100 Phil. 344

[G.R. No. L-8774. November 26, 1956]

IN THE MATTER OF THE TESTATE ESTATE OF THE DECEASED JUANA JUAN VDA. DE MOLO. EMILIANA MOLO-PECKSON AND PILAR PEREZ-NABLE, PETITIONERS AND APPELLEES, VS. ENRIQUE TANCHUCO, FAUSTINO GOMEZ, ET AL., OPPOSITORS AND APPELLANTS.

D E C I S I O N

MONTEMAYOR, J.:

Mariano Molo and Juana Juan was a couple possessed of much worldly wealth, but unfortunately, not blessed with children. To fill the void in their marital life, they took into their home and custody two baby girls, raising them from infancy, treating them as their own daughters, sending them to school, and later to the best and exclusive centers of higher learning, until they both graduated, one in pharmacy, and the other in law. These two fortunate girls, now grown up women and married, are Emiliana Perez-Molo-Peckson, a niece of Juana, and Pilar Perez-Nable a half sister of Emiliana.

Mariano Molo died in January, 1941, and by will bequeathed all his estate to his wife. Juana, his widow, died on May 28, 1950, leaving no forced heirs but only collateral,—children and grandchildren of her sisters. She left considerable property worth around a million pesos or more, and to dispose of the same, she was supposed to have executed on May 11, 1948, about two years before her death, a document purporting to be her last will and testament, wherein she bequeathed the bulk of her property to her two foster children, Emiliana and Pilar. These two foster daughters, as petitioners, presented the document for probate in the Court of First Instance of Rizal. The other relatives, such as Enrique Tanchuco, only son of Juana’s deceased sisiter Modesta, and his two children, Ester, and Gloria, both surnamed Tanchuco, and Faustino Gomez and Fortunata Gomez, the only surviving grandchildren of another deceased sister, named Frandsca, filed opposition to the probate of the will on the ground that the instrument in question was not the last will and testament of Juana; that the same was not executed and attested in accordance with law; that the said supposed will was secured through undue pressure and influence on the part of the beneficiaries therein; that

the signature of the testatrix was secured by fraud and that she did not intend the instrument to be her last will; and that at the time the instrument was executed, the testatrix Juana was not of sound and disposing mind.

Because of the value of the property involved, as well as the fact that the bulk of said property was being left to Emiliana and Pilar, ignoring and practically disinheriting the other relatives whose blood ties with the testatrix were just as close, if not closer, the will, marked Exhibit A at the hearing, was hotly contested and considerable evidence, oral and documentary, was introduced by both parties. After hearing, Judge Bienvenido A. Tan, presiding over the trial court, in a well considered decision declared the document Exhibit A to be the last will and testament of Juana Juan, and admitted the same for probate; and following the provisions of the will, he appointed Emiliana and Pilar executrices without bond. Failing to obtain a reconsideration of this decision, the oppositors appealed to the Court of Appeals about the beginning of the year 1951.

Ordinarily, because of the value of the property involved in the will, which was many times more than P50,000, the appeal should have been brought directly to this Tribunal. However, shortly, after the execution of the instrument admitted to probate as a will, the testatrix executed a document purporting to be a deed of donation *inter vivos,* donating the great bulk-of her entire property, with the exception of about P16,000 worth, to the same beneficiaries. in the will, namely, Emiliana and Pilar. If this deed of donation is valid, then the will disposes of property valued only at about P16,000; hence, the appeal to the Court of Appeals instead of the Supreme Court. In justice to the oppositors, it should be stated that, at the same time that they opposed the probate of the will in the probate court, they also expressed their intention to contest the validity of the allege donation *inter vivos,* either in the administration proceedings or in a proper separate case. The appeal, for one reason or another, remained in the Court of Appeals for sometime, and only by its resolution of July 7, 1954 was the case certified to us on the ground that, inasmuch as the validity of the supposed donation *inter vivos* was being impugned and repudiated by the oppositors of the will, and inasmuch as the will itself covered property valued well in excess of P50,000, the appeal should be determined by the Supreme Court.,

