

SERAPIA DE GALA, PETITIONER AND APPELLANT, VS. APOLINARIO GONZALES AND SINFOROSO ONA, OPPONENTS AND APPELLANTS.

G.R. No. L-30289. March 26, 1929

Ponente: OSTRAND, J.

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OSTRAND, J.:

On November 23, 1920, Severina Gonzales executed a will in which Serapia de Gala, a niece of Severina, was designated executrix. The testatrix died in November, 1926, leaving no heirs by force of law, and on December 2, 1926, Serapia, through her counsel, presented the will for probate. Apolinario Gonzales, a nephew of the deceased, filed an opposition to the will on the ground that it had not been executed in conformity with the provisions of section 618 of the Code of Civil Procedure. On April 2, 1927, Serapia de Gala was appointed special administratrix of the estate of the deceased. She returned an inventory of the estate on March 31, 1927, and made several demands upon Sinforoso Ona, the surviving husband of the deceased, for the delivery to her of the property inventoried and of which he was in possession.

On September 20, 1928, the Court of First Instance ordered Sinforoso Ona to deliver to Serapia de Gala all the property left by the deceased. Instead of delivering the property as ordered, Sinforoso filed a motion asking that the appointment of Serapia de Gala as special administratrix be cancelled and that he, Sinforoso, be appointed in her stead. The motion was opposed both by Apolinario Gonzales and by Serapia de Gala, but on March 3, 1928, it was nevertheless granted, Serapia was removed, and Sinforoso was appointed special administrator in her place, principally on the ground that he had possession of the property in question and that his appointment would simplify the proceedings.

In the meantime and after various continuances and delays, the court below in an order dated January 20, 1928, declared the will valid and admitted it to probate. All of the parties appealed, Serapia de Gala from the order removing her from the office of special administratrix, and Apolinario Gonzales and Sinforoso Ona from the order probating the will.

Serapia's appeal requires but little discussion. The burden of the argument of her counsel is that a special administrator cannot be removed except for one or more of the causes stated in section 653 of the Code of Civil Procedure. But that section can only apply to executors and regular administrators, and the office of a special administrator is quite different from that of regular administrator. The appointment of a special administrator lies entirely in the sound discretion of the court; the function of such an administrator is only to collect and preserve the property of the deceased and to return an inventory thereof; he cannot be sued by a creditor and cannot pay any debts of the deceased. The fact that no appeal can be taken from the appointment of a special administrator indicates that both his appointment and his removal are purely discretionary, and we cannot find that the court below abused its discretion in the present case. In removing Serapia de Gala and appointing the present possessor of the property, pending the final determination of the validity of the will, the court probably prevented useless litigation.

The appellants Sinforoso Ona and Apolinario Gonzales argue that the will in question was not executed in the form prescribed by section 618 of the Code of Civil Procedure as amended by Act No. 2645. That section reads as follows:

"No will, except as provided in the preceding section, shall be valid to pass any estate, real or personal, nor charge or affect the same, unless it be written in the language or dialect known by the testator and signed by him, or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of each other. The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, on the left margin, and said pages shall be numbered correlatively in letters placed on the upper part of each sheet. The attestation shall state the number of sheets or pages used, upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of three witnesses, and the latter witnessed and signed the will and all pages thereof in the presence of the testator and of each other."

The principal points raised by the appeal are (1) that the person requested to sign the name of the testatrix signed only the latter's name and not her own; (2) that the attestation clause does not mention the placing of the thumb-mark of the testatrix in the will; and (3) that the fact that the will had been signed in the presence of the witnesses was not stated in the attestation clause but only in the last paragraph of the body of the will.

The first point can best be answered by quoting the language of this court in the case of the Estate of Maria Salva, G. R. No. 2688111:[1]

"An examination of the will in question discloses that it contains five pages. The name of the old woman, Maria Salva, was written on the left-hand margin of the first four pages and at the end of the will. About in the center of her name she placed her thumb-mark. The three witnesses likewise signed on the left-hand margin and at the end of the will.

"On these facts, the theory of the trial judge was that under the provisions of section 618 of the Code of Civil Procedure, as amended by Act No. 2645, it was essential to the validity of the will that the person writing the name of the maker of the will also sign. Under the old law prior to the amendment, it had been held by this court that where a testator is unable to write and his name is signed by another at his request, in his presence and in that of the subscribing witnesses thereto, it is unimportant, so far as the validity of the will is concerned, whether the person who writes the name of the testator signs his own or not. (Barut vs. Cabacungan [1912], 21 Phil., 461.) But his Honor, the trial judge emphasizes that the amendment introduced into the law the following sentence: 'The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, on the left margin, * * *.' This requirement, it is said, was not lived up to in this instance.

