

TESTATE ESTATE OF JOSE J. JAVELLANA, DECEASED. CRISTETA JIMENEA VDA. DE JAVELLANA, AND BENJAMIN JAVELLANA, PETITIONERS AND APPELLEES, VS. JOSE JAVELLANA Y AZAOLA AND JOSE JAVELL...

G.R. No. 13781. January 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

On June 29, 1957, a petition to probate the alleged last will and testament of Jose J. Javellana, who died on May 24 of the same year, was presented in the Court of First Instance of Rizal by Cristeta Jimenea Vda. de Javellana and Benjamin Javellana, widow and brother respectively of the deceased, alleging that the aforesaid Jose J. Javellana, at the time of his death, a resident of San Juan, Rizal, left properties with an approximate value of P400,000.00 ; that he also left a will which was delivered to the clerk of court pursuant to the Rules of Court; that Oscar Ledesma, therein named executor, had agreed to act as such; that the decedent's next of kin were: the widow, Cristeta J. Vda. de Javellana, his children—Erlinda Javellana, Jose Javellana y Azaola, and Jose Javellana, Jr. (Pepito), his sister Juanita J. de Ledesma, and brother Benjamin Javellana, whose respective addresses were given in the petition.

To this petition, Jose Javellana y Azaola and Jose Javellana, Jr. (Pepito) filed separate oppositions, both claiming that the alleged will of Jose J. Javellana deposited by petitioners with the clerk of court was null and void, the same not having been executed "in accordance with the formalities required by law" and that "the legal requirements necessary for its validity" had not been complied with.

At the hearing, petitioners introduced as evidence in support of the petition, a copy of the will; certification of the date and cause of death of the testator; proof of publication of the petition, once a week for 3 consecutive weeks, in a newspaper of general circulation, and the testimonies of Jose G. Guevarra, Eloisa Villanueva and Jose Yulo, Jr., the 3 instrumental witnesses to the will, who, in substance, testified that sometime in April, 1956i they were asked to witness the execution of the will of the late Jose J. Javellana; that on the said occasion, Jose J. Javellana signed the 4 pages of the will in their presence, and they, in turn, also signed each and every page thereof in the presence of the testator and of one another; and that these acts were acknowledged before notary public Fernando Grey, Jr. on the same occasion.

For their part, the oppositors limited their evidence to the presentation of two letters in the Visayan dialect allegedly written by the deceased, the signatures appearing thereon being identified by Jose Javellana, Jr. (Pepito) and Manuel Azaola, as those of the deceased, for the sole purpose of comparing said signatures with those appearing in the will.

On December 10, 1957, the court a quo issued an order allowing the probate of the win and directing the issuance of letters testamentary to Oscar Ledesma as executor thereof, upon the latter's filing a bond in the sum of IM.0,000.00. From this order, oppositors appealed to this Court charging the lower court of committing error in

allowing probate of the will, Exhibit C, on 2 grounds: (1) that the 3 attesting witnesses failed to clearly and convincingly establish the due execution of the will; and (2) that petitioners failed to prove that the will was written in a language known to the testator.

The first basis of oppositors' appeal has no merit. It is true that the witnesses, particularly Miss Eloisa Villanueva, apparently found difficulty recalling who arrived first at the appointed place, or the order of the witnesses' signing the will, or failed to mention by name the persons present at the time one of the witnesses was signing the document. These details, however, are minor and insignificant and do not enervate their positive testimony that at the execution of the will, the testator, the 3 witnesses, the notary public and Atty. Vicente Hilado were all together in the private office of the latter; that Jose Guevarra, Eloisa Villanueva and Jose Yulo, Jr., the instrumental witnesses, were unanimous in declaring that they actually saw the testator sign the will as well as each and every page thereof, and they, in turn, affixed their signatures to all of its 4 pages. For the purpose of determining the due execution of a will, it is not necessary that the instrumental witnesses should give an accurate and detailed account of the proceeding, such as recalling the order of the signing of the document by the said witnesses. It is sufficient that they have seen or at least were so situated at the moment that they could have seen each other sign, had they wanted to do so.[1] In fact, in the instant case, at least two witnesses, Yulo and Guevarra, both testified that the testator and the 3 witnesses signed in the presence of each and every one of them.

With respect to the second ground, there is some merit in appellant's contention that the language requirement of the law on wills has not been satisfactorily complied with in this case. Admittedly, there is want of expression in the body of the will itself or in its attestation clause that the testator knew Spanish, the language in which it is written. It is true that there is no statutory provision requiring this and that proof thereof may be established by evidence aliunde.[2] But here, there is absolutely no such evidence presented by the petitioners-appellees. Not even the petition for probate contains any allegation to this effect. No reference to it whatsoever is made in the appealed order.

In some cases, it is true, this lack of evidence was considered cured by presumption of knowledge of the language or dialect used in the will, as where the will is executed in a certain province or locality, in the dialect currently used in such province or locality in which the testator is a native or resident, the presumption arises that the testator knew the dialect so used, in the absence of evidence to the contrary;[3] or where the will is in Spanish, the fact that the testatrix was a "mestiza española", was married to a Spaniard, made several trips to Spain, and some of her letters in her own handwriting submitted as evidence by the oppositor, are in Spanish, give rise to the presumption that she knew the language in which the will was written, in the absence of proof to the contrary.[4]

In the case before us, no such or similar circumstances exist. On the contrary, there is evidence that the testator is a Visayan although residing in San Juan, Rizal at the time of his death. The will was executed in the City of Manila. Undoubtedly, it cannot be said, and there is no evidence, that Spanish is the language currently used either in San Juan, Rizal, or Manila. It follows, therefore, that no presumption can arise that the testator knew the Spanish Language.

But petitioner-appellees insist in their brief that the burden is on the oppositors to allege and prove that the testator did not know the Spanish language in the face of the legal presumptions that "the law has been obeyed", "that a will executed in the Philippines must be presumed to have been executed in conformity with the laws of the Philippines".[5] and "that things have happened in accordance with the ordinary course of nature and the ordinary habits of life", concluding that it would certainly be contrary to, the ordinary habits of life for a person to execute his will in a language unknown to him. This, we believe, is, to use a colloquial term, begging the question. If the argument of counsel is correct, then every unopposed will may be probated upon its mere presentation in court, without need of producing evidence regarding its execution. Counsel's statement is its own refutation.

We find, however, in the record some indicia, although insufficient to give rise to the presumption, that the testator might, in fact, have known the Spanish language. In oppositors' own Exhibit 3 (a letter admittedly written by the testator) appear the salutation "Querido Primo" and the complimentary ending "Su primo" which are Spanish terms. Having found that all the formal requisites for the validity of the will have been satisfactorily established, except the language requirement, we deem it in the interest of justice to afford the parties an opportunity to present evidence, if they so desire, on this controverted issue.

Wherefore, let the records of this case be remanded to the court of origin for further proceedings as above indicated, without costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Gutierrez David, JJ., concur.

[1] Jaboneta vs. Gustilo, 5 Phil., 541; Neyra vs. Neyra, 42 Off. Gaz., 2817; see also Fernandez vs. Tantoco, 49 Phil., 380.

[2] Lopez vs. Liboro, 46 Off. Gaz., 211.

[3] Abangan vs. Abangan, 40 Phil., 476; Gonzales vs. Laurel, 46 Phil., 750.

[4] Reyes vs. Zuñiga Vda. de Vidal, 91 Phil., 127.

[5] See Appellees' brief, page 27.

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