

ROMAN OZAETA, PETITIONER AND APPELLEE ROSE GONZALES, ET ALS., CO-PETITIONERS AND APPELLEES, V.S. MARIA CUARTERO, ET ALS., OPPOSITORS AND APPELLEES SEBASTIAN C. PALANCA, MARCIANA...*G.R. No. L-5597. May 31, 1956*

Ponente: REYES, A., J.

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This is an appeal from a decision of the Court of First Instance of Manila, allowing the probate of a will and appointing the petitioner-appellee Roman Ozaeta executor.

The questioned will purports to be that of Carlos "Palanca Tanguinlay, a resident of Manila who died in said city on September 2, 1950, leaving a large estate and three sets of heirs.

Born in China of Chinese parents, Palanca came to the Philippines in 1884 and resided therein the rest of his life. He died a Filipino citizen. In 1894 he married Cesarea Victorina Gano y Torres, with whom he begot three children named Marciana, Angel, and Sebastian. Cesarea died in 1907, and one year thereafter, Palanca lived unmarried with Rosa Gonzales and came to have eight children with her. While living with Rosa, Palanca also sustained relations with another woman, Maria Cuartero, and by her he came to have six children.

Realizing in his old age and failing health that life's end was fast approaching, Palanca made up his mind to legalize his relations with Rosa Gonzales and give their children a good name. And to put himself right with all his children, legitimate and illegitimate, he also decided to make a will. And so it was that on April 12, 1945, in a marriage ceremony performed by a Judge of the Court of First Instance of Manila, Hon. Mamerto Roxas, Palanca took Rosa Gonzales as his wedded wife, and not long thereafter he engaged the services of a prominent lawyer, Atty. Ramon Diokno, for the drafting of the will. After conferring several times with Palanca as to what the will should contain, Diokno handed him a draft. A day or two later, Palanca—who was then living temporarily in the house of petitioner Roman Ozaeta, his own house having been burned in the battle for the liberation of Manila—sent for his former employee, Adolfo Gruet, and had him put the draft of will in clean form, telling him to keep the matter confidential.

Typewriting the will, Gruet made one original and two copies and delivered them all to Palanca together with the draft. The will is in Spanish and consists of six typewritten pages correlatively numbered in letters. Each page is numbered at the top except the first, which is numbered at the bottom.

As previously agreed, in the morning of May 19, 1945, Palanca, accompanied by Adolfo Gruet, went to the office of Atty. Ramon Diokno at 114 Sail Rafael St., Manila for the signing of the will. There they were joined by Segundo Gonzales, who had been previously requested by Palanca to be one of the witnesses. Before the signing began, Atty. Ramon Diokno conferred in his private room with Palanca, reading and explaining to him the entire will. The conference over, Palanca and Atty. Ramon Diokno came out of the room, followed by the latter's son

Jose Diokno, who was to be one of the attesting witnesses to the will, and the three then proceeded to the veranda where they seated themselves around a table together with Adolfo Greet and So gun do Gonzales, who had preceded them there. When all were seated, Atty. Ramon Diokno began by explaining the formalities to be followed in the signing of the will, and once that was done, Palanca signed its original and two carbon copies page by page in the presence of the others in the group, namely, Atty. Ramon Diokno, his son Jose, Se gain do Gonzales, and Adolfo Gruet. Next to sign was Jose Diokno and after him Segundo Gonzales and Adolfo Gruet in that order. In succession these three affixed their signatures to each and every page of the original and two carbon copies in the presence of each other, as well as of Palanca and Atty. Ramon Diokno.

The will named the late President Manuel Roxas as executor, and it would appear that after it was signed the original was put in a sealed envelop and delivered to him. President Roxas, in turn, entrusted the envelop to his daughter Ruby, for safekeeping, and the latter put it in her trunk. It remained until 1950 when, upon the advice of Atty. J. Chuidian, whom she consulted on what to do after learning of Palanca's death, she got the envelop out and opened it. Her father, President Roxas, having already died, Ruby sought advice from her uncle, former Judge Mamerto Roxas, and the latter told her to deliver the will to Justice Roman Ozaeta whom the will named executor in default of President Roxas. Acting on this advice Ruby gave the will to Mrs. Roman Ozaeta three days after Palanca's death.

