

TESTATE ESTATE OF THE DECEASED ENRIQUE C. ZUÑIGA. ROSARIO DIA, PETITIONER AND APPELLEE, VS. JUAN ZUÑIGA AND FAUSTINA CALANOG, OPPOSITORS AND APPELLANTS.

G.R. No. L-1162. May 30, 1951

Ponente: PARAS, C.J.

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PARAS, C.J.:

Enrique C. Zuñiga died on December 31, 1945, leaving a will with the following attestation clause:

"That we, the undersigned witnesses, hereby certify that these last will and testament consisting of two pages written in two sheets, each sheet composing a page, including the page in which this attestation clause is written; that each page is correlatively numbered in letters in the middle of the upper part of each page; and that the Testator signed the will and on both pages at the left hand margin of the page; and that we also signed at the left hand margin of the will on both pages in the presence of the Testator and in the presence and within sight of each other."

Said will was presented in the Court of First Instance of Quezon for probate by Rosario Dia, wife of the testator. The petition for probate was opposed by Juan Zuñiga and Faustina Calanog, parents of the testator. In the decision of the Court of First Instance rendered on April 12, 1946, the will was admitted to probate. The oppositors have appealed, raising the sole contention that the trial court erred "in admitting to probate the will and last testament of Enrique C. Zuñiga, despite the defect that the attestation clause does not state that the testator signed the will and each page thereof in the presence of the three instrumental witnesses, and in declaring that said defect was cured by the oral testimony of the instrumental witnesses." The appellants invoke the case of *Quinto vs. Morata*, 54 Phil., 481, wherein it was held that the attestation clause must be made in strict con-formity with the requirements of section 618 of Act No. 190, as amended, and evidence aliunde should not be admitted to establish facts not appearing in the attestation clause.

As already stated, the flaw attributed to the attestation clause in question is that, although it states that the testator signed the will and on both pages at the left hand margin, it does not certify that the testator signed "in the presence of the instrumental witnesses." In decisions of this Court posterior to the case relied upon by the appellants, the probate of wills containing attestation clauses similarly assailed, had been sustained. In *Estate on the Deceased Magdalena Ozoa*, G. R. No. 37208, 58 Phil., 928, in which it was contended that the attestation clause failed to state that the testatrix signed each and every page of the will in the presence of the three witnesses and in the presence of each other, the following ruling was made: "While the words 'we have each signed, the same and each page thereof in the presence of said testatrix and in the presence of each other' would be expected to relate to the attesting witnesses, it is possible to find that the quoted words also relate to the testatrix. Otherwise stated, the word 'we' could include both the testatrix and the attesting witnesses." (Quoted in *Sebastian vs. Paiiganiban*, 59 Phil., 653, 655.)

In the latter case of *Sebastian vs. Panganiban*, wherein the argument was advanced that the attestation clause

failed to state that the witnesses signed the will in the presence of each other, this Court, citing the Ozoa decision, upheld the probate of the will.

Following the later trend, we are constrained to sustain the appealed judgment. Indeed, the word "we" in the last sentence of the attestation clause in dispute, above quoted, although expected to relate to the attesting witnesses, may also refer both to the testator and to the attesting witnesses. It is likewise obvious that the attesting witnesses could not have certified—as they did—that the testator signed the will and all pages thereof at the left hand margin, if said testator did not sign in their presence. The case, ultimately, is one more or less of grammatical imperfection.

Wherefore, the appealed judgment is affirmed with costs of this instance against the appellants. So ordered.

Feria, Bengzon, Tuason, Montemayor, Jugo, and Bautista Angelo, JJ., concur.

