

TESTAMENTARIA DE D. CARLOS GIL, DECEASED. ISABEL HERREROS VDA. DE GIL, ADMINISTRATRIX-APPELLEE, VS. ROBERTO TOLEDO Y GIL, III, OPPOSITOR-APPELLEE, PILAR GIL VDA. DE MURCIANO, OP...*G.R. No. L-3362. March 20, 1953*

Ponente: TUASON, J.

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This appeal is before us on a motion for reconsideration of this Court's decision. Whereas formerly six Justices voted for reversal and five for affirmance of the probate court's order admitting the will to probate, the vote upon reconsideration was six for affirmance and five for reversal, thereby making the dissenting opinion, which had been filed, the prevailing rule of the case. Under the circumstances, this resolution will largely be confined to a restatement of that dissenting opinion.

The will in question was presented for probate in the Court of First Instance of Manila in 1943 with Roberto Toledo y Gil, decedent's sister, opposing the application. Toledo's legal right to intervene was questioned by the proponent of the will, and the objection was sustained in an order which was affirmed by this Court in G.R. No. L-254. As a result of the latter decision, Toledo was eliminated from the case and did not appear when the trial was resumed.

The proceeding seems to have been held in abeyance pending final disposition of Toledo's appeal, and early in 1945, before the application was heard on the merit, the record, along with the will, was destroyed, necessitating its reconstitution after liberation. In the reconstitution, a stipulation of facts was submitted in which, according to the appealed order, "both parties x x x agreed that the will as transcribed in the record on appeal in Case G. R. No. L-254 is true and correct copy."

The will consisted of only two pages, and the attestation clause as thus copied reads:

"NOSOTROS los que suscribimos, todos mayores de edad, certificamos: que el testamento que procede escrito en la lengua castellana que conoce la testator, compuesto de dos paginas utiles con la clausula de atestiguameineto paginadas correlativamente en letras y numeros en la parte superior de la casilla, asi como todos las hojas del mismo, en nuestra presencia y que cada uno de nosotros hemos atestiguado y firmado dicho documento y todas las hojas del mismo en presencia del testador y en la de cada uno de nosotros.

"(Fdo.) ALFREDO T. RIVERA (Fdo.) RAMON MENDIOLA

"(Fdo.) MARIANO OMANA"

It will be noted from the above copy that the last of the compound sentenced is truncated and meaningless. This defect is the main basis of the appellant's sole assignment of error.

Counsel for appellee contend that the phrase "han sido firmadas por el testador" or equivalent expression between the words "del mismo" and the words "en nuestra presencia" should be inserted if the attestation clause is to be

complete and have sense. With this insertion the attestation clause would read "x x x, asi como todas las hojas del mismo han sido firmadas por el testador en nuestra presencia x x x." The point is well taken.

It seems obvious that the missing phrase was left out from the copy. The probabilities of error in the copy are enhanced by the fact that the form of the will was not in controversy in Toledo's appeal. The form of the will being immaterial, it is easily conceivable that little or no care was employed in transcribing the document in the agreement or record on appeal. The absence of the signature of the testator on the first page of the copy is an additional proof that little or no pain was taken to insure accuracy in the transcription. The appearance of "la testadora" in the copy instead of "el testador" is another indication of haste and carelessness in the transcription.

Quite aside from all this, the testator was presumed to know the law, as the trial court says. Certainly, Attorney Mariano Omaña, who drew the instrument and signed it as an attesting witness, knew the law and, by the context thereof, has shown familiarity with the rules of grammar and ability to express his idea properly. In the light of these circumstances and of the further fact that the clause was brief and, by its importance, must have been written with utmost concern, so important an omission as to make the clause or sentence senseless could not have been made, intentionally or otherwise, in the original.