Designated in the will as substitute executor, Roman Ozaeta, on September 20, 1950, filed a petition in the Court of First Instance of Manila, asking for the probate of the will, for the issuance to him of letters of administration, and for his appointment as special administrator pending probate. The petition was published together with the date set for its hearing, and thereafter Maria Cuartero and her six children filed their opposition, alleging that the will was not executed in accordance with law, that it was procured by fraud and undue pressure and influence on the part of some of the beneficiaries or some other person for their benefit, and that the decedent's signatures thereon were procured thru fraud and trickery, the same having been affixed by him without any intention of making the document his will. Sebastian Palanca, Palanca's youngest son by his deceased first wife, also opposed the petition and, in addition to the grounds alleged by Maria Cuartero and her children, further averred that the provisions of the alleged will were unjust and contrary to law and prayed that the petition be denied, and that he himself be appointed administrator. Rosa Gonzales and her children also appeared and joined the petition for probate.

After trial, the court rendered a decision allowing the will to probate and appointing the petitioner Roman Ozaeta executor. From this decision only Sebastian, Marciana and Angel, all children of the first marriage, have appealed, the case being elevated to this Court because the value of the estate exceeds P50,000.

After going over their briefs, we note that appellants do not seriously dispute Palanca's signature on the 'will and that the whole burden of their contention is that the said will could not have been executed by Palanca on May 19, 1945, and in the manner described by petitioner's witnesses, and that, supposing it to have been so executed, still it should not be allowed because it was allegedly procured thru fraud and improper pressure and influence and did not comply with the requisites of the law.

We may state at once that the facts narrated above as to how the questioned will was prepared, signed, and kept are fully established by the evidence. We entertain no doubt that the will was drafted by Atty. Ramon Diokno at the request of Palanca himself and that once Palanca had the draft he had it put in clean form by his former employee Adolfo Gruet. Neither do we doubt that the will was in fact signed on the day and in the manner testified to by all of the three attesting witnesses. They each gave a detailed and clear account of that proceeding and identified the will presented in court as that which they and the decedent signed on May 19, 1945 in the law office of Atty. Ramon Diokno. They likewise identified their own signatures and that of the decedent on every

page of the will and stated that the decedent affixed his signatures in their presence and that they, themselves affixed theirs in the presence of the decedent and of each other. Much less is there reason for us to doubt the testimony of Ruby Roxas that she had had the will in her custody from the time it was entrusted to her by her father about a month or two after they were liberated in Baguio in April, 1945, up to three days after the death of the decedent in 1950.

The appellants' presented not a single witness who was in a position to deny categorically that a will was in fact executed by the decedent at the time and in the manner testified to by the attesting witnesses. As we see It, appellants' case is built mainly on surmises, which, even if possible in theory as pure speculations, may not, in the absence of sufficient factual basis, be allowed to prevail over the clear, explicit and detailed account of the circumstances surrounding the execution of the will given by witnesses who were so straight forward on d convincing In their assertions that the trial judge who heard and saw then testify accepted their testimony without any hesitation.

To support their theory that the will in question was not prepared and executed as testified to by petitioner's witnesses, the appellants, contend, in the first place, that the will could not have been drafted by Atty, Ramon Diokno because Diokno was once hoard to complain that petitioner Roman Ozaeta had taken away a client (Palanca) from him, including the work of preparing his will; that Diokno could not have agreed to draft a will naming a political enemy, ..the late President Roxas, executor; that the will is couched in poor and even defective Spanish not typical of him who had a good command of that language; that for its preparation he charged an exorbitant fee, more than P30,000, three years after its execution contrary to his usual practice of charging as soon as his work was finished. And in the second place appellants maintain that it was improbable the will was signed at the time and place and in the manner already stated above because in May, 1945 Diokno did not reside or hold office at 114 San Rafael St., Manila, since according to a witness for the appellants, he was then still staying in the University of Sto. Tomas compound where he and his family had found refuge during the occupation; that in their testimony, Atty. Ramon Diokno and Adolfo Gruet did not agree, as to who put the will in clean form; that the testimony of lose Diokno that lie witnessed the signing of the will on May 19, 1945, is inconsistent with the remarks lie made in the office of Judge Ceferino de los Santos in the presence of Atty. Binglasan to the effect that the decedent executed no will in 1945; and, lastly, that the attesting witness Segundo Gonzales was not telling the truth when he stated that in May, 1945, he had an office in Capitan Pepe Building in Manila and that it was from there that he was fetched by the decedent's son, Carlos Palanca, Jr., for the signing of the will.

