Maria Paz Arquiza and Jose Claro Arquiza are the owners and proprietors of one-third part, undivided, of the aforesaid block of land." (P. 3 of the bill of exceptions.)

6. In point 8: “That the defendants Maria Paz Arquiza, Jose Veles, her husband, and Jose Claro Arquiza, and each of them, are collecting and receiving at present, and have been collecting and receiving for a long time previous to the filing of this petition, the rent and revenues of the said block of land. * * * “

7. There is on file with No. 8, as evidence presented by plaintiffs, a record of possessory proceedings “covering all the land and all the property the object of this litigation,” instituted by a *procurador de juzgados* in the name of Jose Claro Arquiza, of which plaintiffs underscore the following words: “Which property my constituent acquired by inheritance from his deceased father, Santiago Arquiza, who died on the 19th of July, 1864, on which date his possession thereof commenced * * *.” (P. 158 of the bill of exceptions.)

8. In fact Santiago Arquiza, the legitimate father of Jose Claro Arquiza, died on the 19th of July, 1864, after his wife, Joaquina Carcaces, whose death occurred on the 6th of August, 1858. (Exhibits Nos.16 and 17, page 188 of the bill of exceptions.)

It is beyond question that Jose Claro Arquiza and Maria Paz Arquiza are legitimate children of Santiago Arquiza and Joaquina Carcaces, as shown by the petition itself, by the evidence adduced by both parties, and principally by the certificates of filiation, admitted without dispute. (Exhibits Nos. 14 and 15, page 167 of the bill of exceptions.)

The title on which the defendants Jose Claro Arquiza and Maria Paz Arquiza base their ownership is that of inheritance from their legitimate father, Santiago Arquiza. The joint possession and title of Jose Claro Arquiza and Maria Paz Arquiza are based on their legitimate parentage, by virtue whereof, and considering themselves the sole heirs of their father, Santiago Arquiza, they took possession of said estate, holding it as their exclusive patrimony from their paternal side, they

being the sole legitimate children who survived their father, whose title to the property is also beyond all controversy, and is presupposed in the present litigation.

The plaintiffs, however, claim participation in said inheritance and joint possession in representation of Dalmacio Arquiza, who, according to their allegation and evidence, was also a legitimate son of Santiago Arquiza and Joaquina Carcaces, their principal proof being the certificate of parentage of the said Dalmacio Arquiza, which reads as follows:

> "On the 28th of September, of the year one thousand eight hundred and fifty-one, with my license, the priest Don Remigio Rodriguez solemnly baptized in the *sagrario* of this cathedral Dalmacio Arquiza, a boy 5 days of age, *the legitimate son, born of legitimate wedlock*, of Santiago Arquiza and Joaquina Carcaces, Indians * * * ." (Exhibit No. 6, page 157 of the bill of exceptions.)

This alleged legitimate parentage, as well as the claim for joint possession since the beginning, and the claim for participation in the estate of Santiago Arquiza subsequently, were denied and disputed by the defendants in their amended reply with voluminous evidence, against which the plaintiffs adduced not less voluminous testimony, regarding the public opinion as to the origin of Dalmacio Arquiza, and the defendants established "that Dalmacio Arquiza was the son of *Benita Linares*, by *Santiago Arquiza* but born *while the latter was married with Joaquina Carcaces*." (P. 13 of the bill of exceptions.)

In refutation of the alleged *legitimate* parentage of Dalmacio Arquiza, set forth in Exhibit No. 6, the certificate of baptism of the same, the defendants affirmed in their reply and supported with evidence that *Dalmacio Arquiza*, if he was a *son* of *Santiago Arquiza*, was a bastard child had with another woman, and not with his legitimate spouse, Joaquina Carcaces.

The court does not consider it necessary to state its opinion of the

testimony adduced by the two parties, deeming sufficient undisputed facts, established and accepted by both parties, which are necessarily the premises of the question at issue.

