

IN THE MATTER OF THE PETITION FOR THE PROBATE OF THE WILL OF DOROTEA PEREZ, (DECEASED): APOLONIO TABOADA, PETITIONER, VS. HON. AVELINO S. ROSAL, AS JUDGE OF THE COURT OF FIRST I...*G.R. No. L-36033. November 05, 1982*

Ponente: GUTIERREZ, JR., J.

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This is a petition for review of the orders issued by the Court of First Instance of Southern Leyte, Branch III, in Special Proceedings No. R-1713, entitled "In the Matter of the Petition for Probate of the Will of Dorotea Perez, Deceased; Apolonio Taboada, Petitioner", which denied the probate of the will, the motion for reconsideration and the motion for appointment of a special administrator.

In the petition for probate filed with the respondent court, the petitioner attached the alleged last will and testament of the late Dorotea Perez. Written in the Cebuano-Visayan dialect, the will consists of two pages. The first page contains the entire testamentary dispositions and is signed at the end or bottom of the page by the testatrix alone and at the left hand margin by the three (3) instrumental witnesses. The second page which contains the attestation clause and the acknowledgment is signed at the end of the attestation clause by the three (3) attesting witnesses and at the left hand margin by the testatrix.

Since no opposition was filed after the petitioner's compliance with the requirement of publication, the trial court commissioned the branch clerk of court to receive the petitioner's evidence. Accordingly, the petitioner submitted his evidence and presented Vicente Timkang, one of the subscribing witnesses to the will, who testified on its genuineness and due execution.

The trial court, thru then Presiding Judge Ramon C. Pamatian issued the questioned order denying the probate of the will of Dorotea Perez for want of a formality in its execution. In the same order, the petitioner was also required to submit the names of the intestate heirs with their corresponding addresses so that they could be properly notified and could intervene in the summary settlement of the estate.

Instead of complying with the order of the trial court, the petitioner filed a manifestation and/or motion ex parte praying for a thirty-day period within which to deliberate on any step to be taken as a result of the disallowance of the will. He also asked that the ten-day period required by the court to submit the names of intestate heirs with their addresses be held in abeyance.

The petitioner filed a motion for reconsideration of the order denying the probate of the will. However, the motion together with the previous manifestation and/or motion could not be acted upon by the Honorable Ramon C. Pamatian due to his transfer to his new station at Pasig, Rizal. The said motions or incidents were still pending resolution when respondent Judge Avelino S. Rosal assumed the position of presiding judge of the respondent court.

Meanwhile, the petitioner filed a motion for the appointment of special administrator.

Subsequently, the new Judge denied the motion for reconsideration as well as the manifestation and/or motion filed ex parte. In the same order of denial, the motion for the appointment of special administrator was likewise denied because of the petitioner's failure to comply with the order requiring him to submit the names of the intestate heirs and their addresses.

The petitioner decided to file the present petition.

For the validity of a formal notarial will, does Article 805 of the Civil Code require that the testatrix and all the three instrumental and attesting witnesses sign at the end of the will and in the pre-sence of the testatrix and of one another?

Article 805 of the Civil Code provides:

"Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

"The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

"The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and the pages thereof in the presence of the testator and of one another.

"If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them."

The respondent Judge interprets the above-quoted provision of law to require that, for a notarial will to be valid, it is not enough that only the testatrix signs at the "end" but all the three subscribing witnesses must also sign at the same place or at the end, in the presence of the testatrix and of one another because the attesting witnesses to a will attest not merely the will itself but also the signature of the testator. It is not sufficient compliance to sign the page, where the end of the will is found, at the left hand margin of that page.

On the other hand, the petitioner maintains that Article 805 of the Civil Code does not make it a condition precedent or a matter of absolute necessity for the extrinsic validity of the will that the signatures of the subscribing witnesses should be specifically located at the end of the will after the signature of the testatrix. He contends that it would be absurd that the legislature intended to place so heavy an import on the space or particular location where the signatures are to be found as long as this space or particular location wherein the signatures are found is consistent with good faith and the honest frailties of human nature.

We find the petition meritorious.

Undoubtedly, under Article 805 of the Civil Code, the will must be subscribed or signed at its end by the testator himself or by the testator's name written by another person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

It must be noted that the law uses the terms attested and subscribed. Attestation consists in witnessing the testator's execution of the will in order to see and take note mentally that those things are done which the statute requires for the execution of a will and that the signature of the testator exists as a fact. On the other hand, subscription is the signing of the witnesses' names upon the same paper for the purpose of identification of such

paper as the will which was executed by the testator. (*Ragsdale v. Hill*, 269 SW 2d 911).

Insofar as the requirement of subscription is concerned, it is our considered view that the will in this case was subscribed in a manner which fully satisfies the purpose of identification.

