

[ G. R. No. 17480. May 04, 1922 ]

**IN RE WILL OF DOLORES CORONEL, DECEASED. LORENZO PECSON, PETITIONER AND APPELLEE, VS. ERIBERTO CORONEL ET AL., OPPONENTS AND APPELLANTS.**

**D E C I S I O N**

**ROMUALDEZ, J.:**

On April 7, 1920, the Court of First Instance of Pampanga ordered the probate of the will marked Exhibit C alleged to have been executed by the deceased Dolores Coronel.

On September 13, 1920, Eriberto Coronel and others who claimed to be heirs of the deceased Dolores Coronel filed a motion in the said court, asking that the order probating the said will be set aside and that, after a new hearing was had, the probate of the said will be disallowed because the consent to the execution thereof was obtained through fraud and illegal means. Petitioners invoke the provisions of section 113 of the Code of Civil Procedure and their motion is based upon the facts contained in their pleadings which are as follows:

- I. That they are heirs of the deceased Dolores Coronel, being the descendants of her deceased brothers, and that the said Dolores Coronel died in Betis, municipality of Guagua, Province of Pampanga, on January 7, 1920, at the age of 82 years.
- II. That on February 27, 1920, Lorenzo Pecson, a resident of Betis, municipality of Guagua, Province of Pampanga, filed an application with this court, asking that a certain document dated July 1, 1918, said to be the last will and testament of the said deceased, Dolores Coronel, be probated, a copy of which document is hereto attached marked Exhibit A and made a part hereof.
- III. That according to the said document the aforesaid deceased appointed as her only legatee the said applicant, Lorenzo Pecson, to the exclusion of the herein movants and of all her surviving brothers and nephews, the said Lorenzo Pecson not being related

to the said deceased in any way, except that he is married to one of her nieces.

- IV. That during her last years the said deceased. Dolores Coronel, entrusted all her business and money to the said Lorenzo Pecson, who, through abuse of confidence, ordered the drafting of the document in question wherein He is appointed as the sole legatee of all the property of the deceased, and with the help of his lawyer, one Vicente J. Francisco, succeeded in affixing to the document the thumb mark of the said deceased, after the said lawyer had written the name of the deceased on the document, when as a matter of fact the said deceased did not even know the contents of the aforesaid document.
- V. That it was never the desire nor the intention of the said deceased to name the said Lorenzo Pecson as her sole legatee, to the exclusion of the herein movants and her other surviving brothers and nephews, but on the contrary, it was her intention, at the time of the drafting and execution of the said document, to divide her estate in equal parts among her surviving brothers and descendants of her deceased brothers, the herein movants being among the latter.
- VI. That before the execution of the said document the said deceased, on numerous occasions, had ordered the said Lorenzo Pecson to divide her estate, upon her death, in equal parts, among her surviving brothers and the descendants of her deceased brothers, said descendants taking by representation, and the said Lorenzo Pecson taking advantage of the confidence reposed in him by the said deceased, with the intention of deceiving her, falsely promised her to make the partition in the manner directed by her, when, as a matter of fact, he intended to retain her whole estate for his own personal benefit.
- VII. That the said deceased, trusting in the false promises of the said Lorenzo Pecson, as stated in the last preceding paragraph, impressed her thumb mark on the said document dated July 1, 1918, drafted by the said Lorenzo Pecson and under his direction, at the request of his attorney, without knowing its contents, as she believed that whatever might be the contents of the document the said Lorenzo Pecson would

comply with her wishes, as he had promised and would divide her property, at her death, among her surviving brothers and the descendants of her deceased brothers, in equal parts.

- VIII. That for the reasons aforesaid, the said document dated July 1, 1918, which was probated at the instance of the said Lorenzo Pecson as the last will and testament of the said deceased is not the true testament and last will of the said deceased, but on the contrary its execution by the deceased was obtained by the said Lorenzo Pecson through fraudulent means and through duress and improper acts committed by the said Lorenzo Pecson, which he well knew at the time of presenting the document for probate.
- IX. That from the time of the execution of the said document it was in the possession of Lorenzo Pecson and notwithstanding the explicit provisions of sections 626, 627, and 628 of the Code of Civil Procedure, he did not file it for probate, with this court, until fifty days after the death of the said deceased.
- X. That a few days after the said document had been presented for probate as the last will and testament of the said deceased, Lorenzo Pecson called a meeting of the heirs of the said deceased, in the latter's house, telling<sup>1</sup> them that he would proceed to the partition of the property left by the said deceased, and after a short discussion the meeting was adjourned, the said Lorenzo Pecson promising to give to the said heirs a certain portion of the estate, and to notify them within five months as to their respective shares which he could not ascertain at the time because there were some items of expense to be deducted the amount of which he did not know.
- XI. That the said meeting was called and the said promise was made by the said Lorenzo Pecson for the only purpose of preventing any opposition on the part of the herein movants, or any of them, to the probate of the document said to be the last will and testament of the said deceased

