7 Phil. 347

[G.R. No. 3059. January 22, 1907]

JUAN SAHAGUN, PETITIONER AND APPELLEE, VS. DOLORES DE GOROSTIZA, RESPONDENT AND APPELLANT.

D E C I S I O N

TORRES, J.:

On the 14th of March, 1905, Juan Sahagun presented a petition to the Court of First Instance asking that the last will and testament of his son, Ciriaco Sahagun, who died at the age of 24 on the 16th of February of the same year at the town of San Pablo, La Laguna, be admitted to probate, the said will having been executed on the 11th of February, 1905, the petitioner being named therein as executor, which office he accepted, he being also a legatee under the said will. The will in question was signed by the testator in the presence of three competent witnesses who also signed the same in the presence of each other. The petitioner further prayed that, after the will had been duly probated, he be appointed executor and that Potenciano Malvar and Rufino Flores, residents of the said town, be appointed commissioners to hear claims against the estate, stating at the same time that the testator had left a widow, Dolores de Gorostiza, and a child about 5 months of age, and that the property of the estate was estimated at about 4,000 pesos.

On the 29th of May of the same year, 1905, Dolores de Gorostiza, having learned through the newspaper “El Renacimiento” of the existence of the will alleged to have been left by her deceased husband, Ciriaco Sahagun, and being in doubt as to the authenticity of the same, appeared and opposed the probate of the will.

The court, in view of the testimony of the witnesses introduced by both parties, rendered judgment on the 6th of November, 1905, admitting to probate the will of the deceased, Ciriaco Sahagun, and upon the filing of a bond in the sum of P10,000, Philippine currency, by the executor, Juan Sahagun, therein appointed, ordered that letters testamentary be issued to him; and the said executor presented to the court within thirty days from the date

on which he took his oath of office an inventory of the property of the estate under his administration and within the same period asked the court to appoint the commissioners to appraise the value of the estate and hear claims, if any, against it. It being necessary to record the judgment in the Registry of Property of the Province of La Laguna, a certified copy of the same was issued to the petitioner by the clerk of the Court of First Instance of the said province for this purpose, which said judgment was to be effective from the day notice thereof was sent to the parties by the clerk, as provided in section 13 of Act No. 867. From this judgment the contestant, Gorostiza, appealed.

Section 614 of the Code of Civil Procedure provides:

> "Every person of age and sound mind may devise, bequeath, and dispose of his estate, real and personal, and of any right or interest which he has in his real or personal estate, by his last will and testament; and the words 'every person' shall include married women, provided, that no person can by will deprive a husband or wife or heir of such interest in his estate as the law provides shall appertain to such husband, wife, or heir, notwithstanding the execution of a will."

Section 618 of the same code provides:

> "No will, except as provided in the preceding section, shall be valid to pass any estate, real or personal, nor charge or affect the same, unless it be in writing and signed by the testator, or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of each other. The attestation shall state the fact that the testator signed the will, or caused it to be signed by some other person, at his express direction, in the presence of three witnesses, and that they attested and subscribed it in his presence and in the presence of each other. But the absence of such form of attestation shall not render the will invalid if it is proven that the will was in fact signed and attested as in this section provided."

Section 625 of the same code provides:

> "No will shall pass either real or personal estate unless it is proved and allowed in the Court of First Instance, or by appeal to the Supreme Court; and the allowance by the court of a will of real and personal estate shall be conclusive as to its due execution."

The three above-quoted sections of the Code of Civil Procedure, together with the result of the proceedings had in the Court of First Instance of the Province of La Laguna, satisfactorily show that the will executed by the deceased, Ciriaco Sahagun, on the 11th of February, 1905, in the presence of the witnesses, Potenciano Malvar, Francisco Villegas, and Isidoro Alvaran, is authentic, and should therefore be admitted to probate, as held by the court below.

