

**TESTATE ESTATE OF VITO BORROMELO. JOSE H. JUNQUERA,
PETITIONER-APPELLEE, VS. CRISPIN BORROMELO, ET AL.,
OPPOSITORS-APPELLANTS, REPUBLIC OF THE PHILIPPINES,
INTERVENOR-APPELLANT.**

G.R. No. L-18498. March 30, 1967

Ponente: DIZON, J.

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DIZON, J.:

Vito Borrromeo, a widower and permanent resident of the City of Cebu, died on March 13, 1952, in Parañaque, Rizal, at the age of 88 years, without forced heirs but leaving extensive properties in the province of Cebu.

On April 19 of the same year, Jose H. Junquera filed with the Court of First Instance of said province a petition for the probate of a one page document as the last will left by said deceased, devising all his properties to Tomas, Fortunato and Amelia, all surnamed Borrromeo, in equal and undivided shares, and designating Junquera as executor thereof (Special Proceedings No. 916-R). The document - now in the record as Exhibit "A" - was dated May 17, 1945, drafted in Spanish, and allegedly signed and thumb-marked by said deceased, in the presence of Dr. Cornelio G. Gandionco, Eusebio Cabiluna and Feliberto Leonardo as attesting witnesses.

On June 14, 1952, the probate court appointed Junquera as special administrator of the estate.

On November 14 of the same year, Teofilo Borrromeo filed an opposition to the probate of the will based on the follow-ing grounds: (1) that the formalities required by law had not been complied with; (2) that the testator was mentally in capable of making a will at the time of its execution; (3) that the will was procured by undue and improper influence, on the part of the beneficiaries and/or some other person; (4) that the signature of the testator was procured by fraud; and (5) that the testator acted by mistake or did not intend the instrument he signed to be his will at the time he affixed his signature thereto.

Upon motion of the abovenamed oppositor, on June 9, 1953, the Court removed Junquera as special administrator and appointed Dr. Patricio Beltran in his place.

On November 27, 1953, Vitaliana Borrromeo, a niece of the deceased, filed her own opposition to the probate of the will, on the ground that the signature "Vito Borrromeo" appearing thereon was a forgery. Other oppositions were subsequently filed by Patrocinio Borrromeo de Tabotabo (her opposition was later withdrawn), Lilia Morre de Tabotabo, Lamberto Morre, Patricia Morre de Ranario, Aurora Morre de Borrromeo, Ramon Ocampo, Isagani Morre and Rosario Morre, invoking substantially the same grounds mentioned heretofore.

Meanwhile, Tomas, Amelia and Fortunato Borrromeo, mani-festly on behalf of the "Cebu Arcade Company, T. L. Borrromeo y Cia." a duly organized partnership controlled by them, filed a motion to exclude from the inventory of the Estate previously filed by the new special administrator, thirteen parcels of land situated in the City of Cebu with a total area of 2,148 square meters, alleging that during his lifetime the deceased testator had sold said lots to them, as evidenced by the do-cument now in the record as Exhibit F-1 executed on May 17, 1945, confirming the

alleged previous sale. After due hearing, the courts in its order of July 16, 1954, denied the motion for exclusion, ruling that movants' remedy was to file a separate accion reivindicatoria against the administrator.

On October 28, 1955, the Republic of the Philippines filed a motion for leave to intervene and join the oppositors in contesting the probate of the will, on the ground that, should the estate be adjudicated the latter by intestacy, it stood to collect a considerable amount by way of estate and inheritance taxes. In its order of December 10 of the same year, the Court allowed the intervention.

After a prolonged trial, on May 28, 1960, the Court rendered a decision denying the probate of the will and declaring itself without jurisdiction to pass upon the question of ownership over the thirteen lots which the Cebu Arcade etc. claimed as its own. All the parties appealed - the proponents of the will from the portion of the decision denying probate, and the oppositors and the Republic of the Philippines, from that portion thereof where the court refused to decide the question of ownership of the thirteen lots already mentioned.