- XII. That trusting in the said promise and in the promises made by the said Lorenzo Pecson to the deceased that he would divide her estate equally among her surviving brothers and the children of her deceased brothers, the herein movants failed to present any opposition to the probate of the document said to be the last will and testament of the said deceased, as they believed, notwithstanding the manner in which the promises were made, that the said Lorenzo Pecson would fulfill his above stated promise.
- XIII. In view of the fact that there was no opposition, the said document was, by order of this court of April 7, 1920, allowed to probate as the last will and testament of the said deceased and letters of administration issued to said Lorenzo Pecson, the executor named in clause 3 thereof, to manage the estate of the deceased without bond.
- XIV. That having obtained, through the fraudulent means above stated, the decree allowing the probate of the document alleged to be the last will and testament of the said deceased, the said Lorenzo Pecson, on or about the beginning of the month of August of this year, definitely refused to give to the herein movants any share of the inheritance left by the said deceased.
- XV. That the probate of the said document said to be the last will and testament of the said testatrix without opposition on the part of the herein movants, was obtained by the said Lorenzo Pecson by fraudulent means, as already stated, and if the herein movants failed to oppose the probate thereof within the time fixed by law, such failure was due to inadvertence or to the excusable negligence brought about by the false promises of the said Lorenzo Pecson which he made without the intention of fulfilling them.
- XVI. That the herein movants have reliable information, which they believe, and, therefore, so allege, that the value of the property left by the deceased, a large part of which is not included in the inventory attached to the application of Lorenzo Pecson for the probate of the document said to be the last will and testament of the said deceased, is approximately P1,000,000, Philippine currency."

Counsel for the estate, answering this motion, prayed that it be denied, as the facts therein stated were not sufficient to justify the reopening of the proceedings and the probate of the will was final and conclusive.

Affidavits were filed by both parties in support of their respective contentions and particularly of the facts alleged by the movants, and the court, by an order dated December 16, 1920, denied their motion; wherefore they excepted to said order, and brought the case to this court on appeal, assigning several errors to the said order.

The fundamental questions herein raised are twofold: (a) Whether the order allowing the will to probate can be reversed after the period fixed for its probate has expired; and (b) whether sufficient facts have been shown so as to bring this case within the purview of section 113 of the Code of Civil Procedure.

As to the first point suffice it to say that the remedy applied for by the movants is one in equity which the Courts of First Instance of the Philippines, such as the court to which the application was made, have power to grant. The Courts of First Instance of these Islands having, as they have, general jurisdiction, are courts both of law and of equity. And as courts of equity, they have jurisdiction over cases falling under section 113 of the Code of Civil Procedure.

And the provisions of this section are applicable to the instant case (*Anuran vs. Aquino and Ortiz*, 38 Phil., 29), if the facts alleged in the motion warrant its application, & question which we shall presently consider in the discussion of the second point.

As to this point, we find it to have been sufficiently established by the appellants that, in view of the understanding between them and Lorenzo Pecson, they believed that the rights which they now claim were sufficiently protected, and for this reason they did not appear at the hearing to oppose the probate of the testament.

We find that the opponents have been negligent, but under the circumstances of the case, we consider their negligence excusable and hold that the court, whose order is the subject of this appeal, did not properly exercise its discretion in this matter and, therefore, committed an abuse of its discretionary powers.

The order appealed from is reversed and the decree allowing the probate of the will set aside, and it is hereby ordered that probate proceedings be reopened, giving the appellants an opportunity to present their pleadings and evidence in opposition to the probate of the

document and for this purpose these records are ordered remanded to the court from whence they came.

Without pronouncement as to costs.

*Araullo, C. J., Malcolm, Avanceña, Villamor, Ostrand, and Johns, JJ., concur.*

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