The proof of the parentage of Maria de la Paz Arquiza consists in the certificate of her baptism and birth, the only proof then established by law, which is admitted as evidence unless it has been contested and the contrary established, It is worded as follows:

> "On the thirty-first of January of the year one thousand eight hundred and fifty-two, Br. D. Escolastico Ruiz, secular priest of this archbishopric, did, with my license, solemnly baptize and anoint with the holy oils and chrism, in the church of Ermita, Maria Paz Arquiza, a girl 8 days of age, the legitimate daughter of D. Santiago Arquiza and Da. Joaquina Carcaces, Indians of the barrio of Ilaya, of the barangay No. 35." (Exhibit No. 15, page 167 of the bill of exceptions.)

If it is true, as has been admitted during the trial, that Maria de la Paz Arquiza was born eight days previous to the 31st of January, 1852—that is, on the 22nd of said month and year—and that she is the legitimate daughter, born in legitimate wedlock, of Santiago Arquiza and Joaquina Carcaces; if it is true, as has been admitted during the trial, that Dalmacio Arquiza was born on the 23d of September, 1851, it being denied that he was the legitimate, son of Santiago Arquiza and Joaquina Carcaces, then it would appear from the attested dates of these documents, which have not been contested, but rather accepted by both parties, that an interval of only four months separated both these births. The attorney for the plaintiffs, now appellants, admits that *it is impossible that two children be born from the same mother, one four months after the other*, and neither law nor reason can require more evident and conclusive proof to properly establish that of these two children the one can not be legitimate whose legitimacy has been contested, and whose legitimacy is incompatible and can not be presumed jointly with that of the other child, the legitimacy of which is recognized and accepted. The judge

says with good reason that if Maria Paz was the illegitimate child and Dalmacio the legitimate, the plaintiffs would not have requested one-third of the estate of Santiago Arquiza, thus acknowledging the right of Maria Paz to another third part, but one-half, the other to go to Jose Claro Arquiza, and Maria Paz to be excluded from inheritance.

Without proof of the legitimate birth of Dalmacio Arquiza, his status can not be considered the same as that of Jose Claro Arquiza and Maria de la Paz Arquiza, owners and possessors of the estate of which the heiresses of the said Dalmacio Arquiza claim a portion, because previous to the case on hand, and during the same, the said defendants were the only persons recognized and considered as the legitimate children and legitimate heirs of Santiago Arquiza. Without evidence to prove his being a legitimate son of Santigao Arquiza, Dalmacio Arquiza can not be given participation in the joint domain, with Jose Claro Arquiza and Maria de la Paz Arquiza, as coheir of these two, the only legitimate children surviving Santiago Arquiza. It being impossible to presuppose the joint domain presupposed by the complaint, there is no ground for an action, nor was there any basis for an action for the purpose of requesting, as has been requested, the partition of property supposed to be held, undivided, by three.

There is no such undivided estate held by three, because such joint domain by three did not exist. This joint domain by three can not exist, for the reason that there can not be three heirs with regard to the estate left by Santiago Arquiza. There are only two legitimate heirs, the two defendants. The person from whom the claim of the plaintiffs originates, if he was Santiago Arquiza's son, was a bastard child, and incapable of being his heir.

Plaintiffs themselves have furnished the proof of his illegitimate birth by the birth certificate of Dalmacio Arquiza, which has been proved a legal impossibility, and a physiological impossibility, as subsequently admitted by plaintiffs themselves, it being the most decisive evidence which could be adduced, and absolutely irrefutable for the party which presented it.

The two defendants, as legitimate children of Santiago Arquiza, had been in quiet and peaceful possession of his estate since July, 1864, when after over thirty-seven years of such possession, a third party appeared before the courts with the claim that these two were not the only surviving legitimate children of Santiago Arquiza, but that there were three, the third being Dalmacio Arquiza. The legitimate filiation of the latter having been denied, legal procedure required that it be proved, the burden of proof resting upon him who alleged such affiliation and based his claim on it. He made use of the principal proof authorized by article 115 of the Civil Code, and against this *prima facie* authentic evidence another proof of the same nature was adduced, for the purpose of comparing the two and proving material impossibility. This impossibility it has been impossible to refute, and the legitimate filiation of Maria de la Paz continues to be uncontested, and is incompatible with that of Dalmacio Arquiza, which has been persistently contested to the end. If the fact on which the petition is based is an absurdity, a legal impossibility, then there is no fact which can be the cause or origin of the action. This court, therefore, has no further evidence to examine as after all, it is not conclusive, because neither the uninterrupted enjoyment of the status of a legitimate child (article 116) nor a foundation of proof in writing coming from both parents, either jointly or severally (article 117), can be deducted from the entire result of this case.