The signatures of the instrumental witnesses on the left margin of the first page of the will attested not only to the genuineness of the signature of the testatrix but also the due execution of the will as embodied in the attestation clause.

While perfection in the drafting of a will may be desirable, unsubstantial departure from the usual forms should be ignored, especially where the authenticity of the will is not assailed. (*Gonzales v. Gonzales*, 90 Phil. 444, 449).

The law is to be liberally construed, "the under-lying and fundamental objective permeating the provisions on the law on wills in this project consists in the liberalization of the manner of their execution with the end in view of giving the testator more freedom in expressing his last wishes but with sufficient safeguards and restrictions to prevent the commission of fraud and the exercise of undue and improper pressure and influence upon the testator. This objective is in accord with the modern tendency in respect to the formalities in the execution of a will" (Report of the Code Commission, p. 103).

Parenthetically, Judge Ramon C. Pamatian stated in his questioned order that were it not for the defect in the place of signatures of the witnesses, he would have found the testimony sufficient to establish the validity of the will.

The objects of attestation and of subscription were fully met and satisfied in the present case when the instrumental witnesses signed at the left margin of the sole page which contains all the testamentary dispositions, especially so when the will was properly identified by subscribing witness Vicente Timkang to be the same will executed by the testatrix. There was no question of fraud or substitution behind the questioned order.

We have examined the will in question and noticed that the attestation clause failed to state the number of pages used in writing the will. This would have been a fatal defect were it not for the fact that, in this case, it is discernible from the entire will that it is really and actually composed of only two pages duly signed by the testatrix and her instrumental witnesses. As earlier stated, the first page which contains the entirety of the testamentary dispositions is signed by the testatrix at the end or at the bottom while the instrumental witnesses signed at the left margin. The other page which is marked as "Pagina dos" comprises the attestation clause and the acknowledgment. The acknowledgment itself states that "This Last Will and Testament consists of two pages including this page".

In *Singson v. Fiorentino, et al.* (92 Phil. 161, 164), this Court made the following observations with respect to the purpose of the requirement that the attestation clause must state the number of pages used:

"The law referred to is article 618 of the Code of Civil Procedure, as amended by Act No. 2645, which requires that the attestation clause shall state the number of pages or sheets upon which the will is written, which requirement has been held to be mandatory as an effective safeguard against the possibility of interpolation or omission of some of the pages of the will to the prejudice of the heirs to whom the property is intended to be bequeathed (*In re will of Andrada*, 42 Phil., 180; *Uy Coque vs. Navas Sioca*, 43 Phil., 405; *Gumban vs. Gorecho*, 50 Phil., 30; *Quinto vs. Morata*, 54 Phil., 481; *Echevarria vs. Sarmiento*, 66 Phil., 611). The ratio decidendi of these cases seems to be that the attestation clause must contain a statement of the number of sheets or pages composing the will and that if this is missing or is omitted, it will have the effect of invalidating the will if the deficiency cannot be supplied, not by evidence aliunde, but by a consideration or examination of the will itself. But here the situation is different. While the attestation clause does not state the number of sheets or pages upon which the will is written, however, the last part of the body of the will contains a statement that it is composed of eight pages, which circumstance in our opinion takes this case out of the rigid rule of

construction and places it within the realm of similar cases where a broad and more liberal view has been adopted to prevent the will of the testator from being defeated by purely technical considerations."

Icasiano v. Icasiano (11 SCRA 422, 429) has the following ruling which applies a similar liberal approach:

"x x x Impossibility of substitution of this page is assured not only (sic) the fact that the testatrix and two other witnesses did sign the defective page, but also by its bearing the coincident imprint of the seal of the notary public before whom the testament was ratified by testatrix and all three witnesses. The law should not be so strictly and literally interpreted as to penalize the testatrix on account of the inadvertence of a single witness over whose conduct she had no control, where the purpose of the law to guarantee the identity of the testament and its component pages is sufficiently attained, no intentional or deliberate deviation existed, and the evidence on record attests to the full observance of the statutory requisites. Otherwise, as stated in Vda. de Gil vs. Murciano, 49 Off. Gaz. 1459, at 1479 (decision on reconsideration) 'witnesses may sabotage the will by muddling or bungling it or the attestation clause.'"

WHEREFORE, the present petition is hereby granted. The orders of the respondent court which denied the probate of the will, the motion for reconsideration of the denial of probate, and the motion for appointment of a special administrator are set aside. The respondent court is ordered to allow the probate of the will and to conduct further proceedings in accordance with this decision. No pronouncement on costs.

SO ORDERED.

Melencio-Herrera, (Acting Chairman), Plana, Vasquez, and Relova, JJ., concur.

Teehankee, (Chairman), on official leave.

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