

ANTONIA RIERA Y BOTELLAS, PETITIONER, VS. VICENTE PALMAROLI, CONSUL GENERAL FOR SPAIN, VICENTE PALMAROLI, ADMINISTRATOR OF THE ESTATE OF JUAN PONS Y COLL, AND THE HONORABLE PEDR...

G.R. No. 14851. September 13, 1919

Ponente: STREET, J.

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STREET, J.:

This is an original petition filed in the Supreme Court under section 513 of the Code of Civil Procedure by Antonia Riera y Botellas, the purpose of which is to vacate an order of the Court of First Instance of the city of Manila admitting to probate the will of Juan Pons y Coll, and to cause the application for probate to be set for rehearing in the Court of First Instance. The respondents having been required to answer, the cause is now here heard on petition and answer, no formal proof having been as yet submitted.

For the purposes of the solution of the questions arising in this case, the facts may be taken to be as follows: Juan Pons y Coll, a Spanish subject resident in the Philippine Islands, died on April 16, 1918, in the city of Manila. The petitioner is the widow of the deceased and was at the time of her husband's death residing in Palma de Mallorca in the Balearic Islands.

On April 19, 1918, the respondent Vicente Palmaroli, Consul General for Spain in the Philippine Islands, produced in the Court of First Instance in the city of Manila a document dated March 16, 1918, purporting to be the will of Juan Pons y Coll, and asked that it be admitted to probate. Publication was accordingly made, and on May 20, 1918, order was entered admitting the will to probate.

Owing to the great distance between Palma de Mallorca and the city of Manila and to the lack of adequate means of communication between the two places—a difficulty then greatly exaggerated by conditions incident to the European War—the petitioner received no information of the probate proceedings until after November 14, 1918. She had, however, received information of the fact of her husband's death on or before June 19, 1918, for upon that date an attorney employed by her in Palma de Mallorca addressed a letter to Wolfson & Wolfson, attorneys in the city of Manila, requesting them to look after the interests of the petitioner in the estate of her deceased husband. Said communication was not received by the attorneys mentioned until November 11, 1918, when they promptly began the investigations necessary to enable them to act in the matter; and on November 29, 1918, they appeared in the Court of First Instance in behalf of the petitioner and moved that the order of probate of May 20, 1918, be set aside in order to allow the petitioner to enter opposition. This application was made under section 113 of the Code of Civil Procedure and was denied by the Court of First Instance on the ground that more than six months had elapsed since the date of the order of probate and prior to the filing of the motion.

The present application was thereupon made to the Supreme Court on December 21, 1918, under section 513 of the Code of Civil Procedure, as already stated.

The will to which reference has been made purports, for reasons stated therein, to deprive the petitioner of participation in the testator's estate—a step which the testator says he was authorized to take under the foral regimen prevailing in the Balearic Islands. It is therefore, apparent that the probate of the will was in fact prejudicial to the petitioner, as alleged; and the petitioner claims that, as a party interested in the estate, she is entitled to be heard in the matter of the probate of the will, having been prevented from appearing and contesting the original application by circumstances over which she had no control.

The order of the Court of First Instance of May 20, 1918, against which relief is sought, is attacked by the petitioner on grounds having relation chiefly to the formalities incident to the execution of the will. In the first place it is said that if the will be considered with reference to our statutes generally applicable to wills, it is void for failure to comply with the requirements of Act No. 2645 of the Philippine Legislature. In this connection attention is directed to the fact that the will is not signed on the left margin of each page by the attesting witnesses and the pages are not numbered as Act No. 2645 requires. In the second place it is said that if the will in question be considered as the will of a Spanish subject, provable under the special provisions of section 636 of the Code of Civil Procedure, then it must be treated as void, for failure to comply with various requirements—unnecessary to be here stated in detail—of the Spanish laws in respect to the manner of execution of wills. As will be at once apparent from an examination of section 636 of the Code of Civil Procedure, if the will was in fact provable as the will of a Spanish subject, under that section, and was admitted to probate as such, compliance with the requirements of our local laws relative to the execution of wills was not necessary. In such case the provisions governing the execution of the will are to be sought in the laws of the country of which the testator was a subject.

Another irregularity in the admission of the will in question to probate, as stated in the petition, is that the document produced in court and actually proved as the will of the decedent was not the original but a copy certified by the Spanish Consul General in this city from the records of his own office, the will having been executed before him on April 16, 1918, pursuant to authority contained in the Treaty between the United States and Spain proclaimed on April 20, 1903.

