

ROSARIO FELICIANO VDA. DE RAMOS, MIGUEL DANILA, RAYMUNDO A. DANILA, CONSOLACION SANTOS, MIGUEL G. DANILA, AMOR DANILA, MOISES MARTINEZ, MIGUELA GAVINO, MELITON NISTA, PRIMITIVA ...

G.R. No. L-40804. January 31, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

Appeal by way of certiorari of the decision[1] of the Court of Appeals in CA-G.R. No. 49915-R, entitled "Adelaida Nista, Petitioner-Appellee, versus Buenaventura Guerra, et al., Oppositors-Appellants," denying and disallowing the probate of the second last will and codicil of the late Eugenia Danila previously declared probated by the Court of First Instance of Laguna, Branch III at San Pablo City.

The facts are stated in the appealed decision, the pertinent portions of which state:

"It appears that on June 2, 1966, Adelaida Nista, who claimed to be one of the instituted heirs, filed a petition for the probate of the alleged will and testament dated March 9, 1963 (Exhibit H) and codicil dated April 18, 1963 (Exhibit L) of the late Eugenia Danila who died on May 21, 1966. The petitioner prayed that after due notice and proper hearing, the alleged will and codicil be probated and allowed and that she or any other person be appointed as administrator of the testatrix's estate. She also prayed that in case no opposition thereto be interposed and the value of the estate be less than P10,000.00, said estate be summarily settled in accordance with the Rules.

"Buenaventura and Marcelina (Martina) both surnamed Guerra, filed an opposition on July 18, 1966 and an amended opposition on August 19, 1967, to the petition alleging among others that they are the legally adopted son and daughter of the late spouses Florentino Guerra and Eugenia Danila (Exhibit 1); that the purported will and codicil subject of the petition (Exhibits H and L) were procured through fraud and undue influence; that the formalities required by law for the execution of a will and codicil have not been complied with as the same were not properly attested to or executed and not expressing the free will and deed of the purported testatrix; that the late Eugenia Danila had already executed on November 5, 1951 her last will and testament (Exhibit 3) which was duly probated (Exhibit 4) and not revoked or annulled during the lifetime of the testatrix, and that the petitioner is not competent and qualified to act as administrator of the estate.

"On November 4, 1968, the petitioner and the oppositors, assisted by their respective counsels, entered into a Compromise Agreement with the following terms and conditions, thus:

'1. That oppositors, Buenaventura Guerra and Marcelina (Martina) Guerra are the legally adopted son and daughter, respectively, of the deceased spouses, Florentino Guerra and Eugenia Danila;

'2. That Florentino Guerra pre-deceased Eugenia Danila; that Eugenia Danila died on May 21, 1966, at San Pablo City, but during her lifetime, she had already sold, donated or disposed of all her properties, some of which to Marcelina (Martina) Guerra, as indicated and confirmed in paragraph 13 of the Complaint in Civil Case No. SP-620, entitled Marcelina Guerra versus Adelaida Nista, et al., and which we hereby likewise admit and confirm;

'3. That, however, with respect to the parcel of riceland covered by TCT No. T-5559 of the Register of Deeds of San Pablo City, which oppositors believe to be the estate left and undisposed of at the time of the death of the owner thereof, Eugenia Danila, it now appears that there is a Deed of Donation covering the same together with another parcel of coconut land situated at Barrio San Ignacio, San Pablo City, with an area of 19,905 sq. m., and covered by Tax Declaration No. 31286, executed by the late Eugenia Danila in favor of Adelaida Nista, as per Doc. No. 406, Page No. 83, Series of 1966 under Notarial Register III of Notary Public Pio Aquino of San Pablo City;

'4. That inasmuch as the above-mentioned parcel of coconut land has been earlier donated inter vivos and validly conveyed on November 15, 1965 by the late Eugenia Danila to Marcelina (Martina) Guerra as shown by Doc. No. 237, Page No. 49, Series of 1965, under Notarial Register XV of Notary Public Atty. Romulo S. Brion of San Pablo City, the inclusion of said parcel in the subsequent donation to Adelaida Nista is admittedly considered a mistake and of no force and effect and will in no way prejudice the ownership and right of Marcelina (Martina) Guerra over the said parcel; that as a matter of fact, whatever rights and interests Adelaida Nista has or may still have thereon are already considered waived and renounced in favor of Marcelina (Martina) Guerra;

