

SPOUSES ROBERTO AND THELMA AJERO, PETITIONERS, VS. THE COURT OF APPEALS AND CLEMENTE SAND, RESPONDENTS.

G.R. No. 106720. September 15, 1994

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal by certiorari from the Decision of the Court of Appeals[1] in CA-G.R. CV No. 22840, dated March 30, 1992, the dispositive portion of which reads:

“PREMISES CONSIDERED, the questioned decision of November 19, 1988 of the trial court is hereby REVERSED and SET ASIDE, and the petition for probate is hereby DISMISSED. No costs.”

The earlier Decision was rendered by the RTC of Quezon City, Branch 94,[2] in Sp. Proc. No. Q-37171, and the instrument submitted for probate is the holographic will of the late Annie Sand, who died on November 25, 1982.

In the will, decedent named as devisees, the following: petitioners Roberto and Thelma Ajero, private respondent Clemente Sand, Meriam S. Arong, Leah Sand, Lilia Sand, Edgar Sand, Fe Sand, Lisa S. Sand, and Dr. Jose Ajero, Sr., and their children.

On January 20, 1983, petitioners instituted Sp. Proc. No. Q-37171, for allowance of decedent's holographic will. They alleged that at the time of its execution, she was of sound and disposing mind, not acting under duress, fraud or undue influence, and was in every respect capacitated to dispose of her estate by will.

Private respondent opposed the petition on the grounds that: neither the testament's body nor the signature therein was in decedent's handwriting; it contained alterations and corrections which were not duly signed by decedent; and, the will was procured by petitioners through improper pressure and undue influence. The petition was likewise opposed by Dr. Jose Ajero. He contested the disposition in the will of a house and lot located in Cabadbaran, Agusan Del Norte. He claimed that said property could not be conveyed by decedent in its entirety, as she was not its sole owner.

Notwithstanding the oppositions, the trial court admitted the decedent's holographic will to probate. It found, *inter alia*:

"Considering then that the probate proceedings herein must decide only the question of identity of the will, its due execution and the testamentary capacity of the testatrix, this probate court finds no reason at all for the disallowance of the will for its failure to comply with the formalities prescribed by law nor for lack of testamentary capacity of the testatrix.

"For one, no evidence was presented to show that the will in question is different from the will actually executed by the testatrix. The only objections raised by the oppositors xxx are that the will was not written in the handwriting of the testatrix which properly refers to the question of its due execution, and not to the question of identity of will. No other will was alleged to have been executed by the testatrix other than the will herein presented. Hence, in the light of the evidence adduced, the identity of the will presented for probate

must be accepted, i.e., the will submitted in Court must be deemed to be the will actually executed by the testatrix.

"xxx xxx xxx

"While the fact that it was entirely written, dated and signed in the handwriting of the testatrix has been disputed, the petitioners, however, have satisfactorily shown in Court that the holographic will in question was indeed written entirely, dated and signed in the handwriting of the testatrix. Three (3) witnesses who have convincingly shown knowledge of the handwriting of the testatrix have been presented and have explicitly and categorically identified the handwriting with which the holographic will in question was written to be the genuine handwriting and signature of the testatrix. Given then the aforesaid evidence, the requirement of the law that the holographic will be entirely written, dated and signed in the handwriting of the testatrix has been complied with.

"xxx xxx xxx

"As to the question of the testamentary capacity of the testatrix, (private respondent) Clemente Sand himself has testified in Court that the testatrix was completely in her sound mind when he visited her during her birthday celebration in 1981, at or around which time the holographic will in question was executed by the testatrix. To be of sound mind, it is sufficient that the testatrix, at the time of making the will, knew the value of the estate to be disposed of, the proper object of her bounty, and the character of the testamentary act xxx. The will itself shows that the testatrix even had detailed knowledge of the nature of her estate. She even identified the lot number and square meters of the lots she had conveyed by will. The objects of her bounty were likewise identified explicitly. And considering that she had even written a nursing book which contained the law and jurisprudence on will and succession, there is more than sufficient showing that she knows the character of the testamentary act.

"In this wise, the question of identity of the will, its due execution and the testamentary capacity of the testatrix has to be resolved in favor of the allowance of probate of the will submitted herein.

"Likewise, no evidence was presented to show sufficient reason for the disallowance of herein holographic will. While it was alleged that the said will was procured by undue and improper pressure and influence on the part of the beneficiary or of some other person, the evidence adduced have not shown any instance where improper pressure or influence was exerted on the testatrix. (Private respondent) Clemente Sand has testified that the testatrix was still alert at the time of the execution of the will, i.e., at or around the time of her birth anniversary celebration in 1981. It was also established that she is a very intelligent person and has a mind of her own. Her independence of character and to some extent, her sense of superiority, which has been testified to in Court, all show the unlikelihood of her being unduly influenced or improperly pressured to make the aforesaid will. It must be noted that the undue influence or improper pressure in question herein only refer to the making of a will and not as to the specific testamentary provisions therein which is the proper subject of another proceeding. Hence, under the circumstances, this Court cannot find convincing reason for the disallowance of the will herein.

