

94 Phil. 346

[G.R. No. L-5263. February 17, 1954]

1. WILLS; PROBATE; SIGNING IN THE PRESENCE OF TESTATOR AND AGUSTIN BARRERA, ET AL., PROPONENTS AND APPELLANTS, VS. JOSE TAMPOCO, ET AL., OPPOSITORS AND APPELLEES.

D E C I S I O N

PARAS, C.J.:

Oliva Villapaña died in Tarlac, Tarlac, on December 13, 1948. On December 31, 1948, a petition was filed by Agustin Barrera in the Court of First Instance of Tarlac for the probate of the will executed by Oliva Villapaña on July 17, 1948, and for the appointment of the petitioner as executor. According to the petition the properties left by the testatrix are worth P94,852.96, and the heirs instituted are nephews and nieces and grandchildren in the collateral line. Jose Tampoco and Victoriano Tampoco, alleged grandchildren of the testatrix in the direct line, filed an opposition, claiming that the will was not executed and attested in accordance with law, that the testatrix lacked testamentary capacity, that there was undue influence and pressure in its execution, that the signature of Oliva Villapaña was obtained by fraud and trickery, and that the testamentary provisions are illegal. Consorcia Lintang, Nemesio Villapaña, Marcos Villapaña, Jesus Villapaña, Vicente Villapaña, Ursulo Villapaña, Avelina Villapaña and Rosario Villapaña, alleged nephews and nieces, also filed an opposition on substantially the same grounds on which the opposition of Jose and Victoriano Tampoco was based. After protracted trial, and more than a year after the submission of the case, a decision was rendered by the Court of First Instance of Tarlac on August 11, 1951. disallowing the will. The court found that Oliva Villapaña had testamentary capacity, that there was no forgery, fraud, trickery or

undue influence in the execution of the will, and that preterition of forced heirs is not a ground for denying probate; but the will was disallowed because it was not the personal last will and testament of the deceased and it was not based on the finding that Oliva Villapaña did not furnish the names of the persons instituted as heirs and that the will was not read to her before she signed it. The second ground is premised on the conclusion that attesting witness Laureano Antonio was not present when Oliva Villapaña and attesting witness Honorio Lacson signed the will; that Antonio only partially saw the signing by attesting witness Modesto Puno; and that Oliva Villapaña saw Antonio sign only two or three times. From this decision the petitioner has appealed.

According to appellant's evidence, two or three days before July 10, 1948, Pilar Tañedo called on Modesto Puno, a lawyer and justice of the peace of Concepcion, Tarlac, and requested the latter to come to Manila for a conference with Oliva Villapaña, aunt of Pilar. On July 10, 1948, Atty. Puno, complying with this request, went to the house of Pilar Tañedo in Singalong Street where Oliva was staying. The latter, after preliminary greetings and courtesies, informed Atty. Puno that she wanted him to prepare her will, giving the names of the heirs and the properties to be left. Oliva Villapaña asked Atty. Puno to get the description of the properties from the herein appellant, Agustin Barrera, husband of Pilar Tañedo. Atty. Puno noted the wishes of Oliva, and, as there was then no available typewriter, he informed the old woman that he would prepare the will in his office in Concepcion and come back with it on the following Saturday. As promised, on or July 17, 1948, Atty. Puno returned to the house of Oliva Villapaña in Singalong, carrying with him one original and three copies, in type-written form, of the will he drafted in accordance with the instructions of Oliva Villapaña. Atty. Puno arrived at about noon. He read the will to Oliva to find out whether it conformed to her wishes, and she indicated that it was all right. After lunch Atty. Puno manifested that two other witnesses were necessary, whereupon Pilar Tañedo requested Honorio Lacson and Laureano Antonio, who were then living in the first floor of the house, to come up. Lacson and Antonio

