

IN THE MATTER OF THE PROBATE OF THE WILL OF CHRISTIAN HARRIS, DECEASED. PEDRO BUTIONG, PETITIONER-APPELLEE, VS. THE SURIGAO CONSOLIDATED MINING CO., INC., OPPOSITOR-APPELLANT.

G.R. No. L-13938. July 31, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Direct appeal from an order of the Court of First Instance of Surigao allowing a given instrument to probate as the last will and testament of Christian Harris.

On September 7, 1954, Pedro Butiong commenced Special Proceedings No. 737 of said Court for the probate of a document -attached to his petition, and later marked as Exhibit G - purporting to have been executed by Christian Harris as his last will and testament. Paragraph IV of said Exhibit G reads:

“I hereby make, appoint and constitute Pedro Butiong, who is my adopted son and whom I have reared and brought up since he was still about two (2) yeas old, as my sole and universal heir of all my properties located in the Philippines, consisting of shares of stock and interest in the Mindanao Mo-ther Lode Mining Co., Inc., located at Mabuhay, Surigao, Surigao, and of shares of stock, interest and one (1%) per cent royalty in the Surigao Consoli-dated Mining Co located at Siano, Surigao.”

The Surigao Consolidated Mining Go., Inc. opposed the probate of said Exhibit G upon the ground of forgery. After ap-propriate proceedings, the lower court issued an order, dated June 15, 1957, admitting the disputed document to probate. Hence, this appeal by said Company hereinafter referred to as appellant - upon the ground that the lower court erred:

- 1) In not holding that the "Semana," in which notice of the hearing of said petition had been published, is not a newspaper of general circulation in the Province of Surigao;
- 2) In finding that Pedro Butiong and Clementino Sykimte are the next of kins of Harris;
- 3) In holding that appellant had, not proven that Harris did not own the property and interest disposed of in his last will;
- 4) In giving credence to the testimony of the attesting wit-nesses;
- 5) In giving credence to Butiong's explanation regarding the temporary disappearance of Exhibit G; and
- 6) In allowing Exhibit G to probate, instead of declaring that the alleged signature of Harris thereon is a "forgery.”

Upon the other hand, Butiong maintains that the lower court erred in entertaining appellant's opposition and in not dismissing its appeal.

It is obvious that Butiong's contention is well taken. Indeed, it is well-settled that one who has or can have no

interest in succeeding a decedent cannot oppose the probate of his alleged will.[1] Appellant herein does not claim to have such interest in the succession to Christian Harris. Accordingly, the lower court should not have considered its opposition to the probate of Exhibit G, much less given due course to the present appeal.

Independently of the foregoing, appellant's assignment of errors are devoid of merit: Indeed, the notice of hearing issued by the Justice of the Peace of the provincial capital, "for and in the absence of the District Judge, " states that the "Semana," in which said notice was ordered and was in fact published, is of general circulation in the Province of Surigao, and there is no evidence to the contrary.

Again, the question whether or not Butiong and Sykimte are related to the deceased, and whether the latter really owns the property and interests sought to be disposed of in Exhibit G, are immaterial to the probate thereof. At any rate, the testimony of Clemente Sykimte, who used to act as the secretary of Harris, during his lifetime, and that of appellant's general superintendent of operations, J. B. Harrison, have established the fact that Harris had in his name four (4) mining claims, two (2) of which were operated by the appellant. In fact; appellant's Articles of Incorporation show, also, that Harris was one of its incorporators, with a subscription of 900, 000 shares of stock. In addition thereto, he had 75, 000 shares of stock in the Mindanao Mother Lode Mining Co., Inc.

It is true that, testifying as appellant's witness, Martin S. Ramos, an alleged handwriting expert, expressed the opinion that the supposed signature of Harris on Exhibit G is forged. This negative evidence was more than offset, however, by the testimony of Vicente C. Fernandez, Bernardino O. Almeda and Mateo Peña fiel, to the effect that, after reading Exhibit G aloud and announcing that it was the true expression of his will, Harris who was of sound mind and spoke, as well as understood, both English and Spanish signed thereon in their presence, and they, in turn, signed on said instrument, in the presence of each other and that of Harris, in accordance with law. Besides, their testimony on the genuineness of the signature of Harris on Exhibit 0 was corroborated by the testimony of Butiong and Sykimte, as well as by handwriting expert, Dr. Paul R. Verzosa, aside, from having been confirmed by his Honor the trial Judge, who compared said signature with the admittedly genuine signatures of Harris, used as standards in the lower court. It is thus apparent that Butiong's evidence is much weightier than that of appellant herein.

As regards the delay in the filing of Exhibit G for probate, Butiong explained it as follows; Harris died in Surigao, Surigao, on December 7, 1941 or on the eve of the outbreak of war in the Pacific. Inasmuch as, soon thereafter, the Japanese forces occupied the province of Surigao, Butiong evacuated from Surigao, Surigao, and transferred Exhibit G, from a wooden trunk he had in his house, to a valise belonging to his uncle, Bernardino Butiong, with whom he lived, in the barrio of Alegria, municipality of Mainit. After liberation, neither he (Pedro Butiong) nor Bernardino could, however, find Exhibit G, until August 20, 1954, when Bernardino located it accidentally while looking for other papers. Thereupon Exhibit G was filed in court for probate.

The records before us do not furnish sufficient data to warrant denying credence to the testimony of Pedro Butiong and Bernardino Butiong, to this effect. At any rate, since the authenticity of the signature of Harris in Exhibit 0 and the due execution thereof, as his last will and testament, have been satisfactorily established, the explanation for the delay in its presentation for probate has become of minimal importance.

WHEREFORE, the order appealed from is hereby affirmed, with costs against appellant, Surigao Consolidated Mining Co., Inc.

IT IS SO ORDERED.

Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] In the Matter of the Will of Kabigting, 14 Phil., 463; Paras vs. Narciso, 35 Phil., 244; Asinas vs. C.F.I., 51 Phil., 665; Reyes vs. Isip, 97 Phil., 11.

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