

**PEDRO CABIGTING ET AL., PLAINTIFFS AND APPELLANTS, VS.
ALEJANDRO SAMIA, AS THE TESTAMENTARY EXECUTOR OF THE
ESTATE OF THE DECEASED MARTINA CABIGTING, DEFENDANT AND
APPELLEE.**

G.R. No. 10646. November 09, 1916

Ponente: ARAULLO, J.

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ARAULLO, J.:

In a written complaint of the date of May 20, 1911, the plaintiffs prayed the Court of First Instance of Pampanga to declare them to be the owners of the pro indiviso half of the properties described therein with the costs against the defendant. They alleged, in effect, that they were the owners of the said pro indiviso half of the properties referred to, and that the defendant claimed to have a right in the said properties and was detaining them. They also prayed the court to appoint Lorenzo Lising as guardian ad litem for the plaintiff minors Eusebia, Lucas and Felisa Angeles and Julita Simbulan, which appointment was made.

On July 8, 1911, the defendant answered the complaint. He admitted the third allegation contained therein, to wit, that relative to the minority of the above-named persons, and, after entering a general and specific denial of the other allegations, excepting the one containing a description of the said properties, interposed two special defenses, to wit: (1) That on April 12, 1881, Isidoro Espino and his wife Martina Cabigting executed a joint will before the gobernadorcillo of Arayat, Pampanga, with all the formalities prescribed by law; that this will was duly forwarded to the alcalde mayor of the said province and was by him protocolized on the 13th of April of the same year (a copy thereof was attached to the complaint as an integral part of the said answer and first defense); that in the sixth clause of this will, the spouses Isidoro Espino and Martina Cabigting mutually named themselves as heirs, in such manner that the surviving spouse should inherit from the deceased consort; that in the said sixth clause and also in the last clause of the will the said testators referred to a certain testamentary note or a codicil contained and kept in a closed envelope signed by the gobernadorcillo; that, Isidoro Espino having died on October 2, 1882, his widow Martina Cabigting, by virtue of the said valid will, succeeded to and accepted all the property that constituted the estate left by the said deceased. (2) That on April 9, 1909, Martina Cabigting executed her last will in Arayat, Pampanga, which will was duly authenticated and probated by the said Court of First Instance of Pampanga (a copy whereof was attached to the defendant's answer as an integral part of the same and of his second special defense); that Martina Cabigting, in clause 5 of her said will, made a list of her property and a statement of the manner in which she had acquired it, and in clause 3 thereof described the parcel of land that her deceased husband had brought to their marriage; that in clause 6 of her said will Martina Cabigting bequeathed to her husband's nephews and nieces the only parcel of land brought by him to the marriage and instituted Gabina Medina y Cabigting, the defendant's wife, as the universal heir of her estate; and finally, in none of the remaining testamentary clauses did the testatrix appoint any other heirs or legatees, nor did she transfer any right whatever in the said property to any of the plaintiffs. The defendant therefore prayed the court to absolve him from the complaint, with the costs against the plaintiffs.

On July 20, 1911, the plaintiffs filed their reply in which under oath they denied the authenticity and the due execution of the joint will of Isidoro Espino and his wife Martina Cabigting, and stated that if the said joint will ever existed, it was afterwards revoked by the said Martina Cabigting, and that it never had been probated; that the property described in the complaint was community property, acquired by Isidoro Espino and Martina Cabigting during their marriage; that the former, Isidoro Espino, died intestate, leaving the plaintiffs as heirs to the one-half of the said property that pertained to him, and his widow, Martina Cabigting, as heir to the usufructuary share allowed her by law; and that, finally, as the latter had died, the property of which she had the usufruct should revert to the plaintiffs.