As against these claims, we have in the first place Atty. Ramon Diokno's categorical declaration under oath that it was he who drafted the will in question and that . he actually billed the decedent P30,000.00 for the preparation of the said will and for his intervention in the signing thereof,' although actually he received only P21,000.00 in deference to the decedent's request for a reduction. Atty." Ramon Diokno also denied the yarn about his having complained that petitioner Roman Ozaeta had taken away from him his client, Palanca, branding the story a nasty falsehood ("tejido de barbaridades, falsedades"), and explained that lie could not have uttered such a complaint because up to the date of his departure for New York on June 2 5, 1946, he was still Palanca's lawyer in 'several cases, including his naturalization case. And then It appears that the will was drafted by Diokno long before he went politically after President Roxas, who became a presidential candidate only. In the early part of 1946, and, anyway, .we doubt if any practicing lawyer would refuse to draft a will and lose a substantial fee just because a political enemy is to be therein named as executor. The phraseology of the will may, in appellants' oponion, be defective; but that in Itself Is no sure. indication that it was not authored by Diokno, who, on his part, explained when confronted with the alleged defects that the will was not intended as a literary piece.

As to Atty. Ramon Diokno's residence at the time 1133 will was signed, we find that appellants' own witness, Adel Hernandez, gave testimony that in May, 1945, Diokno had his office in 114 San Rafael St, Manila, and it also appears, that appellants' own lawyer Atty. Dinglasan, admitted having received around that time a court pleading from Atty. Ramon Diokno in which the letter's address was given as "114 San Rafael, Manila".

Contrary to appellants' clam, we find no contradiction between the testimony of Adolfo Gruet and that of Atty. Ramon Diokno as to who was the one who put the will in clean and final form, for Atty. Ramon Diokno did not deny that, as testified to by Gruet, the latter was the one who put the final draft of the will in clean form.

Jose Diokno admitted saying on one occasion that he did not remember having witnessed a will executed by the decedent in 1945s but explained that he was confused because he had then in mind a reformed draft of a will prepared by his father at the request of the decedent in 1947 which was, however, never signed.

Segundo Gonzales on his part clarified his statement about his having an office in Cap it an Pepe Building in May, 1945, with the explanation that though he was not a lessee in the real sense, of the word, he, however, used to frequent a room in tint building which he-considered as his office.

The appellants also argue that if the decedent had really executed the questioned will on May 19, 1945? it is inconceivable that a man of his intelligence would include false statements therein, and that it is also surprising that properties specifically bequeathed in that will to some of the heirs should afterwards be disposed of by him in favor of other persons without making the corresponding change in the will. Appellants beg the first part of this argument, while the other part fails to take account of the fact that during the lifetime of the testator he retains full ownership and control, including free disposal, of the properties bequeathed by him in the will, and that a specific device fails or is impliedly re voiced as to the property conveyed where the testator subsequent to the execution of a will voluntarily disposes of the property by absolute conveyance.

