

**IN RE WILL OF VICTOR BILBAO. RAMON N. BILBAO, PETITIONER
AND APPELLANT, VS. DALMACIO BILBAO, CLEOFAS BILBAO,
EUSEBIA BILBAO, CATALINA BILBAO, FILEMON ABRINGE AND
FRANCISCO ACADE...**

G.R. No. L-2200. August 02, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal from a decision of the Court of First Instance of Negros Oriental denying the petition for admission to probate of the last will and testament of Victor S. Bilbao who died on July 13, 1943, which petition was filed by his widow and cotestator Ramona M. Navarro.

The will in question was executed on October 6, 1931, on a single page or sheet by the deceased Victor Bilbao jointly with his wife Ramona M. Navarro. The two testators in their testament directed that "all of our respective private properties both real and personal, and all of our conjugal properties, and any other property belonging to either or both of us, be given and transmitted to anyone or either of us, who may survive the other, or who may remain the surviving spouse of the other."

The petition for probate was opposed by one Filemon Abringe, a near relative of the deceased, among other grounds, that the alleged will was executed by the husband and wife for their reciprocal benefit and therefore not valid, and that it was not executed and attested to as required by law. After hearing, the trial court found the will to have been executed conjointly by the deceased husband and wife for their reciprocal benefit, and that a will of that kind is neither contemplated by Act No. 190, known as the Code of Civil Procedure nor permitted by Art. 669 of the Civil Code which provides:

"Two or more persons cannot make a will conjointly or in the same instrument, either for their reciprocal benefit or for the benefit of a third person."

The only assignment of error made in the appeal is that "the lower court erred in not finding that a joint and reciprocal will particularly between husband and wife is valid under the present law." The thesis of the appellant is, that "Chapter XXXI, particularly sections. 614, 618, Act 190, appears to be a complete enactment on the subject of execution of wills and may thus be regarded as the expression of the whole law thereon, and that it must be deemed to have impliedly repealed the provisions of the Civil Code (Title III, Chapter I) on the matter;" that inasmuch as the present law on wills as embodied in the Code of Civil Procedure has been taken from American law, it should be interpreted in accordance with the said law, and because joint and reciprocal wills are neither regarded as invalid nor contrary to public policy by American jurisprudence but on the contrary they are allowed, then article 669 of the Civil Code prohibiting the execution of joint wills whether reciprocal or for the benefit of a third party should be considered as having been repealed and superseded by the new law.

We have made a rather extensive study of the cases decided by our Supreme Court covering the field of wills,

with particular attention to any reference to or ruling on article 669 of the Civil Code but we have failed to find any case wherein that particular codal provision has been discussed or applied, declaring it either repealed or still in force. The sole question and issue squarely raised in this appeal is, therefore, one of first impression and naturally we are constrained to act and to proceed with care and caution, realizing the importance and far reaching effects of any doctrine to be laid down by us in the present case.

We cannot agree to the contention of the appellant that the provisions of the Code of Civil Procedure on wills have completely superseded Chapter I, Title III of the Civil Code on the same subject matter, resulting in the complete repeal of said Civil Code provisions. In the study we have made of this subject, we have found a number of cases decided by this Court wherein several articles of the Civil Code regarding wills have not only been referred to but have also been applied side by side with the provisions of the Code of Civil Procedure.

In the case of *In the Matter of the will of Kabigting*, (14 Phil., 463), where the will was executed in the year 1908, articles 662 and 663 of the Civil Code regarding capacity and incapacity of persons to dispose by will, have been cited and applied together with section 618 of the Code of Civil Procedure regarding requisites of wills.

In the case of *Torres and Lopez De Bueno vs. Lopez*, (48 Phil., 772), article 666 of the Civil Code regarding mental capacity of the testator has been cited and applied together with sections 614 and 634 of the Code of Civil Procedure regarding a will executed in 1924.

In the case of *Marin vs. Nacianceno*, (19 Phil., 238), article 667 of the Civil Code was cited in the dissenting opinion of Mr. Justice Torres.

In the cases of *Postigo vs. Borjal*, (13 Phil., 240); *In re Estate of Calderon*, (26 Phil., 333); *Natividad vs. Gabino*, (36 Phil., 663) wherein the wills involved had been executed after the enactment of the Code of Civil Procedure, particularly the sections regarding wills, article 675 of the Civil Code regarding interpretation of wills was cited and applied.