There is insinuation that the appellee in agreeing that the will read as it was "reproduced in the Record on Appeal" is bound by the agreement. This is not an absolute rule. The binding effect of a stipulation on the parties does not go to the extent of barring either of them from impeaching it on the score of clerical error or clear mistake. The mistake just pointed out clearly brings the case within the exceptions to the rule. The able counsel for the proponent of the will could not possibly have subscribed to the agreement if they had noticed the incomplete sentence in the copy without making an objection or reservation.

The problem posed by the omission in question is governed, not by the law of wills which requires certain formalities to be fulfilled in the execution, but by the rules of construction applicable to statutes and documents in general. And this rule would obtain whether the omission occurred in the original document or in the copy alone. In either case, the court may and should correct the error by supplying the omitted word or words.

In *Testamentaria del Finado Emiliano Alcala*, a similar situation arose and the Court said:

"Es evidente que leyendo la clausula de atestiguacion se note a simple vista que en su redaccion se ha incurriao en omisiones que la razon y el sentido comun pueden suplirlas sin alterar ni tergiversar la intencion tanto del testador como la de los tres testigos que intervinieron en el otorgamiento de la misma. Teniendo en cuenta la fraseologia de la segunda parte de la clausula se observara que las omisiones, aunque son substanciales, consisten en meros errores gramaticales que los tribunales, en el ejercicio de su discrecion y en la aplicacion de las reglas de interpretacion de documentos, pueden subsanarlos para dar efectividad a la intencion y hacer que el conjunto de los terminos de la clausula de atestacion surtan sus efectos."

"La interpretacion que se acaba de dar a la clausula de atestacion y la correccion de los errores gramaticales de que la misma adolece, incluyendo la insercion del verbo "firmamos" que se omitio involuntariamente, esta de acuerdo con las reglas fundamentales de interpretacion de documentos segun las cuales se debe hacer prevalecer siempre la intencion del que haya redactado el instrumento (art. 286, Cod. de Proc. Civil; *Pecson contra Coronel*, 45 Jur. Fil., 224; 28 R.C.L., Sec. 187, pags. 225, 226.)"

"La solucion que se acaba de dar al asunto es la que se halla mas conforme con la justicia en vista de que no se ha presentado prueba alguna que insinue siquiera que en el otorgamiento del testamento se ha cometido dolo o fraude con el animo de perjudicar a cualquiera. (*Testamentaria de Emiliano Alcala*, 40 G.O., 14.o Suplemento, No. 23, pags. 131, 132.)"

From 69 C. J. 82, 83, we quote: "Words omitted from a will may be supplied by the court whenever necessary to

effectuate the testator's intention as expressed in the will; but not where the effect of inserting the words in the will would alter or defeat such intention, or change the meaning of words that are clear and unequivocal." On pages 50 and 51, the same work says: "To aid the court in ascertaining and giving effect to the testator's intention in the case of an ambiguous will, certain rules have been established for guidance in the construction or interpretation to be placed upon such a will, and in general a will should be construed according to these established rules of construction." And referring to construction of statutes which, as has been said, is applicable to construction of documents, C. J. S. in Vol. 59, p. 992, tells us that "Where it appears from the context that certain words have been inadvertently omitted from a statute, the court may supply such words as are necessary to complete the sense, and to express the legislative intent."

Adding force to the above principle is the legal presumption that the will is in accordance with law. (2 Page on Wills 840, 841, Am. Jur. 720.)

But let it be assumed, for the sake of this decision only, that the attestation clause was drawn exactly as it was copied in Toledo's record on appeal, was the mistake fatal? Was it, or was it not, cured by the testator's own declaration? to wit: "En testimonio de lo cual, firmo este mi testamento y en el margen izquierdo de cada una de sus dos paginas utiles con la clausula de atestiguamiento en presencia de los testigos, quienes a su vez firmaron cada una de dicha paginas y la clausula de atestiguamiento en mi presencia cada una de ellos con la de los demas, hoy en Porac, Pampanga, I. F., el dia 27 de marzo de mil novecientos treinta y nueve." The answer is in the negative.