Calling attention to the dissimilarity in the watermarks on the different sheets of paper used in the final draft of the will, as well as to the somewhat thicker ink diffusions in decedent's signatures on page 6 when compared with his signatures on the other pages of the will, appelants draw the conclusion that the will could not have been typewritten or signed in one continuous act. The difference in the watermarks of the paper used is not denied, but the conclusion drawn therefrom that the paper could not have come from a single bunch but from different bunches, and therefore the will was not typewritten in one continuous set, supposing it to be correct, is of no consequence, since there is no claim here about any page having been substituted. Moreover, the scarcity of paper in those early days after Liberation may easily account for the use of paper with different watermarks. And the difference in the thickness of ink diffusion noted by the appellants does not necessarily support their deduction that the will was not signed in one sitting. As was explained by petitioner's expert witness, the thicker ink diffusion on page 6 is due to the fact that the page is on a paper more porous than the other sheets used. Indeed, the expert witness for the appellants could not be positive that the last page of the will and other pages were not signed on the same date. He would even concede the possibility that the decedent may have signed page 6 ahead of the other pages when his pen was still very wet, and he corroborates petitioner's expert witness on the point that the paper of the last page was different in kind and porosity from that use for the first five pages. In any event, as this Court observed in a case, "speculations on these matters should give way to the positive declaration of the attesting witnesses," whose testimony "ought to prevail over expert opinions which cannot be mathematically precise but which, on the contrary, are 'subject to inherent infirmities.'" (Roxas vs. Roxas et al., 48 Off. Gaz., 2177 2182; Vaño vs. Vano et al., G. R. No. L-6303, June 30, 1954.)

As to the charge that the will was procured thru undue and improper pressure and influence by those who stood to profit therefrom or by some other person for their benefit, we note that no direct evidence has been presented to

support it. Appellants, however, maintain that direct evidence of undue influence is not essential; that a contest on the ground of fraud and undue influence may be waged successfully on circumstantial evidence and that the contestant is entitled to the benefit of all inferences which may be reasonably and legitimately derived from established facts; and appellants then offer the theory that after the petitioner had succeeded in convincing the decedent—whom they picture to be then "a very old man suffering from several ailments besides cataract in both eyes,"—to live with him, he (petitioner), with the tolerance and cooperation of Rosa Gonzales and her children, who were then living with the decedent in petitioner's house, instilled fear in his mind and thereafter controlled all his acts in such a way that he could not but do what he was told and had to sign whatever papers he was asked to sign. And that, according to appellants, is how he came to sign the will in question. But this seems to us to be far-fetched deduction from the established fact that the decedent was at the time of the execution of the will already old and somewhat sickly and living with Rosa Gonzales and their children in petitioner's house. Though appellants would want to make the court believe that the decedent was already blind at the time the will was alleged, to have been executed and that he could, therefore, not have read or signed it, we find that the Imputation of blindness is not witness Ariston Hermano, Atty Dinglasan's brother-in-law, both testified that the decedent had to request them to read for him reports and contracts in 1945 because of his failing eyesight, neither of them could assure the court that the deceased was in fact blind. On the contrary, Angel Palanca even stated that his father, the deceased, was still signing checks in 1945 while Tan Guan Siu, another witness for the appellants declared that the deceased still had a good sight in July, 1946 and could read papers by himself in 1949 when he was already living in his house on Taft Avenue. It is not denied that the deceased had cataract in both eyes even before 1941. But Dr. W. H. Waterous, a disinterested witness who was treating the deceased, testified that the latter's affliction in the eyes impaired only his "distance vision" and he could still read "in close-up." In June, 1946 because his "near vision" was still good. Dr. Waterous also stated that the deceased could still see things around and went unaided to the dark room in his clinic when he went there for a check-up at that time. The decedent, though old and suffering from diabetes would appear, to be still in full possession of his mental faculties and was not so helpless as appellants would picture him to be, and there is no showing that before, during, and after the execution of the will, he was not a master of his will but had to take orders from somebody. Moreover, the will was signed by him in the office of a distinguished lawyer, who died a respected member of this Court, and without the presence of any of the beneficiaries named therein or of the petitioner himself whom appellants apparently suspect of having used pressure or influence in favor of the said beneficiaries. It is obvious that the claim that the will was obtained through undue influence and improper pressure has no substantial factual basis but is more a matter of conjecture engendered by suspicion which the weight of authority regards as insufficient to sustain a verdict defeating a will on that ground (57 Am. Jur. 308), "It is not enough that there was an opportunity to exercise undue influence or a possibility that it might have been exercised. There must be substantial evidence that it was actually exercised." (21 A. L.R. 821 c).