It has been shown by the testimony of the three witnesses of the will, and by other evidence in the case, that on the morning of the 11th of February, 1905, the said Ciriaco Sahagun, who was far gone in consumption, dictated his last will between the hours of 8 and 11 o'clock in the morning, the said dictation consuming two hours' time, to the youth Matias Atienza, who wrote it at a small table in the room where the testator was then sitting in an easy-chair; and that between 3 and 4 o'clock in the afternoon of the same day, in the presence of the aforesaid three witnesses, who had been previously called by the testator for this purpose, the latter showed to them a document written in Tagalog, which he stated was his will, and asked the witness, Malvar, to read it, which the latter did aloud, and after the same was read, all present being informed of its contents, it was first signed by the testator and immediately thereafter by Potenciano Malvar, Isidoro Alvaran, and Francisco Villegas, this being done at one time and in the presence of the testator and the three witnesses.

This is proved by the sworn testimony of the three attesting witnesses, as well as by the testimony of some of the witnesses for the widow of the testator, particularly Juan Sahagun and Matias Atienza, and there is no doubt, therefore, that the said will was executed in accordance with the provisions of section 618 of the Code of Civil Procedure.

The widow's opposition to the probate of the will was based upon the fact that she had some doubt as to the authenticity of the same, and that she believed that she had a right to inherit from the deceased through her child who died after the deceased, and it does not appear that she contested the validity of the said will upon any of the grounds mentioned in section 634 of the Code of Civil Procedure.

The probate of a will does not affect the legitimate rights of the heirs at law and of the widow to the succession of the deceased. The validity and efficacy of a will is subject to the provisions of the code governing the order of succession and the legitimate portions of the heirs at law, the surviving spouse being included among the latter with his or her usufructuary portion.

The latter part of section 614 of the Code of Civil Procedure above quoted provides as follows: "That no person can by will deprive a husband or wife, or heir, of such interest in his estate as the law provides shall appertain to such husband, wife, or heir, notwithstanding the execution of a will." As to the rights of the widow, which might have been jeopardized by the provisions of the will in question, we can not make any decision in these proceedings. (Castañeda *vs*. Alemany,[1] 2 Off. Gaz., 366.)

For the reasons hereinbefore stated, we accept the findings of the court below upon the evidence, and hereby affirm the judgment of that court, with the costs against the appellant. After the expiration of twenty days, let judgment be entered in accordance herewith, and ten days thereafter the case be remanded to the court below for execution. So ordered.

Arellano, C. J., Mapa, Johnson, Willard, and *Tracey, JJ.,* concur.

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[1] 3 Phil. Rep., 426.

DISSENTING

CARSON, J.:

I dissent.

The widow of the deceased contests the probate of the alleged will, because, as she alleges, it was not executed in accordance with law, and charges the petitioner, her father-in-law and the chief beneficiary under the will, with having procured its execution by fraud.

The question involved is one of fact and in deciding it the credibility of the witnesses of both parties is drawn in question. Under these circumstances, I should be disposed to give great

weight to the findings of the trial judge but for the fact that he holds in his opinion that under the provisions of section 340 of the Code of Civil Procedure the contestant is bound by the declarations of Juan Sahagun and Matias Atienza, called by her. These witnesses, however, were the petitioner and his alleged tool in preparing the fraudulent will, whom she was compelled to call to the witness stand because the petitioner was careful to limit himself to the presentation of mere formal proof of the execution of the will. They were in the very nature of things hostile witnesses, and in view of the nature of the ground of the attack upon the will, it would appear that they should have been called in support of the petition for probate. Under all the circumstances, it seems clear that the provisions of section 340 of the Code of Civil Procedure do not apply to such witnesses so as to bind the contestant by their testimony, and justify the resolution of all doubts arising from the contradictory statements of the witnesses in favor of the petitioner.

There are contradictions in the testimony of the subscribing witnesses as to various minor details connected with the manner in which they assembled at the time of the execution of the will and these contradictions seems to me to be sufficient to raise a doubt as to the veracity and credibility of those witnesses. The petitioner, himself, is wholly at variance with the subscribing witnesses as to many of these details and much of his testimony is so apparently false as to lead one to believe that he came to the witness stand prepared to make any statement, true or false, which he imagined would aid him in securing probate of the alleged will.

The testimony of the widow, if it is to be believed, is conclusive as to the fact that the alleged will was not executed at the time or under the circumstances described by the subscribing witnesses, and she is corroborated by the testimony of the deceased’s physician and of the notary public of the municipality who appeared to be wholly disinterested witnesses.

Under all the circumstances, I am of opinion that the execution of the alleged will was not satisfactorily established, and that probate should have been denied.

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