The question here presented is therefore this: Can a party who is interested in the estate of a deceased person, and who has been prevented by inevitable conditions from opposing the probate of the will, obtain from the Supreme Court, under section 513 of the Code of Civil Procedure an order for a rehearing in the Court of First Instance, it being alleged that the will was not executed with the formalities required by law and hence was improperly admitted to probate?

In the case of the Estate of Johnson (39 Phil. Rep., 156), we held that a Court of First Instance has the power, under section 113 of the Code of Civil Procedure, to set aside an order admitting a will to probate and to grant a rehearing of the application to admit the will, upon a showing from a person interested in the estate to the effect that the order of probate was erroneous and that the applicant had been prevented by conditions over which he had no control from appearing at the original hearing and opposing the probate of the will. It was also suggested in *Banco Espanol-Filipino vs. Palanca* (37 Phil. Rep., 921) that the remedy conceded in section 513 of the Code of Civil Procedure is supplementary to that conceded in section 113 of the same Code; and it was added that apart from these remedies there is no other means recognized in our procedure whereby a defeated party can, by a proceeding in the same cause, procure a judgment to be set aside with a view to the renewal of the litigation.

We shall now proceed to consider somewhat more closely the effect of the two sections of the Code of Civil Procedure above cited, in relation to each other and with special reference to the facts now before us. To this end it is desirable to confront the text of the provisions in question:

"SEC. 113. Upon such terms as may be just the court may relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or

excusable neglect: Provided, That application therefor be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken"

"Sec. 513. When a judgment is rendered by a Court of First Instance upon default, and a party thereto is unjustly deprived of a hearing by fraud, accident, mistake, or excusable negligence, and the Court of First Instance which rendered the judgment has finally adjourned so that no adequate remedy exists in that court, the party so deprived of a hearing may present his petition to the Supreme Court within sixty days after he first learns of the rendition of such judgment, and not thereafter, setting forth the facts and praying to have such judgment set aside. * * *"

By comparing these two provisions it will be seen that the operative equity which is contemplated as the basis of relief is similar, if not identical, in both cases, inasmuch as the "mistake, inadvertence, surprise or excusable neglect," contemplated in section 113, is substantially the same as the "fraud, accident, mistake or excusable negligence" of section 513. It is true that fraud is not mentioned as a ground of relief in section 113; but as was indicated in *Mortera and Eceiza vs. West of Scotland Insurance Office, Ltd.* (36 Phil. Rep., 994), if a judgment is procured by concealed fraudulent practices the party injured may sometimes at least be relieved on the ground that there was an excusable neglect on his part in failing to discover and defeat such practice. With this prefatory observation we proceed to consider the restrictions placed upon the use of the remedy conceded in section 513.

The first point to which we direct our comment has reference to the lack of an adequate remedy in the Court of First Instance. It is expressly declared in section 513 that the remedy granted thereby is available only in case "the Court of First Instance which rendered the judgment has finally adjourned so that no adequate remedy exists in that court." A moment's inspection of the entire section is sufficient to show that the quoted words are not homogeneous with the remainder of the section, and moreover they are not well adjusted to the sense and effect of section 113. The inference is plain that they were inserted in section 513 probably by way of amendment and by a person other than the original author. The person who wrote these words evidently supposed that by the mere fact of adjournment a Court of First Instance loses the power to entertain an application for relief of the character here contemplated. It is quite obvious, however, that the power granted in section 113 continues for six months regardless of the adjournment of the court. In our judicial system a Court of First Instance exists in each province, and a clerk is maintained at the place appointed for the holding of court, whose duty it is to receive and file applications, petitions, and complaints of all sorts. Consequently when an application for relief against any judgment is properly made under section 113, and filed in the court, the matter is before the judge for action upon the convening of the next session. The mere fact of adjournment cannot really have the effect of shortening the period of six months allowed in section 113. In many American jurisdictions, however, the ending of the term of court terminates absolutely the power of the court over its judgments. To a person whose mind is imbued with this idea, the words "When * * * the Court of First Instance which rendered the judgment has finally adjourned" can only be understood as referring loosely to cases where the Court of First Instance has by the effluxion of time lost all power to set aside or modify its judgment; and this we consider to be its true meaning. The consequence is that the remedy conceded in section 513 is available, other conditions concurring, whenever the Court of First Instance is powerless to grant relief, without regard to the six months limitation fixed in section 113. The sense of this construction may perhaps be further elucidated by saying that the Controlling idea is the want of adequate remedy in the Court of First Instance; and the reference to final adjournment in section 513 is to be taken merely as explanatory of the want of remedy in that court and not as embodying any absolute restriction upon the remedy conceded in section 513.

