

**IN RE: PETITION FOR THE PROBATE OF THE WILL OF THE
DECEASED LEONA SINGSON. MANUEL SINGSON, PETITIONER AND
APPELLEE, VS. EMILIA FLORENTINO, TRINIDAD FLORENTINO DE
PAZ, AND JOSEFI...**

G.R. No. L-4603. October 25, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Ilocos Sur admitting to probate the last will and testament of the late Leona Singson.

On January 13, 1948, Leona Singson died in Vigan Ilocos Sur, leaving a will. In said will the deceased instituted as heirs her brothers Evaristo, Dionisio and Manuel, her nieces Rosario F. de Donato, Emilia Florentino and Trinidad Florentino de Paz, her grandniece Consolacion Florentino, and some servants. She named her brothers Evaristo and Manuel as executors of the will. On February 2, 1948, Manuel Singson filed a petition for the probate of said will.

On March 6, 1948, Emilia Florentino, Trinidad Florentino de Paz and Josefina Florentino Vda. de Lim, daughters of a sister of the deceased, opposed the petition alleging among other grounds that the signatures appearing in the will are not the genuine signatures of the deceased, and that the will has not been executed in accordance with the formalities of the law.

After due trial, the court found that the will has been executed in accordance with law and admitted the same to probate. The oppositors appealed to the Court of Appeals, but the case was later certified to this court for the reason that it involves purely questions of law.

The first error assigned refers to the admission by the lower court of the deposition of Fidel Reyes, an instrumental witness, which was taken because he was then suffering from paralysis and was thus physically incapacitated to appear and testify in court. It is the claim of the oppositors that, under section 11, Rule 77 of the Rules, if the will is contested, all the subscribing witnesses present in the Philippines must be produced and examined, and if they are dead, absent or insane, this fact must be satisfactorily shown to the court. If a subscribing witness is present in the Philippines but outside the province where the will has been filed, his deposition must be taken. In this case Fidel Reyes was not outside of the province, in fact he was then living in the place where the case was pending trial. He, therefore, must appear in court and his deposition cannot be taken. And so they contend that the lower court erred in admitting his deposition instead of taking his testimony.

It should be noted that one of the three instrumental witnesses of the will, namely, Bonifacio Brillantes, was already dead when the case came up for trial and the only witnesses then available were Victoriano Lazo and Fidel Reyes who was then unable to appear because of his physical ailment. And when this matter was brought to the knowledge of the court, the latter manifested its desire to go to the house of the ailing witness for the taking of

his testimony, but the move was prevented because of the conformity of counsel for the oppositors to the taking of his deposition. And because of this conformity, the deposition was taken and on that occasion opposing counsel was present and actually took part in the taking of the deposition. In the face of these facts, we opine that, while the taking of the deposition was not made in strict compliance with the rule (section 11, Rule 77), the deficiency, if any, has been cured by the waiver evinced by counsel for the oppositors which prevented the court from constituting itself in the residence of the witness.

We believe, however, that the deposition may also be justified by interpreting section 11, Rule 77, in connection with Rule 18, section 4 (c), of the Rules, relative to the taking of the deposition of a witness in ordinary cases when he is unable to testify because of sickness. Interpreting and harmonizing together these two provisions we may draw the conclusion that even if an instrumental witness is within the seat of the court but is unable to appear because of sickness, as in this case, his deposition may still be taken, for a different interpretation would be senseless and impractical and would defeat the very purpose which said Rule 77 intends to serve.

Another point raised by oppositors refers to the alleged failure of the attestation clause to state the number of the sheets or pages in which the will is written which, it is claimed, is fatal because it is contrary to the express requirement of the law.

The law referred to is article 618 of the Code of Civil Procedure, as amended by Act No. 2645, which requires that the attestation clause shall state the number of pages or sheets upon which the will is written, which requirement has been held to be mandatory as an effective safeguard against the possibility of interpolation or omission of some of the pages of the will to the prejudice of the heirs to whom the property is intended to be bequeathed (In re will of Andrada, 42 Phil., 180; Uy Coque vs. Navas L. Sioca, 43 Phil, 405; Gumban vs. Gorecho, 50 Phil., 30; Quinto vs. Morata, 54 Phil., 481; Echavarria vs. Sarmiento, 66 Phil., 611). The ratio decidendi of these cases seems to be that the attestation clause must contain a statement of the number of sheets or pages composing the will and that if this is missing or is omitted, it will have the effect of invalidating the will if the deficiency cannot be supplied, not by evidence aliunde, but by a consideration or examination of the will itself. But here the situation is different. While the attestation clause does not state the number of sheets or pages upon which the will is written, however, the last part of the body of the will contains a statement that it is composed of eight pages, which circumstance in our opinion takes this case out of the rigid rule of construction and places it within the realm of similar cases where a broad and more liberal view has been adopted to prevent the will of the testator from being defeated by purely technical considerations.

