

(With Resolution of Nov. 29, 1966)

G.R. No. L-22797. September 22, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

This is an appeal from two orders of the Court of First Instance of Rizal in Special Proceedings No. 2524 regarding the testacy of the deceased Maxima Santos Vda. de Blas.

On October 22, 1956, Rosalina Santos filed a petition with the Court of First Instance of Rizal for the probate of the last will allegedly executed on September 22, 1956 by the deceased Maxima Santos Vda. de Blas.[1] The nearest of kin of the deceased were her brothers and a sister, nephews and nieces. Rosalina Santos, petitioner-appellee herein, is one of said nieces. Among the legatees - or more accurately, devisees - mentioned in the will is Flora Blas de Buenaventura. She is not related by blood to the deceased.

Flora Blas de Buenaventura and Justo Garcia filed on November 28, 1956 an opposition to the probate of said will.

Among the grounds for the opposition of Flora Blas and Justo Garcia were that the will was not executed in accordance with law; that undue and improper pressure was exerted upon the testatrix Maxima Santos in the execution thereof; that the signature of Maxima was secured through fraud; and that at the time of the execution of the will Maxima was mentally incapable of making a will.[2]

After the probate court had received the evidence for both the petitioner and oppositors, but before the latter could close their evidence, Flora Blas on November 6, 1957 filed a manifestation that she is withdrawing her opposition to the probate of the will, quoted as follows:

"Oppositor FLORA BLAS DE BUENAVENTURA, assisted by her counsel, unto this Honorable Court respectfully manifests:

"1. That she is hereby withdrawing her opposition to the petition for the probate of the will of the deceased Maxima Santos Vda. de Blas;

"2. That being a legatee named in the will, to protect and preserve her rights and interests, she hereby makes of record that she is joining the proponent of said will for the legalization of the same."

Some circumstances leading to said withdrawal may be noted. Flora had to sell her house for P5,000 to pay for stenographic notes of this case. Rosalina Santos thereafter gave a party at the Manila Hotel, aimed at settling the case amicably. And there Atty. Jose T. de los Santos - appellee's lawyer - took Flora aside and told her that he learned she had sold her house, that it was a foolish thing to have done, and that for her sake and her children's, she should withdraw her opposition and receive her legacy, so that from its rent she could start a business.

The proceedings continued however as to the opposition of Justo Garcia.

On December 24, 1957, the court below issued an order allowing the probate of the will. After the order had

become final and executory, Flora Blas on February 27, 1958, filed a petition praying for the delivery to her of a fishpond as a specific devise in her favor under Item No. 3, Clause No. 6, of the will. To this petition, inspite of apparent understanding, Rosalina Santos filed an opposition predicated on the ground that said specific devise in favor of Flora was forfeited in favor of the other residuary heirs, pursuant to a provision of the will that should any of the heirs, devisees or legatees contest or oppose its probate, the latter shall lose his or her right to receive any inheritance or benefit under it, which shall be forfeited in favor of the other heirs, devisees and legatees.

The pertinent provisions of the will, translated into English from Tagalog, reads as follows:

"Fourteenth. - I request all my heirs, devisees and legatees to look after each other, love and help one another and accept with thanks what I have bequeathed to them, and treasure, love and cherish the same. Anyone of them who contests or opposes the probate of my will or the carrying out of its provisions shall lose any right to receive any inheritance or benefit under my will, and their inheritance or share shall pertain to the other heirs who have not opposed."[3]

This is known in Anglo-American jurisdiction as the "no-contest and forfeiture" clause of a will.

In its order of April 30, 1958, the court a quo sustained the theory that the "no-contest and forfeiture" clause of the will was valid and had the effect of depriving Flora of her devise in view of her previous opposition to its probate, which it held not justified under the circumstances. Accordingly, it denied the motion for delivery of the specific devise, declaring the same forfeited in favor of the other residuary heirs. Flora's motion for reconsideration, superseded by a subsequent amended motion to the same effect, was denied by the probate court in its order dated March 7, 1959.

From the foregoing two orders of the trial court, Flora Blas interposed an appeal to the Court of Appeals. Said Court, in its resolution of March 25, 1964, certified the appeal to Us as calling for determination of questions purely of law.

This appeal raises two issues: (1) Did Flora's actuations, under the facts and circumstances herein, amount to a violation of the "no-contest and forfeiture" clause of the will; and (2) Is the "no-contest and forfeiture" provision of the will valid?

Anent the second issue, the parties herein, relying mostly upon Spanish and Anglo-American authorities, advance conflicting theories. Petitioner-appellee argues that the "no-contest and forfeiture" clause is a valid, legal and efficacious testamentary condition. Against this position, however, the devisee-appellant maintains that such provision in a will is null and void because it is contrary to public policy.