The proponents of the disputed will, mainly with the testimony of the three attesting witnesses, Cornelio Gandionco, Filiberto Leonardo and Eusebio Cabiluna, sought to prove the following facts:

In the morning of May 17, 1945, Tomas Borromeo, complying with the request of Vito Borromeo, went to the house of Atty. Filiberto Leonardo to request him to be a witness at the execution of the latter's last will. Dr. Cornelio Gandionco, who at the time happened to be in the house of Leonardo, was likewise requested to act as such. Together, the three went to the residence of Vito Borromeo at Ramos Street, Cebu City. Upon their arrival the third witness, Eusebio Cabiluna, who was living on the ground floor of the house, was asked to come upstairs. Thereafter, in their presence, Vito Borromeo executed first, the document Exhibit "F" (deed of confirmation of an alleged previous sale to Cebu Arcade Company, T. L. Borromeo y Cia.) witnessed by Gandionco and Cabiluna. Later, Vito Bor-romeo, being of sound and disposing mind, and without pressure or influence exerted on him, dictated the substance of his will to Tomas Borromeo, who in turn typewrote it in proper legal language. The document was then read by Vito Borromeo, who later signed and thumbmarked it (Exhibit "A") and carbon copies thereof (Exhibits "E" and "K") in the presence of the attesting witnesses, who, in-turn, signed the will and its copies in the presence of Vito Borromeo and of each other.

Proponents also placed the Rev. Fr. Julio Corres, a Spanish Catholic priest who was the confessor of Vito Borromeo from 1942 to 1946, the Rev. Fr. Sergio Alfafara, who was his confessor from 1946 to 1947, and Vicenta Mañacap, a mid-wife who lived in the testator's house and had served him from May 1945 up to his death on March 30, 1952, on the witness stand. The gist of their testimony is to the effect that at the time of the execution of the will, Vito Borromeo was still strong and could move around freely with the aid of a cane; that he was still mentally alert and was a man of strong will; that his right hand was unimpaired and he could write with it unaided; that as a matter of fact - according to Vicente Mañacap - he still wrote personal letters to Tomas Borromeo, could eat by himself and even played the piano.

On the other hand, the oppositors presented several witnesses who testified that the signatures purporting to be those of Vito Borromeo on the document Exhibit "A" and its copies were forgeries; that they were too good and too perfect signatures and, therefore, quite impossible for the deceased - an ailing man already 82 years old on May 17, 1945 - to write; that he was found "positive for bacillus leprosy" by Dr. Antonio Garcia as early as 1926 or 1927, having been treated for it consistently by injections of chaulmoogra oil administered by Dr. Max Borromeo and Dr. Cornelio Gandionco; that Vito Borromeo's usual signatures during his better days had always been characterized by certain flourishes, technically called "rubric"; that Vito Borromeo had also reared and educated two of the oppositors, Crispin Borromeo and the late Teofilo Borromeo and there was no conceivable reason why they were left out in the will, if any such will had really been made by him knowingly; that the

testamentary witness, Cornelio Gandionco, is a nephew of the other witness, Filiberto Leonardo, and was the fiance of Angeles Borromeo, a sister of Tomas Borromeo, one of the instituted heirs; that the third testamentary witness, Eusebio Cabi-luna is the real father of Fortunato Borromeo, another instituted heir, who admittedly grew up and was reared by Vito Borromeo and his wife Juliana Evangelista since he was barely three months; that Amelia Borromeo, the third instituted heir, is a younger sister of Tomas Borromeo and dependent upon him; that on May 17, 1945, the deceased's leprosy was so far advanced that the fingers of his right hand were already hardened and atrophied, this making it difficult, if not impossible, for him to write; and that on the same date, his sense of hearing and his eyesight had been considerably impaired, his eyes being always watery due to the progress of his leprosy.