did as requested. Asked by Olivia Villapaña if they could act as attesting witnesses to her will, both agreed. Oliva Villapaña, Atty. Puno, Lacson and Antonio were then seated around a small rectangular table in the *sala*, and at this juncture Atty. Puno gave a copy of the will to Oliva, Lacson and Antonio, while he retained one. The attorney again read the will aloud, advising the rest to check their respective copies. As Oliva Villapaña agreed to the will, she proceeded to sign all the four copies, on the lines previously placed by Atty. Puno, followed successively by Lacson, Atty. Puno and Antonio, all in the presence of each other. After the signing, Atty. Puno gave the original and a copy to Oliva, and retained the other two copies. Atty. Puno, Lacson and Antonio stayed for a while and even ate merienda prepared by the sisters Pilar and Beatriz Tañedo. Oliva Villapaña delivered her will to Agustin Barrera for safekeeping on October 17, 1948 when she was taken to the U. S. T. Hospital where she remained until November 7, 1948. On this date her doctors lost all hope for her recovery and Oliva Villapaña was brought to Tarlac, Tarlac, her home town, where, as already stated, she died on December 13, 1948.

According to the evidence for the oppositors-appellees, the will presented in court by the petitioner was not executed in accordance with law, in that attesting witness Laureano Antonio did not see the testatrix and attesting witness Lacson sign the will or any of its copies, that he saw Atty. Puno when the latter was already half thru signing the document, and that the testatrix did not see Antonio sign all the copies.

After a thorough study of the record and mature reflection on the conflicting evidence, we are constrained to conclude that the trial court erred in denying probate of the will.

Of the three attesting witnesses, namely, Atty. Modesto Puno, Honorio Lacson and Laureano Antonio, the first two testified positively that the will was signed by the testatrix and the three witnesses in the presence of each other, and that it was read to the testatrix before being signed. In view of the opposition filed by the two sets of oppositors, the third attesting witness, Laureano Antonio, had to be

presented by the petitioner but, contrary to expectations, Antonio testified that he arrived at the scene of the execution of the will after the testatrix and Honorio Lacson had already signed and after Atty. Puno was half through affixing his signatures, and that the testatrix left before Antonio finished signing all the copies. By numerical superiority alone, the weight of the testimony of Atty. Puno and Honorio Lacson outbalances the probative value of the testimony of Laureano Antonio. Intrinsically, we cannot state that Laureano Antonio spoke the truth on the witness stand, since, in the first place, the attestation clause signed by him contradicts his pretense and, in the second place, there is enough evidence on the record to show that in his conferences with Atty. Barrera before taking the witness stand, Antonio never gave the slightest indication that he was not present when the testatrix and the other witnesses signed the will or that the testatrix left before Antonio finished signing. Modesto Puno is a lawyer and at the time a justice of the peace, and it is improbable that he would unnecessarily risk his honor and reputation. Indeed, the trial court gave the impression that Atty. Puno was anxious to strictly meet the requirements of the law and in the absence, as in the case at bar, of any reason for a hasty completion, we do not believe that Atty. Puno would have allowed the signing of the will to be proceeded with unless three attesting witnesses were already present. On the other hand, we can fairly state that there was in fact no hurry on the part of any of the participants in the will, because the testatrix Oliva Villapaña was not dying (she died some five months after the execution of the will) and the parties could therefore take all the time that they wanted, Indeed, none of the three witnesses, left the house of Oliva Villapaña and they even stayed therein until after *merienda* time.

The fact that Atty. Puno is the brother of Jose Puno who is the husband of Carmen Tañedo, one of the beneficiaries of the will, and that Honorio Lacson is the husband of Bibiana Lacson who is a first cousin of Agustin Barrera, herein petitioner and husband of Pilar Tafiedo, is not sufficient to make them biased witnesses. If Atty. Puno had any material interest, this fact should have caused him to be more careful in seeing to it that the formalities of the law were strictly

complied with, and this should be true with respect to Honorio Lacson.