It is, however, the first issue that We will now discuss. For this purpose, the point to determine initially is whether or not appellant's filing of her opposition was justified under the particular circumstances of the case; and then, whether or not a timely withdrawal of said opposition had precluded violation of the "no-contest and forfeiture clause".

The court a quo's conclusion is that "there was no justification for her to oppose or contest the probate of said will" because "from the evidence given by her and by her witnesses during the pendency of the probate of the will x x x, it appears that Flora Blas was aware of the true facts surrounding the execution of the will and of the mental state of mind of the said testatrix at the time of the execution of the will in question, and yet she has charged her benefactor, the late Maxima Santos, as not enjoying sound mind when the latter executed her will on September 22, 1956", and that "there is no proof to show that the said Flora Blas was in any manner related by blood to Maxima Santos Vda. de Blas so that her contest of the said will cannot benefit her."[4]

We disagree with the above conclusion of the lower court, which is not the inference borne out by the facts and

the evidence - both testimonial and documentary - adduced in the case.

Appellant knew about the existence of another will executed earlier in 1953 in which she stood to receive more - much more - than what is devised to her in the 1956 will.[5] Since 1953 up to the death of the testatrix, appellant did not fall out of the good graces of the deceased. Their relationship stayed as close as ever. She did not give any cause to alienate the deceased's affections. Why, then, the supposed change of heart?

She was addressed as Flora Buendia in the will,[6] yet she has been using the name Flora Blas as far as she could remember, apparently with the knowledge and consent of the deceased. This is supported by her school records from grade school up to first year pharmacy. Admittedly, it was the deceased who reared and spent for the education of the appellant, and therefore she must have known that the latter was using the family name Blas. If, indeed, the testatrix was not agreeable to such an arrangement, why did she not take steps to correct the same? We can only conclude that appellant's use of the family name Blas was with the acquiescence of the testatrix. Why should she change her mind after all the years and speak of appellant in her will as Flora Buendia instead of Flora Blas?

There was also the coincidence that the three attesting witnesses to the will, all brothers, are likewise the lawyers of the executrix (who will receive the biggest single share under the will) and compadres of the assistant executrix, while the notary public is also a compadre of one of the attesting brothers-lawyers.

Furthermore, the nurse who attended to the deceased on September 22, 1956 - the date when the will was supposedly typed and signed by the testatrix in her room at the Manila Doctors Hospital - told the appellant that there was no one inside the testatrix's room when she went to administer medications to the old woman at the precise time when the attesting witnesses and the notary public testified they were inside said room. The nurse admitted this likewise under oath (Tsn., June 10, 1957, p. 23).

But the most important single factor that should engender reasonable doubt as to the physical and mental capacity of a person to execute a will, was the condition of Maxima Blas as gleaned from the records of the case. She was an old woman more than 86 years old who suffered from various ailments like rheumatoid arthritis, catarrh of the eyes, jaundice, cirrhosis of the liver, anemia, edema of lower legs and fracture in the vertebrae. From August 1, 1956 to September 23, 1956 she received seven blood transfusions, as follows: one on August 1; two on September 22 (the alleged date of the execution of the will), with barely three hours intervening; one each on September 24, 25, 26 and 29, 1956. She was also given dextrose vinoclysis on September 22, because she could not take food through the mouth; and on September 23, 1956 she started to bleed by mouth, compelling her doctor to cancel her trip to the United States scheduled for September 25, 1956. Several documents executed by her before the alleged date of execution of the will, were no longer signed but merely thumbmarked by her,[7] whereas the will appeared to have been signed.

It is difficult for Us to imagine that one situated and equally faced with the above enumerated facts and circumstances as the appellant was, should keep her peace. She had her doubts, and to resolve them she had to conduct inquiries and investigations. Her findings all the more strengthened her belief that there was something untoward about the execution of the will. Thus, in her desire to know the truth and to protect her rights, she opposed the probate of the will.

After all, had the contest been continued and the will held invalid on any of the grounds provided by law for the disallowance of a will,[8] she would have contributed in no small measure to the cause of the truth which the courts are duty-bound to ascertain. The probate court would have been in a position to apply the proper legal provisions which are for the greater interests of the testatrix - since all of them are ordained to the idea that the truth of her last thoughts may be duly assured and guaranteed.

Above all, the factor that preponderates in favor of appellant is that, after realizing her mistake in contesting the will - a mistake committed in good faith because grounded on strong doubts - she withdrew her opposition and joined the appellee in the latter's petition for the probate of the will. She must not now be penalized for rectifying her error. After all, the intentions of the testatrix had been fulfilled, her will had been admitted and allowed probate within a reasonably short period, and the disposition of her property can now be effected.

