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[G.R. No. L-3087 and L-3088. November 05, 1954]

IN RE: TESTATE ESTATE OF THE DECEASED JOSE B. SUNTAY, SILVINO SUNTAY, PETITIONER AND APPELLANT.
IN RE: INTESTATE ESTATE OF THE DECEASED JOSE B. SUNTAY, FEDERICO C. SUNTAY, ADMINISTRATOR AND APPELLEE.

R E S O L U T I O N

PADILLA, J.:
This is a motion for reconsideration of the decision promulgated on 31 July 1954, affirming the decree of the Court of First Instance of Bulacan which disallowed the alleged last will and testament executed in November 1929 and the alleged last will and testament executed in Kulangsu, Amoy, China, on 4 January 1931, by Jose B. Suntay, without pronouncement as to costs, on grounds that will presently be taken up and discussed.

Appellant points to an alleged error in the decision where it states that–

> xxx This petition was denied because of the loss of said will after the filing of the petition and before the hearing thereof, xxx

because according to him the "will was lost before not after (the) filing of the petition." This slight error, if it is an error at all, does not, and cannot, alter the conclusions and pronouncements made in the judgment rendered in the case. In his alternative petition the appellant alleges:

> 4. That on October 15, 1934, Maria Natividad Lim Billian, the mother of herein petitioner filed a petition in this court for the allowance and pro¬bate of a last will and testament executed, and signed in the Philippines in the year 1929 by said deceased Jose B. Suntay. (P. 3, amended record on appeal.)

If such last will and testament was already lost or destroyed at the time of the filing of the petition by Maria Natividad Lim Billian (15 October 1934), the appellant would have so stated and alleged. If Anastacio Teodoro, a witness for the appellant, is to be believed when he testified–

> xxx that one day in November 1934 (p. 273, t.s.n., hearing of 19 January 1948), x x x Go Toh arrived at his law office in the De los Reyes Building and left an envelope wrapped in red handkerchief [Exhibit C] (p. 32, t.s.n., hearing of 13 October 1947); xxx

and—

> If the will was snatched after the delivery thereof by Go Toh to Anastacio Teodoro and return by the latter to the former because they could not agree on the amount of fees, xxx

then on 15 October 1934, the date of the filing of the petition, the will was not yet lost. And if the facts alleged in paragraph 5 of the appellant's alternative petition which states:

> That this Honorable Court, after hearing, denied the aforesaid petition for probate filed by Maria Natividad Lim Billian in view of the loss and/or destruction of said will subsequent to the filing of said petition and prior to the hearing thereof, and the alleged insufficiency of the evidence adduced to establish the loss and/or destruction of the said will, (Underscoring supplied. P. 3, amended record on appeal)

may be relied upon, then the alleged error pointed out by the appellant, if it is an error, is due to the allegation in said paragraph of his alternative petition. Did the appellant allege the facts in said paragraph with reckless abandon? Or, did the appellant make the allegation as erroneously as that which he made in paragraph 10 of the alternative petition that this will which was lost and ordered probated by our Supreme Court in G.R. No. 44276, above referred to?" (P. 7, amended record on appeal.) This Court did not order the probate of the will in said case because if it did, there would have been no further and subsequent proceedings in the case after the decision of this Court referred to had been rendered and

had become final. Be that as it may, whether the loss of the will was before or subsequent to the filing of the petition, as already stated, the fact would not affect in the slightest degree the conclusions and pronouncements made by this Court.

The appellant advances the postulate that the decision of this Court in the case of Lim Billian vs. Suntay, G.R. No, 44276, 63 Phil, 793, constitutes res judicata on these points: (a) that only one will was prepared by attorney Barretto, and (b) that the issue to be resolved by the trial court was whether the draft (Exhibit B) is a true copy or draft of the snatched will, and contends that these points already adjudged were overlooked in the majority opinion. The decision of this Court in the case referred to does not constitute res judicata on the points adverted to by the appellant. The only point decided in that case is that "the evidence is sufficient to establish the loss of the document contained in the envelope."

In the opinion of this Court, this circumstance justified "the presentation of secondary evidence of its contents and of whether it was executed with all the essential and necessary legal formalities." That is all that was decided. This Court further said:

> The trial of this case was limited to the proof of loss of the will, and from what has taken place we deduce that it was not petitioners intention to raise, upon the evidence adduced by her, the other points involved herein, namely, as we have heretofore indicated, whether Exhibit B is a true copy of the will and whether the latter was executed with all the formalities required by law for its probate. The testimony of Alberto Barretto bears importantly in this connection. (P. 796, supra.)