The oppositors also presented Felipe Logan of the National Bureau of Investigation and Jose G. Villanueva, as handwriting experts, who testified, after examining the supposed signatures of the deceased in Exhibit "A" and comparing them with his accepted standard signatures, that the questioned signatures were forgeries. The proponents, however, presented their own handwriting expert, Martin Ramos, who testified to the contrary.

The trial court refused to believe the testimony of the attesting witnesses and, as a result, denied the petition for probate, because, in its opinion, they appeared not to be "wholly disinterested persons" and because of the serious discrepancies in their testimonies with respect to the number of copies made of the disputed document. The court also found that the physical condition of the deceased at the time of the execution of the questioned document was such that it was highly improbable, if not impossible, for him to have affixed his signatures on the documents Exhibits A, E and K in the spontaneous and excellent manner they appear to have been written. Thus, the court was also led to believe the testimony of the hand-writing experts for oppositors, - adverse to the genuineness of the signatures of Vito Borromeo on the questioned document more than that of the handwriting expert presented by the proponents of the will.

It seems clear, therefore, that the main issue to be decided in the present appeal is whether or not the evidence of record is sufficient to prove the due execution of the will in question.

It must be conceded that in this jurisdiction, the subscribing witnesses to a contested will are regarded as the best witnesses in connection with its due execution. It is similarly true, however, that to deserve full credit, their testimony must be reasonable and unbiased, and that, as in the case of any other witness, their testimony may be overcome by any competent evidence - direct or circumstantial (Board etc. vs. Shasser, 10 Kan. 585; 168 Pac. 836 [1917]).

It is also an appellate practice of long standing in this jurisdiction to accord great weight to the findings of fact made by the trial court and not to disturb them unless said court had failed to consider material facts and circumstances or had given undue weight to, or misconstrued the testimony of particular witnesses, the reason for this being that the trial judge had full opportunity to hear and observe the conduct and demeanor of the witnesses while testifying and was consequently in a better position than the reviewing court to determine the question of their credibility. While this is not applicable to the present case because His Honor, the judge who penned the appealed decision was not the same judge before whom the evidence of the parties was presented, it must be stated that, judging from the carefully written decision under review, it was only after a thorough study of the record that His Honor arrived at the conclusion that the subscribing witnesses do not appear to be wholly disinterested persons.

On the matter of the number of copies made of the questioned will allegedly signed by the testator and the three subscribing witnesses, His Honor found that Cabiluna was very uncertain and confused; that at a certain stage of his examination, he said that only two copies of the will were prepared - the original and one carbon copy - while

at another stage he affirmed that he did not know whether or not there was a duplicate and that all he could say was that he had affixed his signature three times (Transcript, Marquiala, August 22, 1953 pp. 49-50). In truth, however, he really signed six (6) times - twice on the original and twice on each of the two copies. Adding confusion to the situation is the answer he gave when he was asked if Vito Borromeo also signed the carbon copy, to which his answer was "I did not see" (Idem, p. 50).

On the other hand, the other subscribing witness, Atty. Filiberto Leonardo, testified categorically that there were only the original and one carbon copy of the will and that the testator and all the subscribing witnesses signed both (Transcript, Marquiala, December 23, 1953, pp. 167, 210, and 218). However, the naked and highly disturbing fact is that, contrary to what is inferable from the vacillating testimony of Cabiluna and the categorical assertion of Atty. Leonardo, the proponents of the questioned will themselves presented three copies of said will: the original, a carbon duplicate copy and a carbon triplicate copy, now in the record as Exhibits A, E and K, respectively.

While it is true that the testimony of these subscribing witnesses was given around eight years after the alleged execution of the questioned will, still we believe that the transaction in which they claim to have taken an important part is of such character and importance that it can not be a very easy matter for anyone of them to have a hazy recollection of the number of copies signed by the testator and by them. Stranger still would it be for them to say something in open contradiction with the reality on the matter. If, as may be clearly deduced from their testimony - Cabiluna and Leonardo's -, there was only the original and one copy signed by the testator and the subscribing witnesses, why is it that three - original and two copies - were really in existence and were produced in court during the trial?