As early as 1922 a similar case, in which the validity of the will was sustained, found its way into this Court. See *Aldaba vs. Roque*, 43 Phil. 378. That case was more than foursquare behind the case at bar. There the departure from the statutory formality was more radical, in that the testator took charge of writing the entire attestation clause in the body of the will, the witnesses limiting their role to signing the document below the testator's signature. Here, at the most, the testator took away from the witnesses only a small part of their assigned task, leaving to them the rest.

Referring to "the lack of attestation clause required by law," this Court, in a unanimous decision en banc, through Mr. Justice Villamor said in the *Aldaba-Roque* case (Syllabus):

"When the attestation clause is signed by the witnesses to the instruments, besides the testator, such attestation clause is valid and constitute a substantial compliance with the provisions of section 1 of Act No. 2645, even though the facts recited in said attestation clause appear to have been made by the testator himself."

That ruling should set the present case at rest unless we want to revert to the old, expressly abandoned doctrine in a long line of what we believe better-considered decisions.

This Court noted in *Dichoso de Ticson vs. De Gorostiza* (1922), 57 Phil. 437, "that there have been noticeable in the Philippines two divergent tendencies in the law of wills - the one being planted on strict construction and the other on liberal construction. A late example of the former views may be found in the decision in *Rodriguez vs. Alcala* (1930), 55 Phil. 150, sanctioning a literal enforcement of the law. The basic case in the other direction, predicated on reason, is *Abangan vs. Abangan* (1919), 40 Phil. 476, oft-cited approvingly in later decisions."

In the *Abangan* case, a unanimous court, speaking through Mr. Justice Avanceña, later Chief Justice, observed:

"The object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guaranty their truth and authenticity. Therefore the laws on this subject should be interpreted in such a way as to attain these primordial ends. But, on the other hand, also one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will. So when an interpretation already given assures such ends, any other

interpretation whatsoever, that adds nothing but demands more requisites entirely unnecessary, useless and frustrative of the testator's last will, must be disregarded."

Subsequent decisions which followed and adopted the Abangan principle were: *Avera vs. Garcia* (1921), 42 Phil. 145; *Aldaba vs. Roque* (1922), 43 Phil. 378; *Unson vs. Abella* (1922), 43 Phil. 494; *Pecson vs. Coronel* (1923), 45 Phil. 216; *Fernandez vs. Vergel de Dios* (1924), 46 Phil. 922; *Nayve vs. Mojal* (1924), 47 Phil. 152; *De Gala vs. Gonzales* (1929), 53 Phil. 104; *Rey vs. Cartagena* (1931), 56 Phil. 282; *Ticzon vs. Gorostiza* (1932), 57 Phil. 437; *Testamentaria de N. Ozoa* (1933), 57 J. F., 1007; *Sebastian vs. Pañganiban* (1934), 59 Phil. 653; *Rodriguez vs. Yap* (1939), 40 Off. Gaz. 1st Suppl., No. 3, p. 194; *Grey vs. Fabia* (1939), 40 Off. Gaz. 1st Suppl., No. 3, p. 196; *Leynes vs. Leynes* (1939), 40 Off. Gaz. 35d Suppl. No. 7, p. 51; *Martir vs. Martir* (1940), 40 Off. Gaz., 7th Suppl. No. 11, p. 215; *Sabado vs. Fernandez* (1941), 40 Off. Gaz., 1844; *Mendoza vs. Pilapil* (1941), 40 Off. Gaz. 14th Suppl. No. 23, p. 131; and *Lopez vs. Liboro* (1948), 46 Off. Gaz., Suppl., No. 1, p. 211.

It is objected that "If we cure a deficiency by means of inferences, when are we going to stop making inferences to supply fatal deficiencies in wills? Where are we to draw the line?" These same questions might well have been asked by the opponents of the new trends in the cases above cited. But the so-called liberal rule does not offer any puzzle or difficulty, nor does it open the door to serious consequences. The later decisions do tell us when and where to stop; they draw the dividing line with precision. They do not allow evidence aliunde to fill a void in any part of the document or supply missing details that should appear in the will itself. They only permit a probe into the will, an exploration within its confines, to ascertain its meaning or to determine the existence or absence of the requisite formalities of law. This clear, sharp limitation eliminates uncertainty and ought to banish any fear of dire results.

