

**TESTATE ESTATE OF THE DECEASED MARIANO MOLO Y
LEGASPI JUANA JUAN VDA. DE MOLO, PETITIONER AND APPELLEE,
VS. LIRA, GLICEKIA AND COENELIO MOLO, OPPOSITORS AND
APPELLANTS.**

G. R. No. L-2538. September 21, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from an order of the Court of First Instance of Rizal admitting to probate the last will and testament of the deceased Mariano Molo y Legaspi executed on August 17, 1918. The oppositors-appellant brought the case on appeal to this Court for the reason that the value of the properties involved exceeds P50,000.

Mariano Molo y Legaspi died on January 24, 1941, in the municipality of Pasay, province of Rizal, without leaving any forced heir either in the descending or ascending line. He was survived, however, by his wife, the herein petitioner Juana Juan Vda. de Molo, and by his nieces and nephew, the oppositors-appellants, Luz, Gliceria and Cornelio, all surnamed Molo, who were the legitimate children of Candido Molo y Legaspi, deceased brother of the testator. Mariano Molo y Legaspi left two wills, one executed on August 17, 1918, (Exhibit A) and another executed on June 20, 1939, (Exhibit I). The latter will contains a clause which expressly revokes the will executed in 1918.

On February 7, 1941, Juana Juan Vda. de Molo filed in the Court of First Instance of Rizal a petition, which was docketed as special proceeding No. 8022, seeking the probate of the will executed by the deceased on June 20, 1939.

There being no opposition, the will was probated. However, upon petition filed by the herein oppositors, the order of the court admitting the will to probate was set aside and the case was reopened. After hearing, at which both parties presented their evidence, the court rendered decision denying the probate of said will on the ground that the petitioner failed to prove that the same was executed in accordance with law,

In view of the disallowance of the will executed on June 20, 1939, the widow on February 24, 1944, filed another petition for the probate of the will executed by the deceased on August 17, 1918, which was docketed as special proceeding No. 56, in the same court. Again, the same oppositors filed an opposition to the petition, based on three grounds: (1) that petitioner is now estopped from seeking the probate of the will of 1918; (2) that said will has not been executed in the manner required by law and (3) that the will has been subsequently revoked. But before the second petition could be heard, the battle for liberation came and the records of the case were destroyed. Consequently, a petition for reconstitution was filed, but the same was found to be impossible because neither petitioner nor oppositors could produce the copies required for its reconstitution. As a result, petitioner filed a new petition on September 14, 1946, similar to the one destroyed, to which the oppositors filed an opposition based on the same grounds as those contained in their former opposition. Then, the case was set for trial, and on May 28, 1948, the court issued an order admitting the will to probate as already stated in the early

part of this decision. From this order the oppositors appealed assigning six errors, to wit:

"I. The probate court erred in not holding that the present petitioner voluntarily and deliberately frustrated the probate of the will dated June 20, 1939, in special proceeding No. 8022, in order to enable her to obtain the probate of another alleged will of Molo dated 1918.

"II. The court a quo erred in not holding that the petitioner is now estopped from seeking the probate of Molo's alleged will of 1918.

"III. The lower court erred in not holding that petitioner herein has come to court with 'unclean hands' and as such is not entitled to relief.

"IV. The probate court erred in not holding that Molo's alleged will of August 17, 1918 was not executed in the manner required by law.

"V. The probate court erred in holding that the alleged will of 1918 was deliberately revoked by Molo himself.

"VI. The lower court erred in not holding that Molo's will of 1918 was subsequently revoked by the decedent's will of 1939."

In their first assignment of error, counsel for oppositors contend that the probate court erred in not holding that the petitioner voluntarily and deliberately frustrated the probate of the will dated June 20, 1939, in order to enable her to obtain the probate of the will executed by the deceased on August 17, 1918, pointing out certain facts and circumstances which in their opinion indicate that petitioner connived with witness Canuto Perez in an effort to defeat and frustrate the probate of the 1939 will because of her knowledge that said will was intrinsically defective in that "the one and only testamentary disposition thereof was a 'disposition captatoria'". These circumstances, counsel for the appellants contend, constitute a series of steps deliberately taken by petitioner with a view to insuring the realization of her plan of securing the probate of the 1918 will which she believed would better safeguard her right to inherit from the deceased.

These imputations of fraud and bad faith allegedly committed in connection with special proceedings No. 8022, now closed and terminated, are vigorously met by counsel for petitioner who contends that to raise them in these proceedings which are entirely new and distinct and completely independent from the other is improper and unfair as they find no support whatsoever in any evidence submitted by the parties in this case. They are merely based on presumptions and conjectures not supported by any proof. For this reason, counsel contends, the lower court was justified in disregarding them and in passing them sub silentio in its decision.