'5. That in view of the fact that the riceland mentioned in paragraph 3 of the foregoing appears to have already been disposed of by Eugenia Danila in favor of petitioner Adelaida Nista, which the parties hereto do not now contest, there is therefore no more estate left by the said deceased Eugenia Danila, to be disposed of by the will sought to be probated in this proceedings; that consequently, and for the sake of peace and harmony among the relations and kins and adopted children of the deceased Eugenia Danila, and with the further aim of settling differences among themselves, the will and codicil of Eugenia Danila submitted to this Honorable Court by the petitioner for probate, are considered abrogated and set aside;

'6. That as the late Eugenia Danila has incurred debts to private persons during her lifetime, which in addition to the burial and incidental expenses amounts to SIX THOUSAND EIGHT HUNDRED PESOS (P6,800.00), her adopted daughter, Marcelina (Martina) Guerra is now determined to settle the same, but herein petitioner Adelaida Nista hereby agrees to contribute to Marcelina (Martina) Guerra for the settlement of the said indebtedness in the amount of THREE THOUSAND FOUR HUNDRED PESOS (P3,400.00), Philippine Currency, the same to be delivered by Adelaida Nista to Marcelina (Martina) Guerra at the latter's residence at Rizal Avenue, San Pablo City, on or about February 28, 1969;

'7. That should there be any other property of the deceased Eugenia Danila, that may later on be discovered to

be undisposed of as yet by Eugenia Danila during her lifetime, the same should be considered as exclusive property of her adopted children and heirs, Buenaventura Guerra and Marcelina (Martina) Guerra, and any right of the petitioner and signatories hereto, with respect to said property or properties, shall be deemed waived and renounced in favor of said Buenaventura and Marcelina (Martina) Guerra; and

'8. That with the exception of the foregoing agreement, parties hereto waive and renounce further claim against each other, and the above-entitled case.' (Exh. 6)

"This Agreement was approved by the lower court in a judgment reading as follows:

'WHEREFORE, said compromise agreement, being not contrary to public policy, law and moral, the same is hereby approved and judgment is hereby rendered in accordance with the terms and conditions set forth in the above-quoted compromise agreement, which is hereby made an integral part of the dispositive portion of this decision, and the parties are strictly enjoined to comply with the same.' (Exh. 7)

"On November 16, 1968, Rosario de Ramos, Miguel Danila, Felix Danila, Miguel Gavino, Amor Danila, Consolacion Santos and Miguel Danila, son of the late Fortunato Danila, filed a motion for leave to intervene as co-petitioners alleging that being instituted heirs or devisees, they have rights and interests to protect in the estate of the late Eugenia Danila. They also filed a reply partly admitting and denying the material allegations in the opposition to the petition and alleging, among other things, that oppositors repudiated their institution as heirs and executors when they failed to cause the recording in the Register of Deeds of San Pablo City the will and testament dated November 5, 1951 (Exhibit 3) in accordance with the Rules and committed acts of ingratitude when they abandoned the testatrix and denied her support after they managed, through fraud and undue influence, to secure the schedule of partition dated January 15, 1962. The Intervenors prayed for the probate and/or allowance of the will and codicil (Exhibits H and L), respectively) and the appointment of any of them as administrator of said estate.

"On December 6, 1968, the intervenors also filed a motion for new trial and/or re-hearing and/or relief from judgment and to set aside the judgment based on compromise dated November 5, 1968. The oppositors interposed an opposition to the motion to which the intervenors filed their reply.

"The lower court resolved the motions in an order the dispositive portion reading, thus:

'FOR ALL THE FOREGOING, the Court hereby makes the following dispositions –

(1) Movants Rosario de Ramos, Miguel G. Danila, Miguela Gavino, Amor Danila, Consolacion Santos, Miguel A. Danila and Raymundo Danila are allowed and admitted to intervene to this proceeding as Party Petitioners; and likewise admitted in their reply to the amended opposition of November 11, 1968;

(2) The compromise agreement dated October 15, 1968 by and between Petitioner Adelaida Nista and oppositors Buenaventura Guerra and Marcelina Guerra (Martina), is disapproved, except as regards their respective lawful rights in the subject estate; and, accordingly, the judgment on compromise rendered by this Court on November 5, 1968 is reconsidered and set aside; and

(3) The original Petition and amended opposition to probate of the alleged will and codicil stand.

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"The lower court also denied the motion for the appointment of a special administrator filed by the intervenors.

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"A motion for reconsideration of the foregoing order was filed by the intervenors co-petitioners but the motion was denied.