One of such cases is *De Gala vs. Gonzales and Ona*, 53 Phil., 104. Here one of the objections raised was that, the attestation clause does not state that the will had been signed in the presence of the witnesses although this fact appears in the last paragraph of the body of the will, and the Court, in overruling the objection, said that "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".

Another case that may be cited is *Mendoza vs. Pilapil* (72 Phil., 546). In this case, the objection was that the attestation clause does not state the number of pages upon which the will was written, and yet the court held that the law has been substantially complied with inasmuch as in the body of the will and on the same page wherein the attestation clause appears written it is expressly stated that that will contains three pages each of which was numbered in letters and in figures. Said the court:

"El proposito de la ley al establecer las formalidades que se requieren en un testamento, es indudablemente asegurar y garantizar su autenticidad contra la mala fe y el fraude, para evitar que aquellos Que no tienen derecho a suceder al testador, le suceden y salgan beneficiados con la legalization del mismo. Se ha cumplido

dicho proposito en el caso de que se viene hablando porque, en el mismo cuerpo del testamento y en la misma pagina donde aparece la clausula de atestiguamiento, o sea la tercera, se expresa que el testamento consta de tres paginas y porque cada una de las dos primeras lleva en parte la nota en letras, y en parte la nota en guarismos, de que son respectivamente la primera y segunda paginas del mismo. Estos hechos excluyen evidentemente todo temor, toda sospecha, o todo asomo de duda de que se haya sustituido alguna de sus paginas con otra." (Mendoza vs. Pilapil, 72 Phil., 546.)

Considering the form in which the will in question is written in the light of the liberal ruling above adverted to, the conclusion is inescapable that the will has been drafted in substantial compliance with the law. This opinion is bolstered up when we examine the will itself which shows on its face that it is really and actually composed of eight pages duly signed by the testatrix and her instrumental witnesses.

The remaining question to be determined is: does the attestation clause state that the testatrix signed each and every page of the will in the presence of the three instrumental witnesses as required by law?

The disputed attestation clause reads as follows:

"Nosotros los testigos, conforme al nio de Da. Leona Singson, en este testamento, despues de anunciarnos que este es su testamento donde hizo sus ordenes sobre su verdadera y ultima voluntad, firmo e imprimis su marca digital en presencia de todos nosotros; y nosotros firmamos tambien en presencia de ella y delante de cada uno de nosotros al pie del citado testamento y en el margen izquierdo de sus otras paginas. Y hemos observado que Da. Leona Singson estaba en su sano juicio, pensamiento y uso de sus sentidos. (Exh. A-1)."

A perusal of the above attestation clause would at first glance give the impression that the testatrix merely signed or stamped her thumbmark on the will in the presence of the witnesses, without stating the place where her signature or thumbmark had been affixed, which impression is caused by the fact that right after the sentence *firmo e imprimis su marca digital en presencia de todos nosotros*, there appears a semicolon; but if this semicolon is disregarded, we would at once see that the testatrix signed or affixed her thumbmark not only at the bottom of the will but also on the left margin of each and every page thereon, considering the concluding part of the sentence concerning the signing of the will. That semicolon undoubtedly has been placed there by mistake or through inadvertence, as may be deduced from the use of the word *tambien* made by the witnesses in the sentence immediately following, which conveys the idea of oneness in action both on the part of the testatrix and the witnesses. Thus considered and interpreted, the attestation clause complies substantially with the law.

"The appellants earnestly contend that the attestation clause fails to show that the witnesses signed the will and each and every page thereof because it simply says '*que nosotros los testigos hemos tambien firmado en presencia de la testadora y en la presencia del uno al otro*' (that we the witnesses also signed in the presence of the testatrix and of each other).

"In answer to this contention it may be said that this portion of the attestation clause must be read in connection with the portion preceding it, which states that the testatrix signed the will and on all the margins thereof in the presence of the witnesses; especially, because the word also used therein establishes a very close connection between said two portions of the attestation clause. This word also should, therefore, be given in its full meaning which, in the instant case, is that the witnesses signed the will in the same manner as the testatrix did. The language of the whole attestation clause, taken together, clearly shows that the witnesses signed the will and on all the margins thereof in the presence of the testatrix and of each other." (Key vs. Cartagena, 56 Phil., pp. 282, 284.)

In view of the foregoing, we find that the lower court did not commit any of the errors assigned by appellants and, therefore, we affirm the decision appealed from, with costs.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, and Labrador, JJ., concur.

Jugo, J., concurs in the result.

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