"Considering then that it is a well-established doctrine in the law on succession that in case of doubt, testate succession should be preferred over intestate succession, and the fact that no convincing grounds were presented and proven for the disallowance of the holographic will of the late Annie Sand, the aforesaid will submitted herein must be admitted to probate."[3] (Citations omitted.)

On appeal, said Decision was reversed, and the petition for probate of decedent's will was dismissed. The Court of Appeals found that, "the holographic will fails to meet the requirements for its validity." [4] It held that the decedent did not comply with Articles 813 and 814 of the New Civil Code, which read, as follows:

"Article 813: When a number of dispositions appearing in a holographic will are signed without being dated,

and the last disposition has a signature and date, such date validates the dispositions preceding it, whatever be the time of prior dispositions."

"Article 814: In case of insertion, cancellation, erasure or alteration in a holographic will, the testator must authenticate the same by his full signature."

It alluded to certain dispositions in the will which were either unsigned and undated, or signed but not dated. It also found that the erasures, alterations and cancellations made thereon had not been authenticated by decedent.

Thus, this appeal which is impressed with merit.

Section 9, Rule 76 of the Rules of Court provides that wills shall be disallowed in any of the following cases:

- "(a) If not executed and attested as required by law;
- (b) If the testator was insane, or otherwise mentally incapable to make a will, at the time of its execution;
- (c) If it was executed under duress, or the influence of fear, or threats;
- (d) If it was procured by undue and improper pressure and influence, on the part of the beneficiary, or of some other person for his benefit;
- (e) If the signature of the testator was procured by fraud or trick, and he did not intend that the instrument should be his will at the time of fixing his signature thereto."

In the same vein, Article 839 of the New Civil Code reads:

"Article 839: The will shall be disallowed in any of the following cases:

- (1) If the formalities required by law have not been complied with;
- (2) If the testator was insane, or otherwise mentally incapable of making a will, at the time of its execution;
- (3) If it was executed through force or under duress, or the influence of fear, or threats;
- (4) If it was procured by undue and improper pressure and influence, on the part of the beneficiary or of some other person;
- (5) If the signature of the testator was procured by fraud;
- (6) If the testator acted by mistake or did not intend that the instrument he signed should be his will at the time of affixing his signature thereto."

These lists are exclusive; no other grounds can serve to disallow a will.[5] Thus, in a petition to admit a holographic will to probate, the only issues to be resolved are: (1) whether the instrument submitted is, indeed, the decedent's last will and testament; (2) whether said will was executed in accordance with the formalities prescribed by law; (3) whether the decedent had the necessary testamentary capacity at the time the will was executed; and, (4) whether the execution of the will and its signing were the voluntary acts of the decedent.[6]

In the case at bench, respondent court held that the holographic will of Anne Sand was not executed in accordance with the formalities prescribed by law. It held that Articles 813 and 814 of the New Civil Code, ante, were not complied with, hence, it disallowed the probate of said will. This is erroneous.

We reiterate what we held in *Abangan vs. Abangan*, 40 Phil. 476, 479 (1919), that:

"The object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guaranty their truth and authenticity. Therefore, the

laws on this subject should be interpreted in such a way as to attain these primordial ends. But, on the other hand, also one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will. So when an interpretation already given assures such ends, any other interpretation whatsoever, that adds nothing but demands more requisites entirely unnecessary, useless and frustrative of the testator's last will, must be disregarded."

For purposes of probating non-holographic wills, these formal solemnities include the subscription, attestation, and acknowledgment requirements under Articles 805 and 806 of the New Civil Code.

In the case of holographic wills, on the other hand, what assures authenticity is the requirement that they be totally autographic or handwritten by the testator himself,[7] as provided under Article 810 of the New Civil Code, thus:

"A person may execute a holographic will which must be entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of the Philippines, and need not be witnessed." (Italics supplied.)

Failure to strictly observe other formalities will not result in the disallowance of a holographic will that is unquestionably handwritten by the testator.

A reading of Article 813 of the New Civil Code shows that its requirement affects the validity of the dispositions contained in the holographic will, but not its probate. If the testator fails to sign and date some of the dispositions, the result is that these dispositions cannot be effectuated. Such failure, however, does not render the whole testament void.

Likewise, a holographic will can still be admitted to probate, notwithstanding non-compliance with the provisions of Article 814. In the case of *Kalaw vs. Relova*, 132 SCRA 237, 242 (1984), this Court held:

"Ordinarily, when a number of erasures, corrections, and interlineations made by the testator in a holographic Will have not been noted under his signature, xxx the Will is not thereby invalidated as a whole, but at most only as respects the particular words erased, corrected or interlined. Manresa gave an identical commentary when he said 'la omision de la salvedad no anula el testamento, segun la regla de jurisprudencia establecida en la sentencia de 4 de Abril de 1895.'"[8] (Citations omitted.)