We have carefully gone over the evidence of the record, and we are convinced that the great preponderance thereof is in favor of the probate of the will. Not only this, but we realize that the credibility of witnesses is very much involved in the determination of this case, the testimony of those for the petitioners being diametrically opposed to and utterly conflicting with that of the witnesses, for the oppositors. His Honor, the trial judge had the opportunity

and was in a position to gauge said credibility and he evidently found the witnesses for the petitioners more entitled to credence, and their testimony more reasonable. We find no reason for disturbing said finding of the probate court. We quote with approval a portion of the decision of Judge Tan, reading as follows:

> "From the evidence presented in this case, both oral and documentary, it was proved to the full satisfaction of this Court that the deceased freely and voluntarily executed Exhibit "A", her last will and testament, in the presence of her three attesting witnesses; that at the time of the execution of the said will, the deceased was of sound mind and in good health and was fully conscious of all her acts as may be seen in Exhibits "D" 'D-1″ "D-2w "D-3", and "D-4", and also as was proven by the testimony of the two attesting witnesses, Petrona P. Navarro and Dr. Cleofas Canicosa; that said will Was signed in the presence of the three attesting witnesses, who, likewise, signed in the presence of the testatrix and in the presence of each other; that after the execution of said will or after the signing of the same, the deceased Juana Juan Vda. de Molo took it with her and kept it in her possession and after her death, the said will was presented in court for probate.
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> "While the written opposition to the probate of said will consists of a litany of supposed abuses, force and undue influence exercised on the testatrix, yet the evidence shows that these supposed abuses, force and undue influence consist only of failure on the part of the deceased to invite the oppositors in all the parties held in her house through the alleged influence of Mrs. Nable, of paying more attention, care, and extending more kindness to the petitioners than to the oppositors in spite of the close blood relationship existing between the testatrix and the oppositors. The oppositors also tried to prove the existence of another will which, according to them, was read to the oppositor Enrique Tanchuco three days before the departure of the testatrix for the United States, though no evidence whatsoever was presented as to what happened to the supposed will, where it is now, in whose hands it is, or in whose possession it could be found. The oppositors also tried to prove that during the illness of the testatrix in 1948 they were unable to visit her because of the influence of Emiliana Molo-Peckson, who told them that they could not visit the testatrix because of the advice of the doctor. This testimony of the oppositors was satisfactorily contradicted by the testimony of Mrs. Emiliana Molo-Peckson who denied that the testatrix was sick

> in the year 1948 and by means of photographs which show that during the said period of time, which the oppositors alleged to be the date when Mrs. Juana Juan Vda. de Molo was sick, the latter attended several affairs, such as sponsoring the reconstruction of the Antipolo Church, attending a party given in the house of Gen. Aguinaldo in Kawit, Cavite, and other social gatherings."

Neither do we find anything unusual or extraordinary in the testatrix giving practically all her property to her foster daughters, to the exclusion of her other relatives. The two beneficiaries, as already stated, were taken in and raised by her and her husband, Mariano, when they were mere babies. Naturally, they became very much attached to and came to love said two children, specially since they had none of their own. They sent them to good, even expensive schools like the Santa Teresa, Santa Escolastica, and the University of the Philippines, and otherwise lavished their affection and their wealth on their two protegees. Little wonder then that Juana in making her will made Emtliana and Pilar practically her exclusive beneficiaries, specially since, so we understand, when these two girls had grown "up to womanhood, and been highly educated, they helped their foster parents in the administration of their extensive properties, and later took good, kind, and tender care of them in their old age. We repeat that it was neither unusual nor extraordinary that the testatrix, with no forced heirs, should have made her two foster daughters, the beneficiaries in her will, to the exclusion of her blood relatives. Said this Court in a similar case—Pecson *vs*. Coronel, 45 Phil. 220:

> "The appellants emphasize the fact that family ties in this country are very strongly knit and that the exclusion of relatives from one's estate is an exceptional" case. It is true that the ties of relationship in the Philippines are very strong, but we understand that cases of preterition of relatives from the inheritance are not rare. The liberty to dispose of one's estate by will when there are no forced heirs is rendered sacred by the Civil Code in force in the Philippines since 1889. It is so provided in the first paragraph of article 763 in the following terms:
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> > " 'Any person who has no forced heirs may dispose by will of all his property or any part of it in favor of any person qualified to acquire it.'