XXX XXX XXX

"On February 9, 1971, a motion for the substitution of Irene, Crispina, Cristino, Casiano, Eriberto, Felisa, Guerra in place of their father, the oppositor Buenaventura Guerra who died on January 23, 1971, was filed and granted by the lower court."

After trial on the merits, the lower court rendered its decision dated July 6, 1971 allowing the probate of the will. In that decision, although two of the attesting witnesses, Odon Sarmiento and Rosendo Paz, testified that they did not see the testatrix Eugenia Danila sign the will but that the same was already signed by her when they affixed their own signatures thereon, the trial court gave more weight and merit to the "straight-forward and candid" testimony of Atty. Ricardo Barcenas, the Notary Public who assisted in the execution of the will, affirming that the testatrix and the three (3) instrumental witnesses signed the will in the presence of each other, and that with respect to the codicil, the same manner was likewise observed as corroborated to by the testimony of another lawyer, Atty. Manuel Alvero who was also present during the execution of the codicil.

The dispositive portion of the decision reads:

"WHEREFORE, it appearing that the late Eugenia Danila had testamentary capacity when she executed the will, Exh. H., and the codicil, Exh. L, and that said will and codicil were duly signed by her and the three attesting witnesses and acknowledged before a Notary Public in accordance with the formalities prescribed by law, the said will and codicil are hereby declared probated. No evidence having been adduced regarding the qualification and fitness of any of the intervenors-co-petitioners to act as executors, the appointment of

executors of the will and codicil is held pending until after due hearing on the matter.

SO ORDERED."

Oppositors Marcelina Guerra and the heirs of Buenaventura Guerra appealed the foregoing decision to the Court of Appeals. The latter court, in its decision dated May 12, 1975 ruled that the lower court acted correctly in setting aside its judgment approving the Compromise Agreement and in allowing the intervenors-co-petitioners to participate in the instant probate proceedings; however, it disallowed the probate of the will on the ground that the evidence failed to establish that the testatrix Eugenia Danila signed her will in the presence of the instrumental witnesses in accordance with Article 805 of the Civil Code, as testified to by the two surviving instrumental witnesses.

In this present appeal, petitioners vigorously insists on constitutional grounds the nullity of the decision of respondent court but We deem it needless to consider the same as it is not necessary in resolving this appeal on the following assigned errors:

(A) THE COURT OF APPEALS ERRED GRAVELY IN NOT HAVING GIVEN WEIGHT TO THE ATTESTATION CLAUSES IN THE TESTAMENT AND CODICIL, ANNEX B (PETITION) AND INSTEAD IT GAVE CREDENCE TO THE TESTIMONIES OF BIASED WITNESSES OVER THEIR OWN ATTESTATION CLAUSES AND THE TESTIMONIAL EVIDENCE AND NOTARIAL ACKNOWLEDGMENT OF THE NOTARY PUBLIC; AND

(B) THAT THE COURT OF APPEALS ERRED IN HAVING DENIED THE PROBATE OF THE WILL AND CODICIL DESPITE CONVINCING EVIDENCE FOR THEIR ALLOWANCE.

We reverse the judgment of the Court of Appeals and restore the decision of the trial court allowing probate of the will and codicil in question.

The main point in controversy here is whether or not the last testament and its accompanying codicil were executed in accordance with the formalities of the law, considering the complicated circumstances that two of the attesting witnesses testified against their due execution while other non-subscribing witnesses testified to the contrary.

Petitioners argue that the attestation clauses of the will and codicil which were signed by the instrumental witnesses are admissions of due execution of the deeds, thus, preventing the said witnesses from prevaricating later on by testifying against due execution. Petitioners further maintain that it is error for respondent court to give credence to the testimony of the biased witnesses as against their own attestation to the fact of due execution and over the testimonial account of the Notary Public who was also present during the execution and before whom, right after, the deeds were acknowledged.

Private respondents, on the other hand, reiterate in their contention the declaration of the two surviving witnesses, Odon Sarmiento and Rosendo Paz, that the will was not signed by the testatrix before their presence, which is strengthened by two photographic evidence showing only the two witnesses in the act of signing, there being no picture of the same occasion showing the testatrix signing the will. Respondent court holds the view that where there was an opportunity to take pictures, it is not understandable why pictures were taken of the witnesses and not of the testatrix. It concludes that the absence of the latter's picture to complete the evidence belies the

testimony of Atty. Barcenas that the testatrix and the witnesses did sign the will and the codicil in the presence of each other.

