

**IN THE MATTER OF THE PETITION FOR THE ALLOWANCE OF THE WILL OF GREGORIO GATCHALIAN, DECEASED. PEDRO REYES GARCIA, PETITIONER AND APPELLANT, VS. FELIPE GATCHALIAN, AURORA G. CAMI...**

*G.R. No. L-20357. November 25, 1967*

Ponente: DIZON, J.

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**DIZON, J.:**

This is an appeal taken by Pedro Reyes Garcia from the decision of the Court of First Instance of Rizal in Special Proceedings No. 2623 denying the allowance of the will of the late Gregorio Gatchalian, on the ground that the attesting witnesses did not acknowledge it before a notary public as required by law.

On March 15, 1967, Gregorio Gatchalian, a widower of 71 years of age, died in the municipality of Pasig, Province of Rizal, leaving no forced heirs. On April 2 of the same year, appellant filed a petition with the above-named court for the probate of said alleged will (Exhibit "C") wherein he was instituted as sole heir. Felipe Gatchalian, Aurora G. Camins, Angeles G. Cosca, Federico G. Tubog, Virginia G. Talanay and Angeles C. Talanay, appellees herein, opposed the petition on the ground, among others, that the will was procured by fraud; that the deceased did not intend the instrument signed by him to be as his will; and that the deceased was physically and mentally incapable of making a will at the time of the alleged execution of said will.

After due trial, the court rendered the appealed decision finding the document Exhibit "C" to be the authentic last will of the deceased but disallowing it for failure to comply with the mandatory requirement of Article 806 of the New Civil Code — that the will must be acknowledged before a notary public by the testator and the witnesses.

An examination of the document (Exhibit "C") shows that the same was acknowledged before a notary public by the testator but not by the instrumental witnesses.

Article 806 of the New Civil Code reads as follows:

"Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court."

We have held heretofore that compliance with the requirement contained in the above legal provision to the effect that a will must be acknowledged before a notary public by the testator and also by the witnesses is indispensable for its validity (In re: Testate Estate of Alberto, G.R. No. L-11948, April 29, 1959). As the document under consideration does not comply with this requirement, it is obvious that the same may not be probated.

Wherefore, the decision appealed from is affirmed, with costs.

Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

Judgment affirmed.

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