> "Even ignoring the precedents of this legal precept, the Code embodying it has been in force in the Philippines for more than a quarter of a century, and for this reason it is not tenable to say that the exercise of the liberty thereby granted is necessarily exceptional, where it is not shown that the inhabitants of this country whose customs must have been taken into consideration by the legislator in adopting this legal precept, are averse to such a liberty."

Oppositors-appellants in their printed memorandum contend that under section 618 of Act 190, the Old Code of Civil Procedure, which requires that a will should be attested or Subscribed by three or more credible witnesses two of the attesting witnesses to the will in question, namely, Miss Navarro and Miss Canicosa, who were employed as pharmacist and salesgirl, respectively, in the drugstore of Pilar Perez-Nable, one of beneficiaries m the will, may not be considered credible witnesses for the reason that as such employees, they would naturally testify in favor of their employer. We find the contention untenable. Section 620 of the same Code of Civil Procedure provides.that any person of sound mind, and of the age of eighteen years or more, and not blind, deaf, or dumb and able to read and write, may be a witness to the execution of a will. This same provision is reproduced in our New Civil Code of 1950, under Art. 820. The relation of employer and employee, or being a relative to the beneficiary in a will, does not disqualify one to be a witness to a will. The main qualification of a witness in the attestation of wills, if otter qualifications as to age, mental capacity and literacy are present, is that said witness must be credible, that is to say, his testimony may be entitled to credence. There is a long line of authorities on this point, a few of which we may cite:

> "A 'credible witness' is one who is not disqualified to testify by mental incapacity, crime, or other cause. Historical Soc. of Dauphin County *vs*. Kelker, 74 A, 619, 226 Pa. 16, 134 Am. St. Rep. 1010.'" (Words and Phrases, Vol. 10, p. 340).

> "As construed by the common law, a 'credible witness' to a will means a 'competent witness'. Appeal of Clark, 95 A. 517, 114 Me. 105, Ann. Cas. 1917A, 837." (Ibid. p. 341).

> "Expression 'credible witness' in relation to attestation of wills means 'competent witness'; that is, one competent under the law to testify to fact of execution of will Vernon's Ann. Civ. St. art. 8283. Moos *vs*. First State Bank of Uvalde, Tex. 'Cm App. 60 S. W. 2d 888,'889." (*Ibid, p.* 342)

> "The term 'credible', used in the statute of wills requiring that a will shall be attested by two credible witnesses, means competent; witnesses who, at the time of attesting the will, are legally competent to testify, in a court of justice, to the facts attested by subscribing the will the competency being determined as of the date of the execution of the will and not of the time it is offered for probate. Smith *vs*. Goodell, 101 N.E. 255, 256, 258 111. 145. (Ibid.)
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> '"Credible witnesses', as used in the statute relating to wills, means competent witnesses—that is, such persons as are not legally disqualified from testifying in courts of justice, by reason of mental incapacity, interest, ox the commission of crimes, or other cause excluding them from testifying generally, or rendering them incompetent in respect of the particular subject matter or in the particular suit. Hill *vs*. Chicago Title & Trust Co., 152 N. E. 545, 546, 322 III. 42." (Ibid. p. 343)

This Tribunal itself held in the case of Vda. de Roxas *vs*. Roxas, 48 Off. Gaz., 2177, that the law does not bar relatives, either of the testator or of the heirs or legatees, from acting as attesting witnesses to a will.

In view of the foregoing, finding no reversible error in the decision appealed from the same is hereby affirmed. No costs.

Paras, C. J., Bengzon, Bautista Angela, Labrador, Reyes, J. B. L., Endencia, and *Felix, JJ.*, concur.

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