

TESTATE ESTATE OF ISABEL V. FLORENDO, DECEASED.*G.R. No. L-2071. September 19, 1950*

Ponente: OZAETA, J.

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This is a special proceeding commenced in the Court of First Instance of La Union to probate a joint and reciprocal will executed by the spouses Isabel V. Florendo and Tirso Dacanay on October 20, 1940. Isabel V. Florendo having died, her surviving spouse Tirso Dacanay is seeking to probate said joint and reciprocal will, which provides in substance that whoever of the spouses, joint testators, shall survive the other, shall inherit all the properties of the latter, with an agreement as to how the surviving spouse shall dispose of the properties in case of his or her demise.

The relatives of the deceased Isabel V. Florendo opposed the probate of said will on various statutory grounds.

Before hearing the evidence the trial court, after requiring and receiving from counsel for both parties written arguments on the question of whether or not the said joint and reciprocal will may be probated in view of article 669 of the Civil Code, issued an order dismissing the petition for probate on the ground that said will is null and void ab initio as having been executed in violation of article 669 of the Civil Code. From that order the proponent of the will has appealed.

Article 669 of the Civil Code reads as follows:

"Art. 669. Two or more persons cannot make a will conjointly or in the same instrument, either for their reciprocal benefit or for the benefit of a third person."

We agree with appellant's view, supported by eminent commentators, that the prohibition of article 669 of the Civil Code is directed against the execution of a joint will, or the expression by two or more testators of their wills in a single document and by one act, rather than against mutual or reciprocal wills, which may be separately executed. Upon this premise, however, appellant argues that article 669 of the Civil Code has been repealed by Act No. 190, which he claims provides for and regulates the extrinsic formalities of wills, contending that whether two wills should be executed conjointly or separately is but a matter of extrinsic formality.

The question now raised by appellant has recently been decided by this court adversely to him in *re Will of Victor Bilbao*, supra, p. 144. It appears in that case that on October 6, 1931, the spouses Victor Bilbao and Ramona M. Navarro executed a will conjointly, whereby they directed that "all of our respective private properties both real and personal, and all of our conjugal properties, and any other property belonging to either or both of us, be given and transmitted to anyone or either of us, who may survive the other, or who may remain the surviving spouse of the other." That will was denied probate by the Court of First Instance of Negros Oriental on the ground that it was prohibited by article 669 of the Civil Code. The surviving spouse as proponent of the joint will also contended that said article of the Civil Code had been repealed by sections 614 and 618 of the Code of Civil Procedure, Act No. 190. In deciding that question this court, speaking thru Mr. Justice Montemayor, said:

"We cannot agree to the contention of the appellant that the provisions of the Code of Civil Procedure on wills have completely superseded Chapter I, Title III of the Civil Code on the same subject matter, resulting in the complete repeal of said Civil Code provisions. In the study we have made of this subject, we have found a number of cases decided by this court wherein several articles of the Civil Code regarding wills have not only been referred to but have also been applied side by side with the provisions of the Code of Civil Procedure.

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"The provisions of Art. 669 of the Civil Code prohibiting the execution of a will by two or more persons conjointly or in the same instrument either for their reciprocal benefit or for the benefit of a third person, is not unwise and is not against public policy. The reason for this provision, especially as regards husband and wife, is that when a will is made jointly or in the same instrument, the spouse who is more aggressive, stronger in will or character and dominant is liable to dictate the terms of the will for his or her own benefit or for that of third persons whom he or she desires to favor. And, where the will is not only joint but reciprocal, either one of the spouses who may happen to be unscrupulous, wicked, faithless or desperate, knowing as he or she does the terms of the will whereby the whole property of the spouses both conjugal and paraphernal goes to the survivor, may be tempted to kill or dispose of the other.

"Considering the wisdom of the provisions of this Art. 669 and the fact that it has not been repealed, at least not expressly, as well as the consideration that its provisions are not incompatible with those of the Code of Civil Procedure on the subject of wills, we believe and rule that said Art. 669 of the Civil Code is still in force. And we are not alone in this opinion. Mr. Justice Willard as shown by his Notes on the Civil Code, on page 48 believes that this Art. 669 is still in force. Sinco and Cagistrano in their work on the Civil Code, Vol. II, page 33, favorably cite Justice Willard's opinion that this article is still in force. Judge Camus in his book on the Civil Code does not include this article among those he considers repealed. Lastly, we find that this Art. 669 has been reproduced word for word in Art. 818 of the New Civil Code (Republic Act No. 336). The implication is that the Philippine Legislature that passed this Act and approved the New Civil Code, including the members of the Code Commission who prepared it, are of the opinion that the provisions of Art. 669 of the old Civil Code are not incompatible with those of the Code of Civil Procedure."

In view of the foregoing, the order appealed from is affirmed, with costs against the appellant.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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