The court did not err in accepting, as evidence destructive of the presumption which a parochial record of baptism carries with it as to the parentage therein set forth, another record of the same nature and force, according to which it is impossible to admit the contents of the former. It is already established jurisprudence, and appears, amongst other sentences, in the *sentencia de casacion* of the 13th of July, 1899, "that the record of baptism, as in general all the documents, attests the fact which gives rise to its issue, and the date thereof, to wit, the fact of the administration of the sacrament on the day stated, but not the truth of the statements therein made as to the parentage of the child baptized * * *."—That even when the affiliation of legitimate children is proved, as established by article 115 of the

Civil Code, by the record of the birth, entered in the civil register, analogous to which are the certificates of baptism previous to the creation of the civil office referred to, this is a presumption against which evidence may be admitted, and said article 115 is not infringed if said presumption is offset by said evidence." In the decision of March 28, 1896:

> "That a certificate of baptism having been proved false civilly, in so far as it sets forth the legitimate affiliation of the plaintiff with regard to the defendant, this falsity being based on what appears from other documents of a like nature, and authentic and efficacious in the same manner, presented during the trial, it is evident that the relation of paternity was not fully established as required by the law, and the certificate of the administration of the sacrament does not, in the present case, constitute the authentic instrument to which article 115 of the Civil Code refers, and that the court which pronounced the sentence, in declaring that the plaintiff had not proved that she was a legitimate daughter, plaintiff having also failed to prove constant enjoyment of that civil status, and in acquitting the defendant for this reason, did not infringe the provisions of the law or incur the errors of fact and law cited * * * "

The fact that the plaintiff made of the question a supposition does not oblige the defendant and the court to suppose the only thing questionable, to wit, the status of the legitimate child of Dalmacio Arquiza, the same as Jose Claro Arquiza and Maria de la Paz Arquiza. This is the only question to be decided, and if decision should be rendered in favor of Dalmacio Arquiza, then the action for the division of the joint property of inheritance, filed by the successors in interest of Dalmacio Arquiza, would be justified by title of joint domain or joint inheritance, which would have to be recognized (since 1864) in favor of said Dalmacio Arquiza. In case of a decision to the contrary, however, such action can not exist, in view of the absence of the title presupposed, and the petition must therefore be denied.

In fact, the whole question involved in this case has been based on the supposition that plaintiffs and defendants have not done anything but discuss whether or not Dalmacio Arquiza was the legitimate son and heir of Santiago Arquiza and Joaquina Carcaces, each upholding one or the other side of the question—the plaintiffs the affirmative, and the defendants the negative—the former, that he was co-proprietor, as coheir, with the defendants, and the latter that he could not be coheir, and therefore not co-proprietor with them. It is clearly an action for the recognition of legitimacy, or for petition of inheritance..

This being so, it must be considered that while the action to claim legitimacy could have been brought by the son, Dalmacio Arquiza at any time of his life, it did not have this duration for his heirs, as said action is transmitted to the same only when the child dies during minority or in a state of insanity. In cases where the action is transmitted to the heirs of the child, only a period of five years is allowed in which to institute the action. (Article 118.) Dalmacio Arquiza died neither in minority nor in a state of insanity, and even if he had died in either of these states it would appear that the action was instituted by his heirs after the five years had expired, it being filed on October 15,1901, and he having died on June 29,1896.

On these grounds we consider the judgment appealed from, is in accordance with the law in "deciding that plaintiffs have no right to obtain anything in this action, and must pay the costs," and therefore affirm it in all its parts, denying the petition in all its chapters, with the costs of this instance against appellants.

Let judgment be entered in accordance herewith and after the lapse of twenty days let the records be returned to the lower court for execution thereof. So ordered.

Torres, Mapa, Johnson, and *Carson, JJ.,* concur.

Willard, J., did not sit in this case.

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