

TESTATE ESTATE OF THE LATE APOLINARIA LEDESMA. FELICIDAD JAVELLANA, PETITIONER AND APPELLEE, VS. DO&NTILDE;A MATEA LEDESMA, OPPOSITOR AND APPELLANT.*G. R. No. L-7179. June 30, 1955*

Ponente: REYES, J.B.L., J.

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By order of July 23, 1953, the Court of First Instance of Iloilo admitted to probate the documents in the Visayan dialect, marked Exhibits D and E as the testament and codicil duly executed by the deceased Da. Apolinaria Ledesma Vda. de Javellana, on March 30, 1950, and May 29, 1952, respectively, with Ramon Tabiana, Gloria Montinola de Tabiana and. Vicente Yap as witnesses. The contestant, Da. Matea Ledesma, sister and nearest surviving relative of said deceased, appealed from the decision, insisting that the said exhibits were not executed in conformity with law. The appeal was made directly to this Court because the value of the properties involved exceeded two hundred thousand pesos.

Originally the opposition to the probate also charged that the testatrix lacked testamentary capacity and that the dispositions were procured through undue influence. These grounds were abandoned at the hearing in the court below, where the issue was concentrated into three specific questions: (1) whether the testament of 1950 was executed by the testatrix in the presence of the instrumental witnesses; (2) whether the acknowledgment clause was signed and the notarial seal affixed by the notary without the presence of the testatrix and the witnesses; and (3) if so, whether the codicil was thereby rendered invalid and ineffective. These questions are the same ones presented to us for resolution.

The contestant argues that the Court below erred in refusing credence to her witnesses Maria Paderogao and Vidal Allado, cook and driver, respectively, of the deceased Apolinaria Ledesma. Both testified that on March 30, 1950, they saw and heard Vicente Yap (one of the witnesses to the will) inform the deceased that he had brought the "testamento" and urge her to go to attorney Tabiana's office to sign it; that Da. Apolinaria manifested that she could not go, because she was not feeling well; and that upon Yap's insistence that the will had to be signed in the attorney's office and not elsewhere, the deceased took the paper and signed it in the presence of Yap alone, and returned it with the statement that no one would question it because the property involved was exclusively hers.

Our examination of the testimony on record discloses no grounds for reversing the trial Court's rejection of the improbable story of these witnesses. It is squarely contradicted by the concordant testimony of the instrumental witnesses, Vicente Yap, Atty. Ramon C. Tabiana, and his wife Gloria Montinola, who asserted under oath that the testament was executed by testatrix and witnesses in the presence of each other, at the house of the decedent on General Hughes St., Iloilo City, on March 30, 1950. And it is highly unlikely, and contrary to usage, that either Tabiana or Yap should have insisted that Da. Apolinaria, an infirm lady then over 80 years old, should leave her own house in order to execute her will, when all three witnesses could have easily repaired thither for the purpose. Moreover, the cross-examination has revealed fatal flaws in the testimony of Contestant's witnesses. Both claim to

have heard the word "testamento" for the first time when Yap used it; and yet they claimed ability to recall that word four years later, despite the fact that the term meant nothing to either. It is well known that what is to be remembered must first be rationally conceived and assimilated (II Moore on Facts, p. 884). Likewise, Maria Paderogao was positive that Yap brought the will, and that the deceased alone signed it, precisely on March 30, 1950; but she could remember no other date, nor give satisfactory explanation why that particular day stuck in her mind. Worse still, Allado claimed to have heard what allegedly transpired between Yap and Da. Apolinaria from the kitchen of the house, that was later proved to have been separated from the deceased's quarters, and standing at a much lower level, so that conversations in the main building could not be distinctly heard from the kitchen. Later, on redirect examination, Allado sought to cure his testimony by claiming that he was upstairs in a room where the servants used to eat when he heard Yap converse with his mistress; but this correction is unavailing, since it was plainly induced by two highly leading questions from contestants counsel that had been previously ruled out by the trial Court. Besides, the contradiction is hardly consonant with this witness' 18 years of service to the deceased.

Upon the other hand, the discrepancies in the testimony of the instrumental witnesses urged upon us by the contestant-appellant, concerning the presence or absence of Aurelio Montinola at the signing of the testament or of the codicil, and the identity of the person who inserted the date therein, are not material and are largely imaginary, since the witness Mrs. Tabiana confessed inability to remember all the details of the transaction. Neither are we impressed by the argument that the use of some Spanish terms in the codicil and testament (like *legado*, *paries iguales*, *plena propiedad*) is proof that its contents were not understood by the testatrix, it appearing in evidence that those terms are of common use even in the vernacular, and that the deceased was a woman of wide business interests.

The most important variation noted by the contestants concerns that signing of the certificate of acknowledgment (in Spanish) appended to the Codicil in Visayan, Exhibit E. Unlike the testament, this codicil was executed after the enactment of the new Civil Code, and, therefore, had to be acknowledged before a notary public (Art. 806). Now, the instrumental witnesses (who happen to be the same ones who attested the will of 1950) asserted that after the codicil had been signed by the testatrix and the witnesses at San Pablo Hospital, the same was signed and sealed by notary public Gimotea on the same occasion. On the other hand, Gimotea affirmed that he did not do so, but brought the codicil to his office, and signed and sealed it there. The variance does not necessarily imply conscious perversion of truth on the part of the witnesses, but appears rather due to a well-established phenomenon the tendency of the mind, in recalling past events, to substitute the usual and habitual for what differs slightly from it (II Moore on Facts, p. 878; *The Ellen McGovern*, 27 Fed. 868, 870).

At any rate, as observed by the Court below, whether or not the notary signed the certification of acknowledgment in the presence of the testatrix and the witnesses, does not affect the validity of the codicil. Unlike the Code of 1889 (Art. 699), the new Civil Code does not require that the signing of the testator, witnesses and notary should be accomplished in one single act. A comparison of Articles 805 and 806 of the new Civil Code reveals that while testator and witnesses must sign in the presence of each other, all that is thereafter required is that "every will must be acknowledged before a notary public by the testator and the witnesses" (Art. 806); i.e., that the latter should avow to the certifying officer the authenticity of their signatures and the voluntariness of their actions in executing the testamentary disposition. This was done in the case before us. The subsequent signing and sealing by the notary of his certification that the testament was duly acknowledged by the participants therein is no part of the acknowledgment itself nor of the testamentary act. Hence their separate execution out of the presence of the testatrix and her witnesses can not be said to violate the rule that testaments should be completed without interruption (*Andalis vs. Pulgueras*, 59 Phil. 643), or, as the Roman maxim puts it, "*uno eodem die ac tempore in eadem loco*", and no reversible error was committed by the Court in so holding. It is noteworthy that Article 806

of the new Civil Code does not contain words requiring that the testator and the witnesses should acknowledge the testament on the same day or occasion that it was executed.

The decision admitting the will to probate is affirmed, with costs against appellant.

Bengzon, Acting C.J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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