Subsequently the plaintiffs requested that Balbino Cabigting, Encarnacion Abad, Antonio Abad, Elacio Cabigting, Teodoro Abad, Conrado Abad, Rita Abad and Jose Cabigting be included as plaintiffs, and at the same time asked for the appointment of a guardian ad litem for the five lastnamed, they being minors; for this purpose they proposed the name of the said Lorenzo Lising. They also requested that a stone masonry camarin be included among the properties described in the complaint. After the case had been heard and both parties had introduced their respective evidence, the Court of First Instance of Pampanga, on June 9, 1913, rendered judgment by absolving the defendant from the complaint, with the costs against the plaintiffs. The judgment was founded on the following grounds:

"The defendant's allegations are perfectly proven by the evidence. On April 12, 1881, Isidoro Espino and his wife Martina Cabigting Balagtas executed a joint will before the gobernadorcillo of Arayat, Pampanga. This will was duly protocolized on April 13, 1881 (defendant's Exhibit 1). In said will each spouse named the other as heir. Isidoro Espino died in 1882, under this will. On April 9, 1909, Martina Cabigting executed a will, which was duly probated by this Court of First Instance of Pampanga on July 8, 1910, wherein she instituted as her sole and universal heir her niece Gabina Medina y Cabigting, the defendant's wife.

"Under the joint will of April 12, 1881, one that was perfectly valid in accordance with the previous laws, Martina Cabigting succeeded to all the property, rights and actions of her husband, Isidoro Espino. Martina Cabigting being the owner of the said property was free to dispose of it, as she did in her will of April 9, 1909. Therefore, even supposing the property specified in the complaint to be community property, Martina Cabigting had a perfect right to transfer her ownership thereof, as she did, to the defendant's wife."

The plaintiffs excepted to the said judgment and moved for a new trial. Upon the denial of this motion they also excepted to the ruling and by the proper bill of exceptions appealed the case to this Supreme Court. In their brief they make the following assignments of errors:

(1) In holding that the joint will executed by Isidoro Espino and his wife Martina Cabigting on April 12, 1881, was valid; (2) in holding that by virtue of the said joint will Martina Cabigting succeeded to all the property, rights and actions of her husband Isidoro Espino; (3) in not holding that the said joint will was revoked by another that was executed by Martina Cabigting on June 13, 1889, before the notary public Genaro Heredia; (4) in holding that Martina Cabigting was free to dispose of the property, rights and actions of her said husband Isidoro Espino; (5) in not holding that the plaintiffs are entitled to one-half of the property described in the complaint; and (6) in absolving the defendant from the complaint.

In the will executed on April 12, 1881, by Isidoro Espino and his wife Martina Cabigting, they mutually named each other as heirs, so that upon the death of either spouse the survivor should inherit the property of the other. This will was protocolized on the following day, the 13th, in the public registry of the Province of Pampanga, by order of the alcalde mayor of the said province. In accordance with the law then in force this will was duly probated by means of this protocolization, and on Isidoro Espino's death in the following year, 1882, it was carried into effect and the said Espino's widow acquired full ownership of all property that had belonged to the deceased.

On June 13, 1889, Martina Cabigting, being then a widow, executed a will before the notary public Genaro Heredia; but on April 9, 1909, she executed another, in which, as in the previous one, she named her niece Gabina Medina Cabigting as her sole and universal heir.

A joint will was allowed by law 9, title 6, book 3 of the Fuero Real, but only between the husband and wife who had no children (sucesion) and the Partidas, as Manresa says in his work entitled Commentaries on the Civil Code, declared it to be null and void, in order that neither of the testators "might be induced to bring about the other's death for the purpose of inheriting his or her property."

This form of will continued to be used, however, and gave rise to many questions and suits which, according to Manresa, the supreme court of Spain had to decide, and undoubtedly was sanctioned by use, notwithstanding the prohibition contained in the Partidas, for rule 2 of the transitory provisions of the Civil Code now in force, reads:

"Acts and contracts entered into under the regime of the preceding legislation, and which are valid according to the same, shall produce all their effects according to the same legislation, with the limitations set forth in these rules. Therefore, last wills, even when jointly executed; powers of attorney to execute wills and testamentary notes, executed or written before this Code was in force, shall be valid; and the clause ad cautelam, the trusts (fideicomisos) for applying the estate in accordance with the secret instructions of the testator, and any other acts, prescribed by the preceding legislation, shall be effective; but the revocation or modification of these acts or of any of the clauses contained in the same, shall not be effective, after this Code has been enforced, except by making the testament according to the same."