It should be pointed out that, contrary to the translation accorded to Paragraph Fourteen of the will, the testatrix enjoins not a mere contest or opposition to its probate, but a contest or opposition to the probate of the will and the carrying out of its provisions. This is so because the questioned clause speaks of "pagpapatibay at pag-bibigay-bisa" instead of "pagpapatibay o pag-bibigay-bisa."^[9] This furnishes a significant index into the intention of the testatrix, namely, that she was more concerned in insuring the carrying out of her testamentary provisions than in precluding any contest or opposition to it. By the withdrawal of the contest which appellant brought in good faith, no prejudice has been done to the intention of the testatrix. The dispositions of her will can now be safely carried out.

The most that can be said, if at all, is that Flora Blas' actuations were also impelled by some desire to gain. But who among the heirs can assume a posture of innocence and cast the first stone? None of them can safely claim that he is not thus similarly motivated.

From the foregoing premises it cannot be said that Flora's actuations impaired the true intention of the testatrix in regard to the "no-contest and forfeiture" clause of the will. Flora's act of withdrawing her opposition before she had rested her case contributed to the speedy probate of the will. Since the withdrawal came before Flora had rested her case, it precluded the defeat of the probate upon the strength of Flora's evidence. Through said withdrawal, Flora conformed to the testatrix's wish that her dispositions of her properties under the will be carried out. It follows that, taken as a whole, Flora's actuations subserved rather than violated the testatrix's intention.

There is, therefore, no further need to discuss the second issue on the validity of a "no-contest and forfeiture" clause in this jurisdiction, since, at any rate, said clause was not violated in this case.

WHEREFORE, the appealed orders dated April 30, 1958 and March 7, 1959 are hereby reversed, and this case is remanded to the court a quo with the instruction that appellant's devise under the will be forthwith delivered to her. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Makalintal, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.
Regala, J., no part.

[1] She died on October 5, 1956, in Philadelphia, Pennsylvania, U.S.A., but was a resident of Malabon, Rizal, at the time of her death.

[2] Record on Appeal, pp. 6-9.

[3] The Tagalog original is as follows:

"Ika-labing-apat. - Aking itinatagubilin na ang lahat ng aking pinamanahan ay magtinginang mabuti, magmahalan at magdamayan sa isa't isa, at kanilang tanggapin may pasasalamat ang sa kanila ay aking ipinamamana, at ito ay kanilang pag-ingatan, mahalin at pagyamanin. Ang sinuman sa kanila na tumutol o sumalangsang sa pag-papatibay at pag-bibigay-bisa sa testamento kong ito ay mawawalan ng anumang karapatang tumanggap ng mana o anumang biyaya na aking ipinagkaloob sa testamentong ito, at ang kanilang mana o kaparti ay mauwi at

mapapagawi sa ibang mga pinamanahan ko na hindi nagsitutul."

[4] Order of April 30, 1958; Record on Appeal, pp. 44-45.

[5] This the executrix-appellee admits on page 174 of her brief wherein is stated that "the fishpond given to appellant in the revoked will of 1953 is bigger than that bequeathed to her in the revocatory will of 1956."

[6] Probated will dated September 22, 1956.

[7] Two "pagare" documents on September 10, 1956 in favor of Maria Gervasio Blas (Attached to record of case as Annexes A and B); a codicil on September 14, 1956 (Tsn, December 24, 1956, pp. 29-30); a letter to the Rehabilitation Finance Corporation on September 18, 1956 (Annex B to Motion for Reconsideration).

[8] Article 389, New Civil Code; Section 9, Rule 76 of the Rules of Court.

[9] Supra, p. 4.

RESOLUTION AMENDING DECISION

November 29, 1966

BENGZON, J.P., J.:

Flora Blas de Buenaventura, oppositor-appellant moved for reconsideration of this Court's decision herein rendered on September 22, 1966. Against this motion the petitioner-appellee and executrix, Rosalina Santos, filed an opposition. And appellant filed a reply thereto.

Appellant-movant contends, first, that she is entitled to and should be awarded, not only the devised fishpond, but all the fruits or rents of said property from the death of the testatrix on October 5, 1956 up to the time said property will be delivered to her. Appellant, it should be noted, did not expressly seek recovery of the fruits or rents in her petition for delivery of specific legacy (devise) filed below. She started to mention also the fruits or rents in her amended motion for reconsideration of the court a quo's denial of said petition. And, thereafter, she has raised the point in her assignment of error in the present appeal.

This notwithstanding, We believe that appellant should receive the fruits and rents of the property given to her in devise. The provisions of law regarding devised properties are emphatic in stating that a devise of a specific thing includes its fruits and income accruing after the testator's death, ordering that these shall be delivered with the thing devised:

"Art. 948. If the legacy or devise is of a specific and determinate thing pertaining to the testator, the legatee or devisee acquires the ownership thereof upon the death of the testator, as well as any growing fruits, or unborn offspring of animals, or uncollected income; but not the income which was due and unpaid before the latter's death.