The case at hand comes within the bounds thus defined. If the witnesses here purposely omitted or forgot to say that the testator signed the will in their presence, the testator said that he did and the witnesses by their signatures in the will itself said it was so. No extraneous proof was necessary and none was introduced or taken into consideration.

To regard the letter rather than the spirit of the will and of the law behind it was the thing that led to unfortunate consequences. It was the realization of the injustice of the old way that impelled this Court, so we believe, to forsake the antiquated, outworn worship of form in preference to substance. It has been said, and experience has shown, that the mechanical systems of construction has operated more to defeat honest wills than prevent fraudulent ones. That, it must be conceded, would be the effect in this case if the will under consideration were rejected. For the adverse party now concedes the genuineness of the document. At any rate, the genuineness is superobvious, and there is not the slightest insinuation of undue pressure, mental incapacity of the testator, or fraud.

It is said that for the testator to certify that he signed the will in the witnesses' presence "would be like lifting one's self by his own bootstraps." The simile does not look to us quite well placed. There is no impossibility or impropriety in one attesting to his own act unless forbidden by rules of positive law. The rationale of this decision is that he is not. If we were to make a metaphorical comparison, it would be more correct to say that a man can and generally does himself pull the bootstraps when he puts his boots on.

Coming to execution of wills, we see no legitimate, practical reason for objecting to the testator instead of the witnesses certifying that he signed the will in the presence of the latter. The will is of the testator's own making, the intervention of attesting witnesses being designed merely to protect his interest. If the sole purpose of the statute in requiring the intervention of witnesses is to make it certain that the testator has definite and complete intention to pass his property, and to prevent, as far as possible, any chance of substituting one instrument for another (1 Page on Wills, 481), what better guaranty of the genuineness of the will can there be than a

certification by the testator himself in the body of the will so long as the testator's signature is duly authenticated? Witnesses may sabotage the will by muddling and bungling it or the attestation clause. For the testator, who is desirous of making a valid will, to do so would be a contradiction. If the formalities are only a means to an end and not the end themselves, and that end is achieved by another method slightly different from the prescribed manner, what has been done by the testator and the witnesses in the execution of the instant will would satisfy both law and conscience.

A second ground of attack on the questioned will is that the first page or sheet thereof does not bear the testator's signature. The discussion on the correctness of the copy of the attestation clause amply answers this objection. In fact, the appellee's case is much stronger on this point for the reason that there is not only speculative but also positive basis for the conclusion that the testator's signature was affixed to the first page of the original. Both the testator and the attesting witnesses stated in the will and in the attestation clause, respectively, that the former signed both pages or sheets of the testament.

Upon the foregoing consideration, the order of the probate court is affirmed with costs.

A motion dated February 17, 1953 was filed after the motion for reconsideration was deliberated and voted upon, in behalf of the minor children of Carlos Worrel, who was a residuary legatee under the will and who is alleged to have died on February 6, 1949. The motion prays that a guardian ad litem be appointed for the said children, and allowed to intervene and file "A Supplementary Memorandum in Support of Appellant's (Appellee's?) Motion for reconsideration." Counsel for the appellant objects to the motion on the ground that the movants having only a contingent interest under the will are not of right entitled to intervene.

As this case has already been considerably delayed and thoroughly considered and discussed from all angles, it is the sense of the Court that the children's intervention with the consequent further delay of the decision would not serve the best interest of the parties. For this reason, the motion is denied.

Paras, C. J., Feria, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

Jugo, J., I dissent on the grounds set forth in my opinion rendered in this case.

Padilla and Reyes, JJ., dissents.

Pablo and Bengzon, JJ., join the dissent of J. Jugo.

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