In the case of the third subscribing witness, Dr. Cornelio Gandionco, the imputation was made by two witnesses, Dr. Teofilo Borromeo and Judge Crispin Borromeo, that he was the fiancé of Angeles Borromeo, sister of Tomas Borromeo, who is one of the three heirs instituted in the questioned will, evidently to show that he is not a completely disinterested witness. The evidence to this effect appears to have remained unimpeached, although the proponents of the will could have done it by calling on Dr. Gandionco himself or on Angeles Borromeo to deny the imputation.

Moreover, the evidence also discloses that Dr. Gandionco was the uncle of the other subscribing witness, Atty. Leonardo, and that, in fact, they were living together at the time of the alleged execution of the will. This circumstance - apparently trivial - can not be taken lightly because in view of appellee's claim that Angeles Borromeo was the fiancé of Dr. Gandionco, it would not be unreasonable to entertain the suspicion that both subscribing witnesses were not wholly disinterested. Material to this point is the fact established by the evidence that Atty. Leonardo was the notary public before whom the document Exhibit 4-A - which purports to convey to a partnership con-trolled by the heirs instituted in the questioned will thirteen parcels of land situated in the commercial center of Cebu City - was supposedly acknowledged by the testator on the same date May 17, 1945.

In the light of the foregoing, We can not see our way clear to holding that the trial court erred in refusing to give full credit to the testimony of the three subscribing witnesses.

It has also been held that the condition and physical appearance of a questioned document constitute a valuable factor which, if correctly evaluated in the light of surrounding circumstances, may help in determining whether it is genuine or forged. Subscribing witnesses may forget or exaggerate what they really know, saw, heard or did; they may be biased and, therefore, tell only half truths to mislead the court or favor one party to the prejudice of the other. This can not be said of the condition and physical appearance of the questioned document itself. Both, albeit silently, will reveal the naked truth, hiding nothing, forgetting nothing, and exaggerating nothing. For this

reason, independently of the conflicting opinions expressed by the handwriting experts called to the witness stand by the parties, we have carefully examined and considered the physical appearance and condition of the original and two copies of the questioned will found in the record - particularly the signatures attributed to the testator - and We have come to the conclusion that the latter could not have been written by him.

Upon the face of the original and two copies of the con-tested will (Exhibits A, E, and K) appear a total of six alleged signatures of the testator. They are all well written along a practically straight line, without any visible sign of tremor or lack of firmness in the hand that wrote them. In fact, in the respects just adverted to, they appear better written than the unquestioned signatures of attesting witnesses Gandionco and Cabiluna, inspite of the fact that on the date of the alleged execution of the will (May 17, 1945) the testator was considerably older and in a much poorer physical condition than they. Accord-ing to the evidence, the testator was then a sick man, eighty-two years old, with the entire left half of his body paralyzed since six years before, while the oldest attesting witness (Cabiluna) was around sixty-five years of age and Leonardo and Gan-dionco were only forty-four and forty-five years old, respectively, and were all in good health. Despite the obviously very poor phy-sical condition of the testator, Leonardo claims that he signed the alleged will unaided, writing his name thereon slowly but continuously or without interruption, and that, on the same occasion, he signed his name several times not only on the original of the will and its copies but also on the original and several copies of the alleged confirmatory sale Exhibit F-1 and on his residence cer-tificate. Considering all the attendant circumstances, we agree with the lower court that Vito Borromeo could not have written the questioned signatures.