"From the moment of the testator's death, the thing bequeathed shall be at the risk of the legatee or devise, who shall, therefore bear its loss or deterioration, and shall be benefited by its increase or improvement, without prejudice to the responsibility of the executor or administrator."

"Art 951. The thing bequeathed shall be delivered with all its accessions and accessories and in the condition in which it may be upon the death of the testator." (Civil Code)

Furthermore, since fruits or rents are accessions (Arts. 441, 442, Civil Code), strictly speaking, there was really no need to mention them in the petition or the decision. Article 1166 of the Civil Code applies: "The obligation to

give a determinate thing includes that of delivering all its accessions and accessories, even though they may not have been mentioned." To remove doubts on the matter, however, We here expressly state that appellant is also entitled the devised fishpond deliver to her, the fruits or rents of the devised fishpond accruing after the testatrix's death. The precise determination of the same, however, should be threshed out in the court below, before which appellee must render an accounting.

Appellee, in this regard, would bring up in this proceedings and at this very late stage, some underline matters: that allegedly the testatrix owned only $65.38\frac{23}{100}\%$ of the property devised, so that the fruits or rents pertaining to appellant should likewise be only $65.38\frac{23}{100}\%$. And in support of this, appellee refer to final decisions of this Court in two other cases, L-14070, "Maria Gervacio Blas, et al. vs.

Rosalina Santos" promulgated March 29, 1961, and L-19270, Manuel Geravacio Blas, et al. vs. Hon. Cecilia Muñoz-Palma et al." promulgated March 31, 1962. In said decisions, it is contended that the rulings are to the effect that the properties therein litigated belonged to Maxima Santos, the testatrix herein, only to the extent of $65.38\frac{23}{100}\%$, the rest being owned by her husband Simeon Blas, represented by the plaintiffs therein. The property involved here is allegedly one of the properties litigated therein. The foregoing cannot avail appellee herein. She is not the proper party to raise it, since she represents the testatrix and not Simeon Blas or his heirs. For her to do so would in effect be to assert an interest adverse to that of the testatrix, even when those to whom said alleged interest pertains— Simeon Blas and his heirs— do not advance it.

As to appellee's reiterated contention that appellant had violated the no-contest and forfeiture clause of the will, the same has already been sufficiently discussed and resolved in our decision. As therein stated, due to appellant's timely withdrawal of her opposition to the probate of the will, it was as if there had been no opposition by her at all, as far as the purpose underlying the afore-stated clause is concerned.

The next argument is on appellant's claim to interest upon the fruits or rents. The rule is that interest does not run, unless stipulated, where there is yet no delay (Arts. 1169, 2209, Civil Code). And in settlement proceedings, there is no delay on the part of the administratrix until after the court orders her to make delivery of the legacy or devise (Onpin vs. Rivera, 44 Phil. 808). In this case, the court a quo not having issued such an order, appellee has not incurred in delay and is thus not liable for interest.

Appellant-movant also prays for moral and exemplary damages and would rest this claim upon fraud allegedly committed on two different occasions: First, in the preparation of the will; and, second, during the supposed negotiations for the withdrawal of her opposition preparatory for the delivery of her devise.

As to the first, appellant would thereby be assailing the very basis of the right she is asserting as devisee, for if the will was not a voluntary act of the testatrix as she would contend, the devise in question would suffer the same defect. It should be remembered also that the will has already been admitted to probate, so that its due execution and authenticity are already deemed established for purposes of this proceeding.

As to the second alleged occasion of fraud, We have on record only the parties' allegations and denials, and the affidavit of the devisee-claimant. Fraud being a serious charge, it is difficult to see how the same can be sustained on so insufficient an evidence. And, moreover, this being a factual issue, We cannot consider the same, for this appeal is confined to questions purely of law. Appellant-movant's prayer for moral and exemplary damages, therefore, is hereby denied.

As to Attorney's fees, however, this Court, considering all the circumstances, believes it reasonable and equitable to award under Article 2208, par. 11, of the Civil Code, P5,000 in appellant's favor.

In view of the foregoing, the dispositive portion of the decision herein promulgated on September 22, 1966 is

hereby amended to read as follows:

"Wherefore, the appealed orders dated April 30, 1958 and March 7, 195 are hereby reversed and this case is remanded to the court a quo, with the instruction that appellant's specific devise under the will be forthwith delivered to her by appellee executrix, will all the fruits or rents thereof accruing from the death of the testatrix on October 5, 1956 until its delivery, and for this purpose said appellee executrix shall render an accounting to the court a quo. Lastly, attorney's fee of P5,000 is hereby awarded in appellant's favor against appellee. No costs. So ordered.

It is so ordered.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizaon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

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