Besides this positive provision of the Code, in which, as is seen, last wills, even joint ones, which were executed or written before this Code came into force, are valid, the supreme court of Spain, in a case where the execution and putting into force of a will of this kind were called into question, held in its decision of April 9, 1904:

"That a joint will executed under the legislation in force prior to the enactment of the Civil Code, is valid according to that legislation and shall produce all its effects, without other limitations than those established in the transitory provisions of the said Code, the twelfth of which does not alter the power of the testator to instruct the testamentary executors, appointed with joint powers, to effect the partition, because this provision, in providing that the estate of a person who dies after the Code shall have gone into effect, whether such person leaves a will or not, shall be adjudicated and distributed according to the Code, refers only to the manner of making the partition and to the amounts into which the inheritance should be distributed, as shown very clearly by the last paragraph of the said transitory provision."

There cannot, therefore, be the slightest doubt that the joint will executed by Isidoro Espino and his wife Martina Cabigting is valid and that by reason thereof Martina Cabigting, who survived her said husband, succeeded to all his property, rights and actions.

Martina Cabigting's last will was that executed on April 9, 1909, under the provisions of Act No. 190 now in force. On February 19, 1910, the testatrix died and this will was probated by the Court of First Instance of Pampanga on July 8th of the same year, the will executed by her on June 13, 1889, being therefore of no value or effect whatever. Moreover, the said testatrix, by her said last will, that of April, 1909, expressly annulled and revoked the one previously mentioned, or that of June 13, 1889, and as this latter will could produce no effect whatever, it follows that the court did not err, as the appellant maintains that it did, in not holding that the joint will executed by Martina Cabigting and her husband Isidoro Espino in April, 1881, was revoked by the will of June 13, 1889.

After Isidoro Espino and his wife Martina Cabigting had mutually named the other as his and her heir in their will of April 12, 1881, in such manner that, as they stated in the 6th clause thereof, whichever survived the other should succeed to the decedent's estate, they added the following provision:

"And when the latter also dies, we provide that he (or she) be succeeded in whatever estate he (or she) may leave, by the persons named in the testamentary note or codicil that we have written, under the condition therein stated."

And in clause 8 of the said will they make the further statement:

"In case that the persons instituted in the codicil, should die before that one of us who survives the other, the said surviving spouse may name as his or her heirs whomsoever he or she may see fit, under the same condition as the said persons mentioned in the codicil."

Martina Cabigting, then, did not accept the estate left by her husband Isidoro Espino under instructions from him to transmit all of it to the person appointed in the said testamentary note or codicil, that is, as the fiduciary heir of her deceased husband, since in the said sixth clause it was set forth that they should be succeeded, in whatever might be left by the one that survived the other, by the persons named in the testamentary note. Therefore, the surviving spouse was left at liberty to enjoy and dispose of the property he or she might inherit from the other, and was under no obligation with regard to what property the said surviving spouse should bequeath to the persons named in the codicil or testamentary note.

There is no evidence whatever that the plaintiffs or any of them were the persons named in the said codicil to succeed Martina Cabigting, nor is there any proof that one of those persons was not the heir named by Martina Cabigting in her last will, to wit, that of January 9, 1909, nor that those persons had already died when Martina Cabigting executed her last will. Therefore the latter was at liberty to name Gabina Medina Cabigting as her heir.

In clause 9 of the said last will, that of April 9, 1909, Martina Cabigting stated that she annulled and revoked every testamentary provision that she had made before that date, especially the will of April 12, 1881, executed jointly with her husband, and that of June 13, 1889, as aforesaid. The testatrix made no special mention of any revocation of the testamentary note referred to in the first of the said wills.

In fact, Martina Cabigting could have revoked the said joint will and the testamentary note of codicil therein mentioned.

