

IN THE MATTER OF THE TESTATE ESTATE OF PETRONILA TAMPOY, DECEASED, VS. DIOSDADA ALBERASTINE, PETITIONER AND APPELLANT.

G.R. No. 14322. February 25, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This concerns the probate of a document which purports to be the last will and testament of one Petronila Tampoy. After the petition was published in accordance with law and petitioner had presented oral and documentary evidence, the trial court denied the petition on the ground that the left hand margin of the first page of the will does not bear the thumbmark of the testatrix. Petitioner appealed from this ruling but the Court of Appeals certified the case to us because it involves purely a question of law.

The facts of this case as found by the trial court are as follows:

"De las pruebas resulta que Petronila Tampoy, ya viuda y sin hijos, rogo a Bonifacio Miñoza que la leyera el testamento Exhibito A y la explicara su contenido en su casa en la calle San Miguel, del municipio de Argao, provincia de Cebu, en 19 de noviembre de 1939, y así lo hizo Bonifacio Miñoza en presencia de los tres testigos instrumentales, Rosario K. Chan, Mauricio de la Peña y Simeona Omboy, y después de conformarse con el contenido del testamento, ella rogo a Bonifacio Miñoza, que escribiera su nombre al pie del testamento, en la página segunda, y así lo hizo Bonifacio Miñoza, y después ella estampó su marca digital entra su nombre y apellido en presencia de todos y cada uno de los tres testigos instrumentales, Rosario K. Chan, Mauricio de la Peña y Simeon Omboy y de Bonifacio Miñoza, y después, Bonifacio Miñoza firmó también al pie del testamento, en la página 2, en presencia de la testadora y de todos y cada uno de los tres testigos arriba nombrados. La testadora así como Bonifacio Miñoza no firmaron, sin embargo, en la margen izquierda ni en ninguna parte de la primera página del testamento que se halla compuesto de dos páginas. Todos y cada uno de los tres testigos instrumentales, Rosario K. Chan, Mauricio de la Peña y Simeon Omboy, firmaron al pie de la cláusula de atestiguamiento que está escrita en la página segunda del testamento y en la margen izquierda de la misma página 2 y de la página primera en presencia de la testadora, de Bonifacio Miñoza, del abogado Kintanar y de todos y cada uno de ellos. El testamento fue otorgado por la testadora libre y espontáneamente, sin haber sido amenazada, forzada o intimidada, y sin haberse ejercido sobre ella influencia indebida, estando la misma en pleno uso de sus facultades mentales y disfrutando de buena salud. La testadora falleció en su casa en Argao en 22 de febrero de 1957 (Véase certificado de defunción Exhibito B). La heredera instituida en el testamento, Carmen Alberastine, murió dos semanas después que la testadora, o sea en 7 de Marzo de 1957, dejando a su madre, la solicitante Diosdada Alberastine."

The above facts are not controverted, there being no. opposition to the probate of the will. However, the trial court denied the petition on the ground that the first page of the will does not bear the thumbmark of the testatrix. Petitioner now prays that this ruling be set aside for the reason that, although the first page of the will does not bear the thumbmark of the testatrix, the same however expresses her true intention to give the property to her whose claims remains undisputed. She wishes to emphasize that no one has filed any opposition to the probate of

the will and that while the first page does not bear the thumbmark of the testatrix, the second however bears her thumbmark and both pages were signed by the three testimonial witnesses. Moreover, despite the fact that the petition for probate is unopposed, the three testimonial witnesses testified and manifested to the court that the document expresses the true and voluntary will of the deceased.

This contention cannot be sustained as it runs counter to the express provision of the law. Thus, Section 618 of Act 190, as amended, requires that the testator sign the will and each and every page thereof in the presence of the witnesses, and that the latter sign the will and each and every page thereof in the presence of the testator and of each other, which requirement should be expressed in the attestation clause. This requirement is mandatory, for failure to comply with it is fatal to the validity of the will (*Rodriguez vs. Alcala*, 55 Phil., 150). Thus, it has been held that "Statutes prescribing the formalities to be observed in the execution of wills are very strictly construed. As stated in 40 Cyc., at page 1097, 'A will must be executed in accordance with the statutory requirements; otherwise it is entirely void.' All these requirements stand as of equal importance and must be observed, and courts cannot supply the defective execution of a will. No power or discretion is vested in them, either to superadd other conditions or dispense with those enumerated in the statutes" (*Uy Coque vs. Navas L. Sioca*, 43 Phil., 405, 407; See also *Saño vs. Quintana*, 48 Phil., 506; *Gumban vs. Gorecho*, 50 Phil, 30; *Quinto vs. Morata*, 54 Phil., 481).

Since the will in question suffers from the fatal defect that it does not bear the thumbmark of the testatrix on its first page even if it bears the signature of the three instrumental witnesses, we cannot escape, the conclusion that the same fails to comply with the law and therefore, cannot be admitted to probate.

Wherefore, the order appealed from is affirmed, without pronouncement as to costs.

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

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