In deciding against the probate of the will, the trial court believed the testimony of Laureano Antonio to the effect that he arrived at the place of the signing at about 2:30 in the afternoon, and thereby found that a greater part of the proceeding was finished, because Atty. Puno declared in one place that “the signing of the testament commenced around between one o’clock and two o’clock” and in another place that the signing took place “around between two and three o’clock;” and Honorio Lacson declared that he was called by Pilar Tañedo to act as witness at around two o’clock or two thirty. From the testimony of Atty. Puno and Honorio Lacson the court concluded that the signing actually commenced between one and two o’clock. We are of the opinion that the specification of the time of the signing refers to an immaterial or unimportant detail which, in view of the lapse of time, might have been a mistake by one or the other participant in the execution of Oliva’s will. What is important and decisive—and this should be impressed in the mind of an attorney preparing and taking charge of the signing of will,—is that the testatrix and each of the three attesting witnesses must affix their signatures in the presence of one another. In the case before us, Atty. Puno and Honorio Lacson both attesting witnesses, categorically affirmed that this procedure was followed. At any rate, even under the testimony of Atty. Puno and Honorio Lacson, the signing could have taken place at about or after two thirty, since the former declared that it took place between two and three o’clock and Honorio Lacson stated that the time was two or two thirty.

Another point invoked by the trial court against the probate of the will is the circumstance that, while Atty. Puno testified that he placed the lines on which the testatrix and the witnesses were to sign before he read the document to the testatrix to whom he gave the original, witness Lacson testified that Atty. Puno read the original after giving a copy to the testatrix, and after reacting Atty. Puno placed the lines for signatures. This discrepancy again refers to a minor detail which is not sufficient to negative the truthfulness of Atty. Puno and Honorio Lacson on the main and important fact that the

will was signed by the testatrix and the three attesting witnesses in the presence of each other.

Oppositors-appellees presented in corroboration of the testimony of Laureano Antonio, Joaquin Villapaña and Consolacion del Mundo. Joaquin Villapaña, a painter, allegedly painted the house of Agustin Barrera in July, 1948 and saw the execution of the will. Consolacion del Mundo allegedly was then the maid of Oliva Villapaña. Apart from the fact that there is evidence to show that both Joaquin Villapaña and Consolacion del Mundo were not yet employed in the house of Oliva when the latter's will was executed, there is little or no reason for their version to prevail over the positive testimony of Atty. Puno and Honorio Lacson, considering that the latter's testimony is even corroborated by two other witnesses, Bibiana Lacson and Beatriz Tañedo. Certainly the story of Joaquin Villapaña and Consolacion del Mundo can have no greater weight than that of Laureano Antonio.

In holding that the will was not that of Oliva Villapaña, the trial court found that it was not read to her; and this finding was premised on the alleged contradiction of Atty. Puno and Honorio Lacson regarding the sequence of the reading of the will and the placing of lines for signatures, and regarding the question whether a copy or the original was handed to the testatrix. As we have already observed, the discrepancy relates to an insignificant matter which cannot vitally detract from the credibility of Atty. Puno to the effect that upon arrival at the house of Oliva Villapaña at about noon, he read the will to her with a view to finding whether she was agreeable thereto. It is not necessary that said will be read upon its signing and in the presence of the witnesses.

The trial court also concluded that the testatrix could not have furnished the names of the heirs instituted under the will, because (1) Salvador Tañedo, one of such heirs, was long dead and (2) Marcelo Villapaña, another instituted heir, was non-existent, since Oliva Villapaña did not have a grandson by such name. It is true that Salvador Tañedo was already dead and the testatrix knew about it, but it is not uncommon for a woman of old age, confused by the big number of

her relatives, to commit the mistake of unwittingly mentioning a dead one. With respect to the instituted heir, Marcelo Villapaña, while it appears that Oliva did not have a grandson answering to that name, there is evidence tending to show that Pioquinto Villapaña, a child of Ruperta Pineda, must have been referred to, because Oliva, who was the child's god-mother, originally wanted said child to be baptized as Marcelo, after his father. Moreover, if Atty. Puno had supplied the names instituted as heirs, he would have consulted all the interested parties and would be sure that no mistake of the kind was made.

As a closing observation, it is not for us to discover the motives of Oliva Villapaña in leaving her properties to the person named in the will, and omitting therefrom the oppositors-appellees. Suffice it to state that the trial court itself found the will to have been executed free from falsification, fraud, trickery or undue influence, with Oliva having testamentary capacity; and in such a situation it becomes our duty to give expression to her will.

Wherefore, the appealed order is reversed and the will executed by Oliva Villapaña on July 17, 1948, is hereby allowed. So ordered without costs.

Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, and Labrador, JJ., concur.