A careful examination of the evidence available in this case seems to justify this contention. There is indeed no evidence which may justify the insinuation that petitioner had deliberately intended to frustrate the probate of the 1939 will of the deceased to enable her to seek the probate of another will other than a mere conjecture drawn from the apparently unexpected testimony of Canuto Perez that he went out of the room to answer an urgent call of nature when Artemio Reyes was signing the will and the failure of petitioner later to impeach the character of said witness in spite of the opportunity given her by the court to do so. Apart from this insufficiency of evidence, the record discloses that this failure has been explained by petitioner when she informed the court that she was unable to impeach the character of her witness Canuto Perez because of her inability to find witnesses who may impeach him, and this explanation stands uncontradicted. Whether this explanation is satisfactory or not, it is not now for us to determine. It is an incident that comes within the province of the former case. The failure of petitioner to present the testimony of Artemio Reyes at the rehearing has also been explained, and it appears that petitioner has failed because his whereabouts could not be found. Whether this is true or not is not also for this Court to determine. It is likewise within the province and function of the court in the former case. And the

unfairness of this imputation becomes more glaring when we take stock of the developments that had taken place in these proceedings which show in bold relief the true nature of the conduct, behavior and character of the petitioner so bitterly assailed and held in disrepute by the oppositors.

It should be recalled that the first petition for the probate of the will executed on June 20, 1989, was filed on February 7, 1941, by the petitioner. There being no opposition, the will was probated. Subsequently, however, upon petition of the herein oppositors, the order of the court admitting said will to probate was set aside, over the vigorous opposition of the herein petitioner, and the case was reopened. The reopening was ordered because of the strong opposition of the oppositors who contended that the will had not been executed as required by law. After the evidence of both parties had been presented, the oppositors filed an extensive memorandum wherein they reiterated their view that the will should be denied probate. And on the strength of this opposition, the court disallowed the will.

If petitioner then knew that the 1939 will was inherently defective and would make the testamentary disposition in her favor invalid and ineffective, because it is a "disposicion captatoria", which knowledge she may easily acquire through consultation with a lawyer, there was no need for her to go through the ordeal of filing the petition for the probate of the will. She could accomplish her desire by merely suppressing the will or tearing or destroying it, and then take steps leading to the probate of the will executed in 1918. But her conscience was clear and bade her to take the only proper step possible under the circumstances, which is to institute the necessary proceedings for the probate of the 1939 will. This she did and the will was admitted to probate. But then the unexpected happened. Over her vigorous opposition, the herein appellants filed a petition for reopening, and over her vigorous objection, the same was granted and the case was reopened. Her motion for reconsideration was denied. Is it her fault that the case was reopened? Is it her fault that the order admitting the will to probate was set aside? That was a contingency which petitioner never expected. Had appellants not filed their opposition to the probate of the will and had they limited their objection to the intrinsic validity of said will, their plan to defeat the will and secure the intestacy of the deceased would have perhaps been accomplished. But they failed in their strategy. If said will was denied probate it is due to their own effort. It is now unfair to impute bad faith to petitioner simply because she exerted every effort to protect her own interest and prevent the intestacy of the deceased to happen.

Having reached the foregoing conclusions, it is obvious that the court did not commit the second and third errors imputed to it by the counsel for appellants. Indeed, petitioner cannot be considered guilty of estoppel which would prevent her from seeking the probate of the 1918 will simply because her effort to obtain the allowance of the 1939 will has failed considering that in both the 1918 and 1939 wills she was instituted by her husband as his universal heir. Nor can she be charged with bad faith for having done so because of her desire to prevent the intestacy of her husband. She cannot be blamed for being zealous in protecting her interest.

The next contention of appellants refers to the revocatory clause contained in the 1989 will of the deceased which was denied probate. They contend that, notwithstanding the disallowance of said will, the revocatory clause is valid and still has the effect of nullifying the prior will of 1918.

Counsel for petitioner meets this argument by invoking the doctrine laid down in the case of *Samson vs. Naval*, (41 Phil., 838). He contends that the facts involved in that case are on all fours with the facts of this case. Hence, the doctrine in that case is here controlling.

There is merit in this contention. We have carefully read the facts involved in the *Samson* case and we are indeed impressed by their striking similarity with the facts of this case. We do not need to recite here what those facts are; it is enough to point out that they contain many points and circumstances in common. No reason, therefore, is seen why the doctrine laid down in that case (which we quote hereunder) should not apply and control the present

case.

"A subsequent will, containing a clause revoking a previous will, having been disallowed, for the reason that it was not executed in conformity with the provisions of section 618 of the Code of Civil Procedure as to the making of wills, cannot produce the effect of annulling the previous will, inasmuch as said revocatory clause is void." (41 Phil., 838.)