Appellant's contention that the question before the probate court was whether the draft (Exhibit B) is a true copy or draft of the snatched will is a mistaken interpretation and view of the decision of this Court in the case referred to, for if this Court did make that pronouncement, which, of course, it did not, such pronouncement would be contrary to law and would have been a grievous and irreparable mistake, because what the Court passed upon and decided in that case, as already stated, is that there was sufficient evidence to prove the loss of the will and that the next step was to prove by secondary evidence its due execution in accordance with the formalities of the law and its contents, clearly and distinctly, by the testimony of at least two credible witnesses,[1]

The appellant invokes Rule 133 to argue that Rule 77 should not have been applied to the

case but the provisions of section 623 of the Code of Civil Procedure (Act No. 190), for the reason that this case had been commenced before the Rules of Court took effect. But Rule 133 cited by the appellant provides:

> These rules shall take effect on July 1, 1940. They shall govern all cases brought after they take effect, and also all further proceedings in cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the former procedure shall apply. (Underscoring supplied.)

So, Rule 77 applies to this case because it was a proceedings in a case then pending. But even if section 623 of the Code of Civil Procedure were to be applied, still the evidence to prove the contents and due execution of the will and the fact of its unauthorized destruction, cancellation, or obliteration must be established "by full evidence to the satisfaction of the Court." This requirement may even be more strict and exacting than the two-witness rule provided for in section 6, Rule 77. The underlying reason for the exacting provisions found in section 623 of Act No. 190 and section 6, Rule 77, the product of experience and wisdom, is to prevent impostors from foisting, or at least to make for them difficult to foist, upon probate courts alleged last wills or testaments that were never executed.

In commenting unfavorably upon the decree disallowing the lost will, both the appellant and the dissenting opinion suffer from an infirmity born of a mistaken premise that all the conclusions and pronouncements made by the probate court in the first decree which allowed the probate of the lost will of the late Jose B. Suntay must be accepted by this Court.

This is an error. It must be borne in mind that this is not a petition for a writ of certiorari to review a judgment of the Court of Appeals on questions of law where the findings of fact by said Court are binding upon this Court. This is an appeal from the probate court, because the amount involved in the controversy exceeds P50,000, and this Court in the exercise of its appellate jurisdiction must review the evidence and the findings of fact and legal pronouncements made by the probate court. If such conclusions and pronouncements are unjustified and erroneous this Court is in duty bound to correct them. Not long after entering the first decree the probate court was convinced that it had committed a mistake, so it set aside the decree and entered another. This Court affirmed the last decree not precisely upon the facts found by the probate court but upon facts found by it after a careful

review and scrutiny of the evidence, parole and documentary. After such review this Court has found that the provisions of the will had not been established clearly and distinctly by at least two credible witnesses and that conclusion is unassailable because it is solidly based on the established facts and in accordance with law.

The appellant and the dissent try to make much out of a pleading filed by five (5) children and the widow of Apolonio Suntay, another child of the deceased by the first marriage, wherein they state that—

> xxx in answer, to the alternative petition filed in these proceedings by Silvino Suntay, through counsel, dated June 18, 1947, to this Honorable Court respectfully state that, since said alternative petition seeks only to put into effect the testamentary disposition and wishes of their late father, they have no opposition thereto, (Pp. 71-72, amended record on appeal.)

Does that mean that they were consenting to the probate of the lost will? Of course not. If the lost will sought to be probated in the alternative petition was really the will of their late father, they, as good children, naturally had, could have, no objection to its probate. That is all that their answer implies and means. But such lack of objection to the probate of the lost will does not relieve the proponent thereof or the party interested in its probate from establishing its due execution and proving clearly and distinctly the provisions thereof by at least two credible witnesses. It does not mean that they accept the draft Exhibit B as an exact and true copy of the lost will and consent to its probate. Far from it. In the pleading copied in the dissent, which the appellant has owned and used as argument in the motion for reconsideration, there is nothing that may bolster up, his contention. Even if all the children were agreeable to the probate of said lost will, still the due execution of the lost will must be established and the provisions thereof proved clearly and distinctly by at least two credible witnesses, as provided for in section 6, Rule 77. The appellant's effort failed to prove what is required by the rule. Even if the children of the deceased by the first marriage, out of generosity, were willing to donate their shares in the estate of their deceased father or parts thereof to their step mother and her only child, the herein appellant, still the donation, if validly made, would not dispense with the proceedings for the probate of the will in accordance with section 6, Rule 77, because the former may convey by way of donation their shares in the estate of their deceased father or, parts thereof to the latter only after the decree disallowing the will shall have been rendered and shall have

become final. If the lost will is allowed to probate there would be no room for such donation except of their respective shares in the probated will.