It may be argued that the words "and the Court of First Instance which rendered the judgment has finally adjourned so that no adequate remedy exists in that court" were intended to be applicable exclusively to the case where the Court of First Instance might, if not already adjourned, grant relief under section 113, but is prevented

from so doing solely by reason of the fact of adjournment. This would seem at first blush to be the literal sense of the words used, but it gives to the provision an application so narrow as to defeat the manifest purpose of the legislator; for under section 113 the power of the Court of First Instance to grant relief is limited to applications made within six months after entry of the judgment against which relief is sought. If the meaning be as here suggested, the relief grantable by the Supreme Court under section 513 would also be necessarily limited to applications made within six months, or at most, within sixty days after the expiration of six months, and then only when it should appear that the lower court had finally adjourned before the six months within which it could have granted relief had expired. In this view the sole function served by section 513 is to make sure that a person may obtain relief in the Supreme Court whenever the Court of First Instance had adjourned before six months after judgment entered; and no relief could be granted by the Supreme Court upon applications made after the expiration of eight months from the date of the judgment.

We consider this interpretation incorrect. It can hardly be supposed that section 513 would have been incorporated in the Code if the only idea was to enable a party having a right to relief in the Court of First Instance under section 113 to direct his petition to the Supreme Court only when the Court of First Instance has adjourned prior to the end of six months after judgment entered. If such were the idea, the provision in question is, as we have already seen, superfluous. The real purpose of section 513 in our opinion is to enable an injured party under the conditions stated, to apply to the Supreme Court without reference to the six months limitation expressed in section 113; and the expression "when the Court of First Instance * * * has finally adjourned," as used in section 513, must not be understood as referring exclusively to adjournment within six months after judgment entered.

It is generally recognized that if a statute is ambiguous and capable of more than one construction, the literal meaning of the words used may be rejected if the result of adopting such meaning would be to defeat the purpose of the legislature had in view. It is declared in article 1281 of the Civil Code that if the words of a contract appear to be contrary to the evident intention of the contracting parties, the intention shall prevail. This rule is there stated with respect to the interpretation of contracts; but the same idea may be accepted, though guardedly, as applicable in the interpretation of statutes, and more especially those of a remedial nature. Statutes of this kind are liberally construed to promote the object which the legislature may be supposed to have had in view.

From what has been said it will be seen that the jurisdiction of the Supreme Court to entertain a petition of the character of that now before us begins in point of time when the period has passed within which it was competent for the Court of First Instance to entertain an application under section 113; and apart from the requirement that the application must be made to the Supreme Court within two months after the petitioner first learns of the rendition of judgment against which relief is sought, there is no absolute limit to the period within which the application may be made. But of course if relief from a judgment is sought by timely application in the Court of First Instance, and the application is there denied, no petition based on the same ground will thereafter be entertained in the Supreme Court under section 513, as the proper remedy in that case would be to appeal from the action of the Court of First Instance. (*Rabajante vs. Moir and Ranees*, 28 Phil. Rep., 161.)

Proceeding now to a further comparison of sections 113 and 513, it is noteworthy that while the power of the Court of First Instance to grant relief under section 113 extends to the setting aside of any judgment, order or proceeding whatever, the power of the Supreme Court under section 513 is limited to granting a new trial upon judgments rendered upon default.

Now what is the meaning of "judgment rendered upon default," as used in section 513? The reference is of course to the default mentioned in section 128 of the Code of Civil Procedure. (*Simori vs. Castro and Castro*, 6 Phil. Rep., 335, 337.) A default, such as is there intended, can only arise in contentious litigation where a party who has been impleaded as a defendant and served with process fails to appear at the time required in the summons or

to answer at the time provided by the rules of the court. The proceeding to probate a will is not a contentious litigation in any sense, because nobody is impleaded or served with process. It is a special proceeding, and although notice of the application is published, nobody is bound to appear and no order for judgment by default, is ever entered. If the application is not opposed, the court may allow the will on the testimony of one of the subscribing witnesses only (sec. 631, Code Civ. Proc), provided none of the reasons specified in section 634 of the Code of Civil Procedure for disallowing the will are found to exist. If any interested person opposes the probate, the court hears the testimony and allows or disallows the will accordingly. From such judgment any interested person may appeal to the Supreme Court within twenty days. (Sec. 781, Code Civ. Proc.) Though the action taken by a Court of First Instance in thus allowing or disallowing a will is properly denominated a judgment, it is not a judgment rendered upon default even though no person appears to oppose the probate.