Thus, unless the unauthenticated alterations, cancellations or insertions were made on the date of the holographic will or on testator's signature,[9] their presence does not invalidate the will itself.[10] The lack of authentication will only result in disallowance of such changes.

It is also proper to note that the requirements of authentication of changes and signing and dating of dispositions appear in provisions (Articles 813 and 814) separate from that which provides for the necessary conditions for the validity of the holographic will (Article 810). The distinction can be traced to Articles 678 and 688 of the Spanish Civil Code, from which the present provisions covering holographic wills are taken. They read as follows:

"Article 678: A will is called holographic when the testator writes it himself in the form and with the requisites required in Article 688."

"Article 688: Holographic wills may be executed only by persons of full age.

"In order that the will be valid it must be drawn on stamped paper corresponding to the year of its execution, written in its entirety by the testator and signed by him, and must contain a statement of the year, month and day of its execution.

"If it should contain any erased, corrected, or interlined words, the testator must identify them over his signature.

"Foreigners may execute holographic wills in their own language."

This separation and distinction adds support to the interpretation that only the requirements of Article 810 of the New Civil Code -- and not those found in Articles 813 and 814 of the same Code -- are essential to the probate of a holographic will.

The Court of Appeals further held that decedent Annie Sand could not validly dispose of the house and lot located in Cabadbaran, Agusan del Norte, in its entirety. This is correct and must be affirmed.

As a general rule, courts in probate proceedings are limited to pass only upon the extrinsic validity of the will sought to be probated. However, in exceptional instances, courts are not powerless to do what the situation constrains them to do, and pass upon certain provisions of the will.[11] In the case at bench, decedent herself indubitably stated in her holographic will that the Cabadbaran property is in the name of her late father, John H. Sand (which led oppositor Dr. Jose Ajero to question her conveyance of the same in its entirety). Thus, as correctly held by respondent court, she cannot validly dispose of the whole property, which she shares with her father's other heirs.

IN VIEW WHEREOF, the instant petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. CV No. 22840, dated March 30, 1992, is REVERSED and SET ASIDE, except with respect to the invalidity of the disposition of the entire house and lot in Cabadbaran, Agusan del Norte. The Decision of the Regional Trial Court of Quezon City, Branch 94 in Sp. Proc. No. Q-37171, dated November 19, 1988, admitting to probate the holographic will of decedent Annie Sand, is hereby REINSTATED, with the above qualification as regards the Cabadbaran property. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Mendoza, JJ., concur.

[1] Sixteenth Division, composed of Associate Justices Luis L. Victor (ponente), Ricardo J. Francisco (chairman), and Pacita Cañizares-Nye.

[2] Presided by Judge Filemon H. Mendoza.

[3] Rollo, pp. 37-39.

[4] Impugned Decision, p. 5; Rollo, p. 46.

[5] Person vs. Coronel, 45 Phil. 216 (1923); See 3 EDGARDO L. PARAS, Civil Code of the Philippines Annotated (1989), pp. 145-146.

[6] See Montañaño vs. Suesa, 14 Phil. 676 (1909).

[7] See Fernando vs. Villalon, 3 Phil. 386 (1904).

[8] See Velasco vs. Lopez, 1 Phil. 720, 725 (1903), citing a Decision of the Supreme Court of Spain, dated April 4, 1895; See also, 3 MANRESA, Comentarios al Código Español (Quinta ed.), p. 483; See further, 3 ARTURO M. TOLENTINO, Commentaries & Jurisprudence on the Civil Code (1973), p. 107, citing Castan 341, 5 Valverde 82; 3 AMBROSIO PADILLA, Civil Code Annotated (1987), pp. 157-158; 2 RAMON C. AQUINO and CAROLINA C. GRIÑO-AQUINO (1990), p. 42.

[9] 3 PARAS, op. cit..

[10] It must be noted, however, that in *Kalaw*, this Court laid down an exception to the general rule, when it invalidated the entire will because of an unauthenticated erasure made by the testator. In that case, the will had only one substantial provision. This was altered by substituting the original heir with another, with such alteration being unauthenticated. This Court held that the whole will was void "for the simple reason that nothing remains in the Will after (the provision is invalidated) which could remain valid. To state that the Will as first written should be given efficacy is to disregard the seeming change of mind of the testatrix. But, that change of mind can neither be given effect because she failed to authenticate it in the manner required by law by affixing her full signature."

[11] *Nepomuceno vs. Court of Appeals*, 139 SCRA 206 (1985); See *Nuguid vs. Nuguid*, 17 SCRA 449 (1966); See also *Cayetano vs. Leonidas*, 129 SCRA 522 (1984).

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