Appellants' theory is, furthermore, disproved by decedent's failure to revoke or otherwise alter the questioned will as soon as he stopped out of petitioner's house and moved to his own where he led a free man's life up to five years after the execution of the will in question. This behaviour of the decedent constitutes a silent ratification of the contents of the impugned will and refutes the claim of undue influence and improper pressure, even supposing that these circumstances were, duly proved. (57 Am. Jur. p. 312c)

It is, therefore, our conclusion that the will involved in this case cannot be disallowed on the ground that it was procured, through improper influence or pressure.

Not much need be said on appellants' contention that the legal formalities for the execution of a will, supposing that the questioned will was really, executed, were not observed in the present case. Appellants do not dispute the decedent's testamentary capacity or his knowledge of the language in which the will was written, and we think

that it is beyond cavil, that the signatures of the testator and of the attesting witnesses appearing thereon are genuine. But appellants contend that the paging of the will is defective in that the first page is numbered, at the bottom and that the will does not contain an attestation clause.

The object of the law in providing that the pages of a will "shall be numbered correlatively in letters placed on the upper part of each sheet" is, as already declared by this Court, "to forestall suppression or substitution of pages" (*Martir v. Martir*, 70 Phil. 89) or "to make falsification more difficult," (*Aldaba vs. Roque*, 43 Phil. 378.) We cannot conceive how the placing of the number of the page at the bottom of the sheet might defeat such purpose. And as a matter of fact this Court has already held that numbering a page of the will at the bottom does not make the will void for that reason. (*Aldaba vs. Roque*, supra.) In the case of *Mendoza vs. Pila*, 72 Phil. 546, this Court, even held that where the first page is not numbered but at the bottom thereof there is written the phrase "pase a la 2.a pagina", the will is not for that reason to be declared invalid.

There is no merit in the claim that the will in question does not contain the attestation clause required by law in that the attestation only appears in its last paragraph, which purports to be the attestation clause, and that it was only the decedent who certified, to those matters which the law requires to be stated therein. The paragraph in question reads:

"En testimonio de lo cual, he otorgado este testamento en el idioma castellano, que hablo, leo y escribo, y lo he promulgado y firmado en presencia de todos y cada uno de los tres testigos que firman conmigo en todas las seis paginas de que se compone este testamento, cada uno de cuyos testigos lo atestiguaron y firmaron a mi ruego, en mi presencia y en la de cada uno de ellos, de todo lo cual yo, el testador, y nosotros, los tres testigos abajo firmados, certificamos y damos fe, en Manila hoy 19 de mayo de 1945."

The latter part of the above paragraph which appellants seem to ignore or overlook says: "x x de todo lo cual yo, el testador, y nosotros, los tres testigos abajo firmados, certificamos y damos fe x x." This makes it quite clear that it is not only the testator but also the attesting witnesses who have taken part in the certification of the circumstances required to be stated in the attestation clause. That an attestation clause of this kind, is legally sufficient has already been decided in the cases of *Aldaba vs. Roque*, supra; *Cuevas vs. Achacoso*, G. R. No. L-3497, May 18, 1951; *Gonzales vs. Gonzales*, G. R. No. L-3272-73, November 29, 1951- Appellants cite the case of *Testate Estate of Carlos Gil*, 49 Off. Gaz. 1459, in the belief that the decision therein rendered favors their contention. Attention, however, must be called to the fact that the decision first rendered in that case was on a motion for reconsideration, subsequently revoked and the Court reverted to the liberal interpretation followed in the cases of *Aldaba vs. Roque*, supra, and a long line of other cases.

Finally, appellants object to the appointment of petitioner as executor, alleging that "he is unfit to execute the duties of the trust by reason of want of understanding and integrity." But this allegation is gratuitous, for it is not supported by any evidence. On the other hand, we may take judicial notice of the fact that petitioner is a lawyer of learning and ability, a former Solicitor General and Secretary of Justice, and twice a member of the highest court of the land where he served with distinction. With nothing proved against his character and ability, we must reject the charge that he is unfit for the position of executor to which the lower court as well as the testator himself has seen fit to name him.

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

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista, Angelo, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

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