The oppositors' argument is untenable. There is ample and satisfactory evidence to convince Us that the will and codicil were executed in accordance with the formalities required by law. It appears positively and convincingly that the documents were prepared by a lawyer, Atty. Manuel Alvero. The execution of the same was evidently supervised by his associate, Atty. Ricardo Barcenas and before whom the deeds were also acknowledged. The solemnity surrounding the execution of a will is attended by some intricacies not usually within the comprehension of an ordinary layman. The object is to close the door against bad faith and fraud, to avoid substitution of the will and testament, and to guarantee their truth and authenticity.[2] If there should be any stress on the participation of lawyers in the execution of a will, other than an interested party, it cannot be less than the exercise of their primary duty as members of the Bar to uphold the lofty purpose of the law. There is no showing that the above-named lawyers had been remiss in their sworn duty. Consequently, respondent court failed to consider the presumption of regularity in the execution of the questioned documents. There were no incidents brought to the attention of the trial court to arouse suspicion of anomaly. While the opposition alleged fraud and undue influence, no evidence was presented to prove their occurrence. There is no question that each and every page of the will and codicil carry the authentic signatures of Eugenia Danila and the three (3) attesting witnesses. Similarly, the attestation clauses, far from being deficient, were properly signed by the attesting witnesses. Neither is it disputed that these witnesses took turns in signing the will and codicil in the presence of each other and the testatrix. Both instruments were duly acknowledged before a Notary Public who was all the time present during the execution.

The presumption of regularity can of course be overcome by clear and convincing evidence to the contrary, but not easily by the mere expediency of the negative testimony of Odon Sarmiento and Rosendo Paz that they did not see the testatrix sign the will. A negative testimony does not enjoy equal standing with a positive assertion, and faced with the convincing appearance of the will, such negative statement must be examined with extra care. For in this regard.

"It has also been held that the condition and physical appearance of a questioned document constitute a valuable factor which, if correctly evaluated in the light of surrounding circumstances, may help in determining whether it is genuine or forged. Subscribing witnesses may forget or exaggerate what they really know, saw, heard or did; they may be biased and, therefore, tell only half-truths to mislead the court or favor one party to the prejudice of the others. This cannot be said of the condition and physical appearance of the questioned document. Both, albeit silent, will reveal the naked truth, hiding nothing, forgetting nothing, and exaggerating nothing."[3]

Unlike other deeds, ordinary wills by necessity of law must contain an attestation clause which, significantly, is a separate memorandum or record of the facts surrounding the conduct of execution. Once signed by the attesting witnesses, it affirms that compliance with the indispensable legal formalities had been observed. This Court had previously held that the attestation clause basically contradicts the pretense of undue execution which later on may be made by the attesting witnesses.[4] In the attestation clause, the witnesses do not merely attest to the signature of the testatrix but also to the proper execution of the will, and their signatures following that of the testatrix show that they have in fact attested not only to the genuineness of the testatrix's signature but also to the due execution of the will as embodied in the attestation clause.[5] By signing the will, the witnesses impliedly certified to the truth of the facts which admit to probate, including the sufficiency of execution, the capacity of the testatrix, the absence of undue influence, and the like.[6]

In this jurisdiction, all the attesting witnesses to a will, if available, must be called to prove the will. Under this circumstance, they become "forced witnesses" and their declaration derogatory to the probate of the will need not bind the proponent, hence, the latter may present other proof of due execution even if contrary to the testimony of some or all of the attesting witnesses.[7] As a rule, if any or all of the subscribing witnesses testify against the due execution of the will, or do not remember having attested to it, or are otherwise of doubtful credibility, the will may, nevertheless, be allowed if the court is satisfied from the testimony of other witnesses and from all the evidence presented that the will was executed and attested in the manner required by law.[8] Accordingly, although the subscribing witnesses to a contested will are the best witnesses in connection with its due execution, to deserve full credit, their testimony must be reasonable, and unbiased; if otherwise, it may be overcome by any competent evidence, direct or circumstantial.[9]

In the case at bar, the records bear a disparity in the quality of the testimonies of Odon Sarmiento and Rosendo Paz on one hand, and the Notary Public, Atty. Ricardo A. Barcenas, on the other. The testimony of Odon Sarmiento was contradicted by his own admission. Though his admission to the effect that "when Eugenia Danila signed the testament (he) and the two other attesting witnesses Rosendo Paz and Calixto Azusada were present" (t.s.n., Feb. 12, 1970, p. 115) was made extra-judicially, it was not squarely refuted when inquired upon during the trial.

