4 Phil. 719

[G.R. No. 1888. September 02, 1905]

PETRONILA VALERA, PLAINTIFF AND APPELLANT, VS. SEVERINO PURUGGANAN, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

Cosme Purugganan was the husband of the appellant, and Severino Purugganan the appellee, was his brother. Cosme died on the 13th day of December, 1902, leaving neither children nor father nor mother surviving. He left a will which was executed on the 30th of July, 1902. He appointed as his only heir the appellant, his wife. In case his wife should die before he died, he appointed as his heir Rita Barcena. In case Rita should die before he died, he appointed as his heirs his next of kin. In case his wife should die after Rita died, he provided that his property should pass to his next of kin. He appointed a guardian for Rita, and executors of his will.

At the time this document was executed, to wit, on the 30th day of July, 1902, and at the time the testator died, on the 13th of December, 1902, the law in force in regard to the execution of wills was section 618 of the Code of Civil Procedure. This will was executed in the presence of three witnesses, who signed the same in the presence of the testator, and in the presence of each other. It was accordingly executed in compliance with the law.

The judge below refused to probate the will on the ground that the notary before whom it was executed was a brother of the appellant, and that the will was accordingly void under the terms of article 754 of the Civil Code, which provided that the testator could not dispose of

the whole or any part of his estate in favor of the notary who took part in the execution of the will, or of any relation of his within the fourth degree.

In accordance with the law now in force it is not necessary that a notary should intervene in the execution of any will. In every case it is sufficient if the will is signed by the testator and by three credible witnesses, in the manner stated in said section 618. There were in this case three credible witnesses, of whom the notary was not one. What the notary did was no more than the work of a lawyer. Moreover, even if the notary had been a witness to the will, it would not have been void on that account, but by section 622 of the Code of Civil Procedure, any legacy made to the notary who was a witness, or to his relatives named in said section, would have been void. It follows that article 754 of the Civil Code was repealed by these provisions of the Code of Civil Procedure.

It is apparently claimed by the appellee in his brief that the testator made his will as he did by reason of undue influence exercised by the beneficiaries. There is no evidence in the case to show any undue influence exercised by anyone. The only evidence which could possibly be said to exist upon that point is evidence of the fact that the notary was a brother of the appellant, who was made the heiress, but this is not sufficient to show undue influence.

It is claimed also by the appellee that the judgment of the court was correct, because at the time of the hearing the original will was not produced in court. In answer to this it may be said that it does not affirmatively appear that the original will was not produced in court. In one part of the testimony it is stated that the will was read. In another part of the proceedings it is stated that the will was presented with the petition.

The fact that the witnesses did not identify their signatures to the will is not important. We have already so held in the case of Castaneda *vs*. Alemany[1] (2 Off. Gaz., 366). Upon the point here in question the two cases are almost identical.

The judgment of the court below is reversed, and after the expiration of twenty days the case will be remanded to that court, with instructions to enter judgment as prayed for in the petition for the probate of the will. No costs will be allowed to either party in this court. So ordered.

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

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[1] 3 Phil. Rep., 426.

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