The part of the deposition of Go Toh quoted in the motion for reconsideration which appellant underscores does not refer to Go Toh but to Manuel Lopes. Even if Go Toh heard Manuel Lopez read the draft (Exhibit B) for the purpose of checking it up with the original held and read by Jose B. Suntay, Go Toh could not have understood the provisions of the will because he knew very little of the Spanish language in which the will was written (answers to 22nd and 23rd interrogatories and to X-2 cross-interrogatory). In fact, he testifies in his deposition that all he knows about the contents of the lost will was revealed to him by Jose B. Suntay at the time it was executed (answers to 25th interrogatory and to X-4 and X-8 cross-interrogatories); that Jose B. Suntay told him that the contents thereof axe the same as those of the draft /Exhibit B/ (answers to 33rd interrogatory and to X-8 cross-interrogatory); that Mrs. Suntay had the draft of the will (Exhibit B) translated into Chinese and he read the translation (answer to the 67th interrogatory); that he did not read the will and did not compare it (check it up) with the draft /Exhibit B/ (answers to X-6 and X-20 cross-interrogatories). We repeat that–

> x x x all of Go Toh's testimony by deposition on the provisions of the alleged lost will is hearsay, because he came to know or he learned of them from information given him by Jose B. Suntay and from reading the translation of the draft (Exhibit B) into Chinese.

This finding cannot be contested and assailed.

The appellant does not understand how the Court came to the conclusion that Ana Suntay, a witness for the appellant, could not have read the part of the will on adjudication. According to her testimony "she did not read the whole will but only the adjudication," which, this Court found, "is inconsistent with her testimony in chief (to the effect) that 'after Apolonio read that portion, then he turned over the document to Manuel, and he went away.'" (P. 528, t.s.n., hearing of 24 February 1948) And appellant asks the question: "Who went away? Was it Manuel or Apolonio?" In answer to his own question the appellant says: "The more obvious inference is that it was Apolonio and not Manuel who went away." This inference made by the appellant not only is not obvious but it is also illogical, if it be borne in mind that Manuel came to the house of Apolonio and it happened that Ana was there, according to her testimony. So the sentence "he went away" in Ana's testimony must logically and

reasonably refer to Manuel, who was a caller or visitor in the house of his brother Apolonio and not to the latter who was in his house. If it was Apolonio who "went away," counsel for the appellant could have brought that out by a single question. As the evidence stands could it be said that the one who went away was Apolonio and not Manuel? The obvious answer is that it was Manuel. That inference is the result of a straight process of reasoning and clear thinking.

There is a veiled insinuation in the dissent that Alberto Barretto testified as he did because he had been paid by Federico C. Suntay the sum of P16,000. Federico C. Suntay testifies on the point thus–

Q You mentioned in your direct testimony that you paid certain amount to Atty. Alberto Barretto for services rendered, how much did you pay? A Around SIXTEEN THOUSAND (P6,000.00).

Q When did you make the payment?

A During the Japanese time.

Q Did you state that fact in any accounts you presented to the Court?

A I do not quite remember that. x x x (P. 180, t.s.n., hearing of 24 October 1947.)

Q When you made that payment, was (it) your intention to charge it to the estate or to collect it later from the estate?

A Yes, sir.

Q More or less, when was such payment made, during the Japanese time, what particular month and year, do you remember?

A I think in 1942.

Q And you said you paid him because of services he rendered?

A Upon the order of the Court.

Q And those services were precisely because he made a will and he made a will which was lost, the will of Jose Suntay?
x x x (P. 181, t.s.n., supra.)
A I think if I remember correctly according to ex-Representative Vera who is the administrator whom I followed at that time, that was paid according to the services rendered by Don Alberto Barretto with regard to our case in the testamentaria but he also rendered services to my father.
Q At least your Counsel said that there was an order of the Court ordering you to pay that, do you have that copy of the order?
A Yes, sir, I have, but I think that was burned.
(P. 184, t.s.n., supra.)

So the sum of P16,000 was paid upon recommendation of the former administrator and order of the probate court for services rendered by Alberto Barretto not only in the probate proceedings but also for services rendered to his father. But if this sum of 116,000 paid to Alberto Barretto upon recommendation of the previous administrator and order of the probate court for professional services rendered in the probate proceedings and to the deceased in his lifetime be taken against his truthfulness and veracity as to affect adversely his testimony, what about the professional services of Anastacio Teodoro who appeared in this case as one of the attorneys for the petitioner-appellant? (P. 2, t.s.n., hearing of 13 October 1947.) Would that not likewise or by the same token affect his credibility? Is not the latter1s interest more compelling than the former's?

For the foregoing reasons, the motion for reconsideration is denied.

Paras, C.J., Pablo, Bengzon, Padilla, Reyes, A., Labrador, and *Concepcion, JJ.* concur.

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[1] Section 6, Rule 77.

DISSENTING

PARAS, *C.J.,*

For the same reasons and considerations set forth in detail in my dissent promulgated on July 31, 1954, I vote to grant the motion for reconsideration.

Montemayor and *Hugo, JJ.,* concurs in the above dissent.

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