DISIDENTE

Pablo, M.:

En mi opinion, no debe legalizarse el testamento del finado Enrique C. Zuñiga, porque no aparece en la clausula de atestiguamiento que el testador haya firmado el testa-mento en presencia de los tres testigos presenciales. Esto es un requisito indispensable. La ley exige que el testador firme el testamento en presencia de tres o mas testigos para evitar que un testamento firmado por un testador en presencia de nadie pueda despues ser legalizado si, a peticion de alguien, tres testigos firman la clausula de atestiguamiento aseverando que cada uno de los tres firmo la clausula en presencia de cada uno de ellos. Con esta clase de certificacion de tres personas es facil legalizar un testamento apocrifo. En el caso citado, los tres testigos que firman la clausula de atestiguamiento no mienten porque no certifican que el testador firmo el testamento en su presencia. Supongase que un testador haya firmado su testamento en presencia de nadie y por suplicas de alguien, los testigos firmaron la clausula de atestiguamiento porque creian—por las seguridade's dadas por ese alguien—que la firma es del testador. Las tres testigos no mienten en la clausula de atestiguamiento al decir que el testador firmo el testamento, porque es posible que sea verdad que lo haya firmado. Ellos no certifican que el testamento ha sido firmado en presencia de ellos. No es suficiente que el testamento este firmado por el testador: lo que requiere la ley es que el testador lo firme en presencia de los testigos y que cada uno de estos lo firme tambien en presencia del testador y de cada uno de ellos.

La clausula del testamento discutido dice: "That we, the undersigned witnesses, * * * and that the Testator signed the will and on both pages at the left hand margin of the page; and that we also signed at the left hand margin of the will on both pages in the presence of the Testator and in the presence and within sight of each other." La palabra "we" en la ultima oracion, no se refiere al testador y a los testigos; se refiere solamente a los tres testigos, "the undersigned witnesses."

Este Tribunal en Quinto contra Morata, (54 Jur. Fil., 515) dijo:

"Al articulo 618 de la Ley No. 190, tal y como esta reformado, se le debe dar una interpretacion estricta. En el asunto de Uy Coque contra Navas L. Sioca (43 Jur. Fil., 425)' este Tribunal, hablando de la interpretacion que se ha de dar a dicho articulo, dijo:

" 'Las leyes que señalan las formalidades que han de observarse en el otorgamiento de los testamentos se interpretan muy estrictamente.' Como se dice en 40 Cyc, pagina 1097, 'El testamento deberd otorgarse de conformidad con los requisitos que marca la ley; de lo contrario es absolutamente nulo. Todos esos requisitos son de igual importancia y deben observarse, sin que los tribunales puedan subsanar los defectos en que se haya incurrido en el otorgamiento de un testamento. No se les ha conferido poder ni facultad alguna, ni para

añadir otras condiciones ni para dispensar las enumeradas en la ley' (Uy Coque contra Navas L. Sioca, 43 Jur. Fil., 425, 427.)"

La decision en la testamentarla de Magdalena Ozoa, G. R. No. 37208, citada por la mayoria, no esta publicada (58 Jur. Fil., 973) y, si no se publico, es porque el Tribunal Supremo no quiso establecerla como una regla de conducts en el futuro.

El articulo 618 del Codigo de Procedimiento Civil dispone contra Morata, supra:

"Se sostiene energicamente, en representacion de la apeiante, que el supuesto defecto en la clausula de atestiguamiento ha sido subsanado mediante prueba oral, que fue admitida sin oposicion de parte de los apelados. No se puede sostener esta pretension. No es aplicable a testamentos la doctrina de este Tribunal relativa a la ley de fraudes. La ley de fraudes se refiere a contratos y convenios. La materia sobre testamentos y las formalidades que acompanan a su otorgamiento, se rigen por disposiciones separadas y especificas de la Ley No. 190."

Y en Uy Coque contra Sioca, este Tribunal dijo:

"El objeto del nuevo requisito de que en la clausula de atestiguamiento debe constar que el testador y los testigos firmaron cada uno en presencia de los otros, y que este hecho no puede demostrarse por pruebas aliunde, es, tal vez, menos evidente, pero, en vista de la bien conocida falta de seguridad de la prueba testifical, es cosa clara que lo declarado en la clausula de atestiguamiento aporta una prueba mas satisfactoria del hecho que ha de probarse. En todo caso, el hecho de que el antiguo principio relativo a la admisibilidad de pruebas testificales para demostrar que el testador y los testigos han firmado en la forma prescrita por la ley, se ha considerado nada satisfactorio, y se ha cambiado deliberadamente en virtud de la reforma, demuestra que la Legislatura ha considerado importante el asunto. Siendo asi, no esta justificado que los tribunales enerven la enmienda mediante una interpretacion demasiado liberal." (43 Jur. Fil., 426.)

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