In the case of *Samson vs. Naval*, (41 Phil., 838), article 739 of the Civil Code regarding revocation of wills has been applied in harmony with section 623 of the Code of Civil Procedure, The will involved was executed in 1915 when the Code of Civil Procedure was already in force.

The above-cited authorities all go to show that it is not exactly correct to say that the provisions of the Code of Civil Procedure regarding wills completely cover the subject matter and therefore have superseded the provisions of the Civil Code on the point.

It is also contended that in the case of *Macrohon Ong Ham vs. Saavedra*, (51 Phil., 267), a will executed in the year 1923, which was made jointly by husband and wife in the same instrument, was admitted to probate by the Court of First Instance of Zamboanga and the decision was affirmed by this Court, thereby proving that this tribunal has disregarded the prohibition regarding the execution of wills conjointly under article 669 of the Civil Code, meaning that said article has already been repealed. After examining said case we find the contention untenable. It is true that the will already described was allowed probate by the trial court but there was no appeal from the order approving the will on the ground of its invalidity, but only on the manner the properties involved were to be distributed or otherwise disposed of. The Supreme Court never touched this point of invalidity nor the applicability of article 669 of the Civil Code but merely ruled that a testator may die both testate and intestate, depending upon the properties sought to be disposed of by him and those to be inherited by his heirs on intestate succession when not covered by the will. As a rule this Tribunal does not pass upon the legality, enforceability, or applicability of a law unless that point is raised and put in issue,- and it is necessary to rule upon it in order to determine the case.

The provisions of article 669 of the Civil Code prohibiting the execution of a will by two or more persons conjointly or in the same instrument either for their reciprocal benefit or for the benefit of a third person. Is not unwise and is not against public policy. The reason for this provision especially as regards husband and wife is that when a will is made jointly or in the same instrument, the spouse who is more aggressive, stronger in will or character and dominant is liable to dictate the terms of the will for his or her own benefit or for that of third persons whom he or she desires to favor. And, where the will is not only joint but reciprocal, either one of the spouses who may happen to be unscrupulous, wicked, faithless or desperate, knowing as he or she does the terras of the will whereby the whole property of the spouses both conjugal and paraphernal goes to the survivor, may be tempted to kill or dispose of the other.

Considering the wisdom of the provisions of this article 669 and the fact that it has not been repealed, at least not expressly, as well as the consideration that its provisions are not incompatible with those of the Code of Civil Procedure on the subject of wills, we believe and rule that said article 669 of the Civil Code is still in force. And we are not alone in this opinion. Mr. Justice Willard as shown by his Notes on the Civil Code, on page 18 believes that this article 669 is still in force. Sinco and Capistrano in their work on the Civil Code, Vol. II, page 33, favorably cite Justice Willard's opinion that this article is still in force. Judge Camus in his book on the Civil Code does not include this article among those he considers repealed. Lastly, we find that this article 669 has been reproduced word for word in article 818 of the New Civil Code (Republic Act No. 386). The implication is that the Philippine Legislature that passed this Act and approved the New Civil Code, including the members of the Code Commission who prepared it, are of the opinion that the provisions of article 669 of the old Civil Code are not incompatible with those of the Code of Civil Procedure.

In the case of Testate Estate of the late Bernabe Rodriguez (CA-G. R. 1627-R, July 1, 1948; 46 Off.Gaz., No. 2, p. 584), the Court of Appeals had occasion to make reference to this article 669 of the Civil Code, though indirectly. In the will involved therein, the testator Rodriguez instituted his wife his universal heir and the latter in her separate will equally instituted her husband Rodriguez as her universal heir; in other words, they were reciprocal beneficiaries in their respective separate wills. Opposition to the probate of the will of Rodriguez was based on the prohibition contained in article 669 of the Civil Code. The Court of Appeals said that what the law prohibits under said article is two or more persons making a will conjointly or in the same instrument and not reciprocity contained in separate wills.

In conclusion, we believe and hold that the provisions of the Code of Civil Procedure regarding wills have not repealed all the articles of the old Civil Code on the same subject matter, and that article 669 of the Civil Code is not incompatible or inconsistent with said provisions of the Code of Civil Procedure, and that finally, said article 669 of the Civil Code is still in force.

In view of the foregoing, the decision appealed from, is hereby affirmed, with costs.

Ozaeta, Pablo, Bengzon, Tuason, and Reyes, JJ., concur.

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