It is manifest from this that the remedy given in section 513 can have no application to the order of May 20, 1918, legalizing the will of Juan Pons y Coll; and this is necessarily fatal to the petition before us. This consequence follows regardless of any irregularities that may have occurred in the Court of First Instance in admitting the will to probate and regardless of any error which that court may have committed in the action taken upon the proof submitted at the hearing. It is not alleged that any fraud has been attempted or committed, or that the document probated is any other than a testamentary memorial in which the decedent actually gave expression to his desires with regard to the disposition of his property. But if fraud had been charged—as, for instance, if it were alleged that the purported will is forged document—the remedy, if any exists, would not be found in a proceeding under section 513, but in an original action in the Court of First Instance. It thus becomes unnecessary to inquire whether the will in Question was in fact executed in conformity with the requirements of law—either of these Islands or of Spain.

As a result of this decision it cannot be denied that, without any fault on the part of the petitioner or her attorneys, she has been deprived not only of the opportunity of opposing the will and appealing from the order of probate but also of the opportunity of applying to the Court of First Instance for relief under section 113. Even assuming that she could have procured the disallowance of the will by either of those methods—a point upon which no pronouncement can here be made—it is obvious that the impossibility of her thus obtaining relief was due to circumstances peculiar to this case; and the possibility of occasional hardship cannot affect the validity of our procedure for the probate of wills (*Estate of Johnson*, supra.)

A will is nothing more than a species of conveyance whereby a person is permitted, with the formalities prescribed by law, to control in a certain degree the disposition of his property after his death. Out of consideration for the important interests involved the execution and proof of wills has been surrounded by numerous safeguards, among which is the provision that after the death of the testator his will may be judicially established in court. The action of the court in admitting a will to probate has all the effect of a judgment; and as such is entitled to full faith and credit in other courts. The proceeding by which this is accomplished is considered to be in the nature of a proceeding in rem, and upon this idea the decree of probate is held binding on all persons in interest, whether they appear to contest the probate or not. The proceeding is not a contentious litigation; and though the persons in interest are given an opportunity to appear and reasonable precautions are taken for publicity, they are not impleaded or required to answer.

As has been repeatedly stated in the decisions of this court, the probate of a will, while conclusive as to its due execution, in no wise involves the intrinsic validity of its provisions. If, therefore, upon the distribution of the estate of Juan Pons y Coll, it should appear that any provision of his will is contrary to the law applicable to his case, the will must necessarily yield upon that point and the disposition made by law must prevail. The petitioner is therefore free to appear in the Court of First Instance at the proper juncture and discuss the question of the

validity of such provisions of the will as affect her interests adversely; and so far as we can see, on the facts before us, this is her only recourse. But if the will in question was in fact proved as the will of a Spanish subject under section 636 of the Code of Civil Procedure, the intrinsic validity of its provisions must be determined under the Spanish law applicable to this testator.

After the resolution embodied in the preceding opinion had been adopted by the court, but before the decision had been promulgated, the attorneys for the petitioner moved that an order be entered for the submission of evidence and that the clerk of this court be appointed commissioner to take the same, upon designation by him of the time and place therefor.

The step indicated would be proper if the facts stated in the petition had been found sufficient to entitle the petitioner to relief, but inasmuch as the petition is in our opinion insufficient, the making of the order suggested becomes unnecessary.

In this connection it may be well to /state that when a petition for relief in the exercise of our original jurisdiction is presented to this court, we are accustomed to consider the case as being at all times before us for the purpose of determining the legal sufficiency of the petition; and when it is found at any stage of the proceeding that the allegations of the complaint are insufficient to entitle the petitioner to relief of any sort, it is our practice to enter an order upon our own motion dismissing the petition. Where the defect apparent in the petition is of a sort that might be cured by amendment, the order of dismissal is made conditional upon the failure of the petitioner to amend within a period stated. On the other hand where the defect is manifestly incurable it is proper to make the order of dismissal absolute, and such appears to be the correct practice.

In the course of the preceding discussion we have, for the purpose of explaining the situation more clearly, permitted ourselves to refer to at least one detail not stated in the petition, as where we state that the will purports to disinherit the petitioner. This fact, however, if not admitted, is incontrovertible and apparent from the copy of the will exhibited with the answer. Moreover, the point has no decisive influence on the decision. Our opinion therefore is to be taken as an expression of our opinion upon the legal sufficiency of the petition exclusively upon the statements contained therein.

As will be discovered from the opinion, the inability of this court to grant relief in the case before us is really due to the fact that the remedy conceded in section 513 of the Code of Civil Procedure has no application to orders admitting wills to probate. The defect from which the petition suffers is therefore not curable by amendment and cannot be aided by the taking of proof. The request for an order allowing proof to be submitted must therefore be denied, and judgment absolute will be entered dismissing the petition with costs.

Arellano, C.J., Torres, Johnson, Araullo, Malcolm, Avanceña, and Moir, JJ., concur.

Writ denied

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