With respect to the testimony of Rosendo Paz, it had been refuted by the declaration of Atty. Ricardo A. Barcenas. The records show that this attesting witness was fetched by Felix Danila from his place of work in order to act as witness to a will. Rosendo Paz did not know what the document he signed was all about. Although he performed his function as an attesting witness, his participation was rather passive. We do not expect, therefore, that his testimony, "half-hearted" as that of Odon Sarmiento, be as candid and complete as one proceeding from a keen mind fully attentive to the details of the execution of the deeds. Quite differently, Atty. Ricardo A. Barcenas, more than a direct witness himself, was purposely there to oversee the accomplishment of the will and codicil. His testimony is an account of what he actually heard and saw during the conduct of his profession. There is no evidence to show that this lawyer was motivated by any material interest to take sides or that his statement is truth perverted.

It has been regarded that the function of the Notary Public is, among others, to guard against any illegal or immoral arrangements in the execution of a will.[10] In the absence of any showing of self-interest that might possibly have warped his judgment and twisted his declaration, the intervention of a Notary Public, in his professional capacity, in the execution of a will deserves grave consideration.[11] An appraisal of a lawyer's participation has been succinctly stated by the Court in *Fernandez v. Tantoco*, *supra*, this wise:

"In weighing the testimony of the attesting witnesses to a will, the statements of a competent attorney, who has been charged with the responsibility of seeing to the proper execution of the instrument, is entitled to greater weight than the testimony of a person casually called to participate in the act, supposing of course that no motive is revealed that should induce the attorney to prevaricate. The reason is that the mind of the attorney being conversant of the instrument, is more likely to become fixed on details, and he is more likely than other persons to retain those incidents in his memory."

One final point, the absence of a photograph of the testatrix Eugenia Danila in the act of signing her will. The fact that the only pictures available are those which show the witnesses signing the will in the presence of the testatrix and of each other does not belie the probability that the testatrix also signed the will before the presence of the witnesses. We must stress that the pictures are worthy only of what they show and prove and not of what they do not speak of including the events they failed to capture. The probate of a will is a special proceeding not imbued

with adversary character, wherein courts should relax the rules on evidence "to the end that nothing less than the best evidence of which the matter is susceptible" should be presented to the court before a purported will may be probated or denied probate.[12]

We find here that the failure to imprint in photographs all the stages in the execution of the will does not serve any persuasive effect nor have any evidentiary value to prove that one vital and indispensable requisite has not been acted on. Much less can it defeat, by any ordinary or special reason, the presentation of other competent evidence intended to confirm a fact otherwise existent but not confirmed by the photographic evidence. The probate court having satisfied itself that the will and codicil were executed in accordance with the formalities required by law, and there being no indication of abuse of discretion on its part, We find no error committed or any exceptional circumstance warranting the sub-sequent reversal of its decision allowing the probate of the deeds in question.

WHEREFORE, the decision of respondent Court of Appeals is hereby reversed in so far as it disallowed the probate of the will and codicil. With costs against respondents.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Fernandez, JJ., concur.

[1] Fifth Division, Justice Mama D. Busran, ponente, with Justice Andres Reyes and Justice Godofredo P. Ramos, concurring.

[2] Cf. *Abangan v. Abangan*, 40 Phil. 478; *Corpuz v. Yangco*, 73 Phil. 527 (1941).

[3] *Junquera v. Borromeo*, L-18498, March 30, 1967, 19 SCRA p. 662, 664.

[4] Cf. *Barrera v. Tampoco*, 94 Phil. 346 (1954).

[5] Cf. *Cuevas v. Achacoso*, 88 Phil. 740 (1951); *Gonzales v. Carungcong*, 90 Phil. 444 (1951).

[6] Cf. *Garcia v. Garcia de Bartolome*, 63 Phil. 419 (1936).

[7] Cf. *Fernandez v. Tantoco*, 49 Phil. 380 (1926).

[8] Section 11, Rule 76, Rules of Court; *Tolentino v. Francisco*, 57 Phil. 742; *Fernandez v. Tantoco*, supra; *Cuyugan v. Baron*, 69 Phil. 639; *Pascual v. De la Cruz*, L-24819, May 30, 1969, 28 SCRA 421.

[9] *Junquera v. Borromeo*, supra, 657.

[10] *Cruz v. Villasor*, L-32213, November 26, 1973, 54 SCRA 31.

[11] *Garcia v. Garcia de Bartolome*, supra.

[12] Cf. *Vda. de Prescilla v. Narciso*, L-27200, August 18, 1972, 46 SCRA 538.

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