Apropos of this question, counsel for oppositors make the remark that, while they do not disagree with the soundness of the ruling laid down in the Samson case, there is reason to abandon said ruling because it is archaic or antiquated and runs counter to the modern trend prevailing in American jurisprudence. They maintain that said ruling is no longer controlling but merely represents the point of view of the minority and should, therefore, be abandoned, more so if we consider the fact that section 623 of our Code of Civil Procedure, which governs the revocation of wills, is of American origin and as such should follow the prevailing trend of the majority view in the United States. A long line of authorities is cited in support of this contention. And these authorities hold the view, that "an express revocation is immediately effective upon the execution of the subsequent will, and does not require that it first undergo the formality of a probate proceeding", (p. 63, appellants' brief).

While there are many cases which uphold the view entertained by counsel for oppositors, and that view appears to be controlling in the states where the decisions had been promulgated, however, we are reluctant to fall in line with the assertion that that is now the prevailing view in the United States. In the search we have made of American authorities on the subject, we found ourselves in a pool of conflicting opinions perhaps because of the peculiar provisions contained in the statutes adopted by each State on the subject of revocation of wills. But the impression we gathered from a review and study of the pertinent authorities is that the doctrine laid down in the Samson case is still a good law. On page 328 of the American Jurisprudence, Vol. 57, which is a revision published in 1948, we found the following passages which in our opinion truly reflect the present trend of American jurisprudence on this matter affecting the revocation of prior wills:

"SEC. 471. Observance of Formalities in Execution of Instrument.— Ordinarily, statutes which permit the revocation of a "will by another "writing provide that to be effective as a revocation, the writing must be executed with the same formalities which are required to be observed in the execution of a will. Accordingly, where, under the statutes, attestation is necessary, to the making of a valid will, an unattested nontestamentary writing is not effective to revoke a prior will. It has been held that a writing fails as a revoking instrument where it is not executed with the formalities requisite for the execution of a will, even though it is inscribed on the will itself, although it may effect a revocation by cancellation or obliteration of the words of the will. A testator cannot reserve to himself the power to modify a will by a written instrument subsequently prepared but not executed in the manner required for a will.

"SEC. 472. Subsequent Unexecuted, Invalid, or Ineffective Will or Codicil.—A will which is invalid because of the incapacity of the testator or of undue influence can have no effect whatever as a revoking will. Moreover, a will is not revoked by the unexecuted draft of a later one. Nor is a will revoked by a defectively executed will or codicil, even though the latter contains a clause expressly revoking the former will, in a jurisdiction where it is provided by a controlling statute that no writing other than a testamentary instrument is sufficient to revoke a will, for the simple reason that there is, no revoking will. Similarly where the statute provides that a will may be revoked by a subsequent will or other writing executed with the same formalities as are required in the execution of wills, a defectively executed will does not revoke a prior will, since it cannot be said that there is a writing which complies with the statute. Moreover, a will or codicil which, on account of the manner in which it is executed, is sufficient to pass only personally does not affect dispositions of real estate made by a former will, even though it may expressly purport to do so. The intent of the testator to revoke is immaterial, if he has not complied with the statute." (57 Am. Jur., 328, 329.)

We find the same opinion in the American Law Reports, Annotated, edited in 1939. On page 1400, Volume 123, there appear many authorities on the "application of rules where second will is invalid", among which a typical one is the following:

"It is universally agreed that where the second will is invalid on account of not being executed in accordance with the provisions of the statute, or where the testator has not sufficient mental capacity to make a will or the will is procured through undue influence* or the such, in other words, where the second will is really no will, it does not revoke the first will or affect it in any manner." *Mort vs. Baker University* (1985) 229 Mo. App, 632, 78 S. W. (2d), 498."

These treaties cannot be "mistaken. They uphold the view on which the ruling in the Samson case is predicated. They reflect the opinion that this ruling is sound and good and for this reason we see no justification for abandoning it as now suggested by counsel for the oppositors.

It is true that our law on the matter (sec. 623, Code of Civil Procedure) provides that a will may be revoked "by some will, codicil, or other writing executed as provided in case of wills"; but it cannot be said that the 1939 will should be regarded, not as a will within the meaning of said word, but as "other writing executed as provided in the case of wills", simply because it was denied probate. And even if it be regarded as any other writing within the meaning of said clause, there is authority for holding that unless said writing is admitted to probate, it cannot have the effect of revocation. (See 57 Am. Jur. pp. 329-330).