The supreme court of Spain on March 1, 1905, rendered a decision in a case which involved the revocation by the surviving wife of a joint will executed by her and her husband in which they mutually named the other as heir. Said will provided that whichever of them should outlive the other should enter into the possession and enjoyment of all the property that belonged to the decedent, whether derived from the capital brought to the marriage, earnings realized during the same, property inherited or which might be inherited in the future, or derived from any other source; that this appointment or reciprocal institution was made with the conditions and limitations that neither of them might, without the consent of the other, change or alter the will except where the other spouse specially authorized such alteration or change; that otherwise the appointment should be null and void; that the surviving spouse could not alienate, encumber, or dispose in any manner of the real estate, except in a case of necessity recognized to be such by a judge of competent jurisdiction and after his permission to do so should first have been obtained, and that said judge should deny such permission if the surviving spouse should have contracted a second marriage. The testators made various legacies and appointed their nephew as their sole and universal heir to all the remainder of their property. The court said:

"There is no statute or legal doctrine that provides that a will jointly executed by husband and wife shall be irrevocable. On the contrary, it is a principle constantly maintained by the Supreme Court, in accordance with the provisions of laws 1 to 25, title 1, sixth partida, and art. 747 of the Civil Code, that the record of two last wills in one and the same instrument is a circumstance which neither imposes a reciprocal contract nor deprives the wills of their essential quality of being susceptible of alteration until the death of either of the

testators in the part disposed of by either of them and in so far as they relate to the property and lights pertaining to each."

Martina Cabigting, by virtue of the joint will executed by her and her husband on April 12, 1881 inherited the latter's property (of what this property consisted the said will does not specify) and had ample and full power to enjoy and dispose freely of it as her own. She was not obliged to transmit it to the persons named in the said testamentary note or codicil, except such part thereof as she might leave or which remained at her death. But this will was revoked by the last will of April 9, 1909, and admitting that this revocation included the testamentary note or codicil, her appointment as heir, made by her husband with regard to his property which, as before said, came to belong to Martina Cabigting, remained unaffected; and as by virtue of the revocation of that first will and of its codicil she could, consequently, freely dispose of that and also her own property in favor of whatever person she pleased, it is evident that her action in the will of January 9, 1909, in devising all her property to her niece Gabina Medina Cabigting, is perfectly valid and legal, and the plaintiffs have no right whatever in the said property, for, as stipulated at the trial, they are the direct descendants of the brothers and sisters of Isidoro Espino, and, consequently, not being the forced heirs of the said deceased Espino, the latter could freely dispose, as he did in the said will of April 12, 1881, of the private property he then owned, in favor of his wife Martina Cabigting.

On the other hand, in clause 3 of the last will, that of April 9, 1909, the testatrix specified the properties that her husband Isidoro Espino had brought to the marriage and she made a detailed statement of other properties. In clause 5 she declared that she was then the absolute owner of them on account of her having inherited some from her parents and having acquired others by her own labor and industry during the period of her widowhood. These properties she bequeathed to her niece Gabina Cabigting, the daughter of her sister Cornelia and the wife of Alejandro Samia, as her sole and universal heir.

There is no evidence that any of the properties specified by the testatrix in the said will as being of her absolute ownership was either community property or the private property of her husband Isidoro Espino. The fact that Martina Cabigting became a widow in 1882 and died in 1910, and executed the said will on April 9, 1909, constitutes, on the contrary, proof that during the 27 years that she lived after her husband's death, that is, during her widowhood, as she herself stated in her will, she acquired some of these properties by her own labor and industry, aside from those she inherited from her parents.

Moreover, the testatrix bequeathed in her said will to the nephews and nieces of her deceased husband the only properties which, as she stated in clause 3, he had brought to his marriage with her and which she had inherited from him by virtue of the will executed on April 12, 1881, to wit, the one reciprocally executed by both of them on the said date. These properties consisted in a parcel of rice land of about ten cavanos of seed. At all events and on the supposition, which is incorrect, that these properties continued to belong to the estate of Isidoro Espino notwithstanding his having instituted his wife Martina Cabigting as his heir in the mutual will of June 13, 1881, they are the only ones that might correspond to the nephews and nieces of the said deceased Espino.

For the foregoing reasons, as the trial court did not incur any of the errors assigned by the appellant in his brief and as the judgment appealed from is in accordance with the law and the evidence, the judgment is affirmed with the costs against the appellants. So ordered.

Torres, Johnson, Carson, and Trent, JJ., concur.

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