"There is, however, an entirely different view which can be taken of the situation. This is that the testatrix placed her thumb-mark on the will in the proper places. When, therefore, the law says that the will shall be 'signed' by the testator or testatrix,, the law is fulfilled not only by the customary written signature but by the testator or testatrix' thumb-mark. The construction put upon the word 'signed' by most courts is the original meaning of a signum or sign, rather than the derivative meaning of a sign manual or handwriting. A statute requiring a will to be 'signed' is satisfied if the signature is made by the testator's mark. (28 R. C. L., pp. 116, 117.)"

The opinion quoted is exactly in point. The testatrix' thumb-mark appears in the center of her name as written by Serapia de Gala on all of the pages of the will.

The second and third points raised by Sinforoso Ona and Apolinario Gonzales are sufficiently refuted by quoting

the last clause of the body of the will together with the attestation clause, both of which are written in the Tagalog dialect. These clauses read as follows:

"Sa katunayang ang kasulatang ito, na may anim na dahon, ay siyang naglalaman ng aking huling tagubilin, at sa hindi ko kaalamang lumagda ng aking pangalan, ipinamanhik ko sa aking pamankin na si Serapia de Gala na isulat ang aking pangalan at apellido, at sa tapat ay inilagda ko ang titik ng kanang daliri kong hinlalaki, sa wakas at sa bawat isa sa anim (6) na dahon ng kasulatang ito, at ito'y ginawa niya sa kautusan at sa harap ko at ng tatlong saksing nagpapatutuo sa huli ngayon ika dalawang po't tatlo ng Nobiembre ng 1920.

" (Sgd.) SEVERINA GONZALES

"Pinatutunayan namin na ang kasulatang ito na binubuo ng anim (6) na dahon na pinirmahan sa harap namin ni Serapia de Gala sa kahilingan ni Severina Gonzales sa wakas at sa mga gilid ng bawa't isa sa anim (6) na dahon at isinaysay na ang kasulatang ito ay siyang huling habilin o testamento ni Severina Gonzales, ay pinirmahan namin, bilang mga saksi sa wakas at sa gilid ng bawa't dahon sa harap at sa kahilingan ng tinurang testadora, at ang bawat isa sa amin ay pumirma sa harap ng lahat at bawat isa sa amin, ngayon ika dalawang po't tatlo ng noviembre ng taong 1920.

"(Sgd.) ELEUTERIO NATIVIDAD
JUAN SUMULONG
FRANCISCO NATIVIDAD"

The translation in English of the clauses quoted reads as follows:

"In virtue of this will, consisting of six pages, that contains my last wish, and because of the fact that I cannot sign my name, I request my niece Serapia de Gala to write my name, and above this I placed my right thumb-mark at the end of this will and to each of the six pages of this document, and this was done at my direction and in the presence of three attesting witnesses, this 23d of November, 1920.

" (Sgd.) SEVERINA GONZALES

"We certify that this document, which is composed of six (6) sheets and was signed in our presence by Serapia de Gala at the request of Severina Gonzales at the end and on the margins of each of the six (6) sheets and was declared to contain the last will and testament of Severina Gonzales, was signed by us as witnesses at the end and on the margins of each sheet in the presence and at the request of said testatrix, and each of us signed in the presence of all and each of us, this 23d day of November of the year 1920.

"(Sgd.) ELEUTERIO NATIVIDAD
JUAN SUMULONG
FRANCISCO NATIVIDAD"

As will be seen, it is not mentioned in the attestation clause that the testatrix signed by thumb-mark, but it does there appear that the signature was affixed in the presence of the witnesses, and the form of the signature is sufficiently described and explained in the last clause of the body of the will. It may be conceded that the attestation clause is not artistically drawn and that, standing alone, it does not quite meet the requirements of the statute, but taken in connection with the last clause of the body of the will, it is fairly clear and sufficiently carries out the legislative intent; it leaves no possible doubt as to the authenticity of the document.

The contention of the appellants Sinf oroso Ona and Apolinario Gonzales that the fact that the will had been signed in the presence of the witnesses was not stated in the attestation clause is without merit; the fact is expressly stated in that clause.

In our opinion, the will is valid, and the orders appealed from are hereby affirmed without costs. So ordered.

Johnson, Street, Malcolm, Johns, Romualdez, and Villa-Real, JJ., concur.

[1] Promulgated May 17, 1927, not reported.

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