But counsel for oppositors contend that, regardless of said revocatory clause, said will of 1918 cannot still be given effect because of the presumption that it was deliberately revoked by the testator himself. The oppositors contend that the testator, after executing the 1939 will, and with full knowledge of the revocatory clause contained in said will, himself deliberately destroyed the original of the 1918 will, and that for this reason the will submitted by petitioner for probate in these proceedings is only a duplicate of said original.

There is no evidence which may directly indicate that the testator deliberately destroyed the original of the 1918 will because of his knowledge of the revocatory clause contained in the will he executed in 1939. The only evidence we have is that when the first will was executed in 1918, Juan Salcedo, who prepared it, gave the original and copies to the testator himself and apparently they remained in his possession until he executed his second will in 1939. And when the 1939 will was denied probate on November 29, 1943, and petitioner was asked by her attorney to look for another will, she found the duplicate copy (Exhibit A) among the papers or files of the testator. She did not find the original.

If it can be inferred that the testator deliberately destroyed the 1918 will because of his knowledge of the revocatory clause of the 1939 will, and it is true that he gave a duplicate copy thereof to his wife, the herein petitioner, the most logical step for the testator to take is to recall said duplicate copy in order that it may likewise be destroyed. But this was not done as shown by the fact that said duplicate copy remained in the possession of petitioner. It is possible that because of the long lapse of twenty-one (21) years since the first will was executed, the original of the will had been misplaced or lost, and forgetting that there was a copy, the testator deemed it wise to execute another will containing exactly the same testamentary dispositions. Whatever may be the conclusion we may draw from this chain of circumstances, the stubborn fact is that there is no direct evidence of voluntary or deliberate destruction of the first will by the testator. This matter cannot be left to mere inference or conjecture.

Granting for the sake of argument that the earlier will was voluntarily destroyed by the testator after the execution of the second will, which revoked the first, could there be any doubt, under this theory, that said earlier will was destroyed by the testator in the honest belief that it was no longer necessary because he had expressly revoked it

in his will of 1939? In other words, can we not say that the destruction of the earlier will was but the necessary consequence of the testator's belief that the revocatory clause contained in the subsequent will was valid and the latter would be given effect? If such is the case, then it is our opinion that the earlier will can still be admitted to probate under the principle of "dependent relative revocation".

"This doctrine is known as that of dependent relative revocation, and is usually applied where the testator cancels or destroys a will or executes an instrument intended to revoke a will with a present intention to make a new testamentary disposition as a substitute for the old, and the new disposition is not made or, if made, fails of effect for some reason. The doctrine is not limited to the existence of some other document, however, and has been applied where a will was destroyed as a consequence of a mistake of law * * *." (68 C. J. p. 799).

"The rule is established that where the act of destruction is connected with the making of another will so as fairly to raise the inference that the testator meant the revocation of the old to depend upon the efficacy of the new disposition intended to be substituted, the revocation will be conditional and dependent upon the efficacy of the new disposition.; and if, for any reason, the new will intended to be made as a substitute is inoperative, the revocation fails and the original will remains in full force." (Gardner, pp. 232, 233.)

"This is the doctrine of dependent relative revocation. The failure of the new testamentary disposition, upon whose validity the revocation depends, is equivalent to the non-fulfillment of a suspensive condition, and hence prevents the revocation of the original will. But a mere intent to make at some time a will in place of that destroyed will not render the destruction conditional. It must appear that the revocation is dependent upon the valid execution of a new will." (1 Alexander, p. 751; Gardner, p. 233.)

We hold, therefore, that even in the supposition that the destruction of the original will by the testator could be presumed from the failure of the petitioner to produce it in court, such destruction cannot have the effect of defeating the prior will of 1918 because of the fact that it is founded on the mistaken belief that the will of 1939 has been validly executed and would be given due effect. The theory on which this principle is predicated is that the testator did not intend to die intestate. And this intention is clearly manifest when he executed two wills on two different occasions and instituted his wife as his universal heir. There can therefore be no mistake as to his intention of dying testate.

The remaining question to be determined refers to the sufficiency of the evidence to prove the due execution of the will.

The will in question was attested, as required by law, by three witnesses, Lorenzo Morales, Eufrino Enriquez, and Angel Cuenca. The first two witnesses died before the commencement of the present proceedings. So the only instrumental witness available was Angel Cuenca and under our law and precedents, his testimony is sufficient to prove the due execution of the will. However, petitioner presented not only the testimony of Cuenca but placed on the witness stand Juan Salcedo, the notary public who prepared and notarized the will upon the express desire and instruction of the testator. The testimony of these witnesses shows that the will had been executed in the manner required by law. We have read their testimony and we were impressed by their readiness and sincerity. We are convinced that they told the truth.

Wherefore, the order appealed from is hereby affirmed, with costs against the appellants.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, and Jugo, JJ., concur.

Reyes, J., concurs in the result.

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