In view of what has been said heretofore, We find it unnecessary to examine and consider in detail the conflicting testimony of the handwriting experts presented by the parties: Martin Ramos by the proponents of the will, to sustain the genuineness of the questioned signatures, and Felipe Logan and Jose G. Villanueva, by the oppositors, to prove that said sig-natures are forgeries. We shall limit ourselves in this con-nection to quoting with approval the following portion of the appealed decision:

"What the Court finds to be a weakness in the conclusions of Martin Ramos, based on his comparative examination of the questioned and standard signatures of Vito Borromeo, is his apparent assumption that all the signatures were made by Vito Borromeo under equal-ity or similarity of circumstances, that is, that in all instances Vito Borromeo had normal use of both of his hands, - the right and the left. He failed to take into account that when Vito Borromeo allegedly affixed those signatures on May 17, 1945 on Exhibits 'A', 'E', and 'IK' the left portion of his body, including the left hand, was already paralyzed, and Vito Borromeo was represented to have written his name alone by himself and unaided. Maybe, if he was previously apprised of those circumstances, he would hesitate to make the conclusion that those flawless signatures reading Vito Borromeo, written straight and in a form as good as, if not better than, the sig-natures of three much younger attesting witnesses, were positively in the handwriting of the 82-year old, ailing, and paralytic Vito Borromeo. The Court con-sequently, finds itself not disposed to adopt his conclusions, but on the contrary is inclined toward the views of the other two expert witnesses, Felipe Logan and Jose G. Villanueva."

As stated at the outset, the contested will is claimed to have been signed and thumbmarked by the testator. An examination of the thumbmarks, however, readily shows that, as the lower court found, the same are "glaringly far from being distinct and clear"; that "they are not a possible means of identification" nor can "They possibly be identified to be those of Vito Bor-romeo, or for that matter, of any other person whatsoever". It is, therefore, obvious, that they are of little use in the reso-lution of the issue before Us.

We shall now consider the appeal taken by the oppositors and the Republic of the Philippines from that portion of the decision where the lower court declined to decide with finality the question of who owns the thirteen parcels of land subject-matter of the confirmatory sale Exhibit F-1 and whether or not they should be included in or

excluded from the inventory of properties of the Estate of the deceased Vito Borromeo.

It appears that on February 11, 1954 Tomas, Amelia, and Fortunato Borromeo, through counsel, filed a motion for the exclusion from the inventory of the Estate of the thirteen lots therein mentioned, with a total area of 2,348 square meters, claiming that the same had been sold by the deceased Vito Borromeo during his lifetime to the Cebu Arcade., T. L. Borromeo y Cia. This motion for exclusion was denied by the lower court in its order of July 16, 1954, and the ruling was reiterated in the appealed decision "for the same reasons and considerations" upon which it rejected the probate of the will. The ruling on the matter, however, was expressly made provisional in nature.

We believe, and so hold, that the resolution of the lower court on this matter is correct because said court, acting in its capacity as a probate court, had no jurisdiction to determine with finality the question of ownership involved. That such matter must be litigated in a separate action has been the established jurisprudence in this jurisdiction (Ongsinco vs. Borja, G.R. No. L-7635, 1955; Mallari vs. Mallari, G.R. No. L-4656, February 23, 1953; Garcia vs. Martin G. R. No. G.R. No. L-9233, June 29, 1957; Cordova vs. Ocampo, 73 Phil. 661; Pascual vs. Pascual, 73 Phil. 561 and others), except where a party merely prays for the inclusion or exclusion from the inventory of any particular property, in which case the probate court may pass upon, provisionally, the question of inclusion or exclusion, but without prejudice to its final determination in an appropriate separate action (Garcia vs. Garcia, 67 Phil. 353; Marcelino vs. Antonio, 70 Phil. 388; Guinguing vs. Abuton, 48 Phil. 144, 147).

IN VIEW OF ALL THE FOREGOING, the decision appealed from is affirmed, with costs.

Concepcion, C.J., Reyes, Regala, Makalintal, Bengzon, Zaldivar, Sanchez, and Castro, JJ., concur.

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