

HEIRS OF ROSENDO LASAM, REPRESENTED BY ROGELIO LASAM AND ATTY. EDWARD P. LLONILLO, PETITIONERS, VS. VICENTA UMENGAN, RESPONDENT.

G.R. NO. 168156. December 06, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is the petition for review on certiorari filed by the Heirs of Rosendo Lasam, represented by Rogelio M. Lasam and Atty. Edward P. Llonillo, seeking the reversal of the Decision^[1] dated February 16, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 80032. The assailed decision reversed and set aside the decision of the Regional Trial Court (RTC) of Tuguegarao City, Cagayan and dismissed, for lack of merit, the complaint for unlawful detainer filed by the said heirs against respondent Vicenta Umengan.

The RTC decision affirmed that of the Municipal Trial Court in Cities (MTCC) of the same city, Branch III, which had rendered judgment in favor of the heirs of Rosendo Lasam and directed the ejectment of respondent Vicenta Umengan from the lot subject of litigation.

The present petition likewise seeks the reversal of the CA Resolution dated May 17, 2005 denying the motion for reconsideration filed by the heirs of Rosendo Lasam.

As culled from the records, the backdrop of the present case is as follows –

The lot subject of the unlawful detainer case is situated in Tuguegarao City, Cagayan. It is the eastern half portion of Lot No. 5427 and Lot No. 990. The first lot, Lot No. 5427 containing an area of 1,037 square meters, is covered by Original Certificate of Title (OCT) No. 196. The second lot, Lot No. 990 containing an area of 118 sq m, is covered by OCT No. 1032. These lots are registered in the names of the original owners, spouses Pedro Cuntapay and Leona Bunagan.

In an instrument denominated as Deed of Confirmation and acknowledged before a notary public on June 14, 1979, the heirs of the said spouses conveyed the ownership of Lots Nos. 990 and 5427 in favor of their two children, Irene Cuntapay and Isabel Cuntapay. In another instrument entitled Partition Agreement and acknowledged before a notary public on December 28, 1979, it was agreed that the eastern half portion (subject lot) of Lots Nos. 990 and 5427 shall belong to the heirs of Isabel Cuntapay. On the other hand, the remaining portion thereof (the west portion) shall belong to the heirs of Irene Cuntapay. The subject lot (eastern half portion) has an area of 554 sq m.

Isabel Cuntapay had four children by her first husband, Domingo Turingan, namely: Abdon, Sado (deceased), Rufo and Maria. When Domingo Turingan passed away, Isabel Cuntapay remarried Mariano Lasam. She had two other children by him, namely: Trinidad and Rosendo.

Sometime in January 2001, the heirs of Rosendo Lasam (son of Isabel Cuntapay by her second husband) filed with the MTCC a complaint for unlawful detainer against Vicenta Umengan, who was then occupying the subject

lot. Vicenta Umengan is the daughter of Abdon Turingan (son of Isabel Cuntapay by her first husband).

In their complaint, the heirs of Rosendo Lasam alleged that they are the owners of the subject lot, having inherited it from their father. Rosendo Lasam was allegedly the sole heir of the deceased Pedro Cuntapay through Isabel Cuntapay. During his lifetime, Rosendo Lasam allegedly temporarily allowed Vicenta Umengan to occupy the subject lot sometime in 1955. The latter and her husband allegedly promised that they would vacate the subject lot upon demand. However, despite written notice and demand by the heirs of Rosendo Lasam, Vicenta Umengan allegedly unlawfully refused to vacate the subject lot and continued to possess the same. Accordingly, the heirs of Rosendo Lasam were constrained to institute the action for ejectment.

In her Answer with Counterclaim, Vicenta Umengan specifically denied the material allegations in the complaint. She countered that when Isabel Cuntapay passed away, the subject lot was inherited by her six children by her first and second marriages through intestate succession. Each of the six children allegedly had a pro indiviso share of 1/6 of the subject lot.

It was further alleged by Vicenta Umengan that her father, Abdon Turingan, purchased the respective 1/6 shares in the subject lot of his siblings Maria and Sado. These conveyances were allegedly evidenced by the Deed of Sale dated March 3, 1975, appearing as Doc. No. 88, Page No. 36, Book No. XIV, series of 1975 of the notarial book of Atty. Pedro Lagui.

Prior thereto, Rufo already sold his 1/6 share in the subject lot to Vicenta Umengan and her husband as evidenced by the Deed of Sale dated June 14, 1961, appearing as Doc. No. 539, Page No. 41, Book No. V, series of 1961 of the notarial book of Atty. Pedro Lagui. Also on June 14, 1961, Abdon donated his 1/6 share in the subject lot to her daughter Vicenta Umengan as evidenced by the Deed of Donation appearing as Doc. No. 538, Page No. 41, Book No. V, series of 1961 of the notarial book of the same notary public.

According to Vicenta Umengan, the children of Isabel Cuntapay by her second husband (Rosendo and Trinidad Lasam) own only 2/6 portion of the subject lot. She thus prayed that the complaint for ejectment be dismissed and that the heirs of Rosendo Lasam be ordered to pay her damages.

The MTCC rendered judgment in favor of the heirs of Rosendo Lasam and directed the ejectment of Vicenta Umengan. In so ruling, the MTCC gave credence to the newly discovered last will and testament (entitled Testamento Abierto) purportedly executed by Isabel Cuntapay where she bequeathed the subject lot to her son, Rosendo Lasam, thus:

x x x my share 1/5[th] (one-fifth) of the Cuntapay heirs, bordered on the North by Sr. Elia Canapi; to the South, by Calle Aguinaldo; to the East, by Calle P. Burgos and the West, by the late Don Luis Alonso; on the property which is my share stands a house of light materials where I presently reside; this 1/5[th] (one-fifth) share of my inheritance from the Cuntapays I leave to my son Rosendo Lasam and also the aforementioned house of light material x x x[2]

The MTCC reasoned that the heirs of Rosendo Lasam anchored their claim over the subject lot on the last will and testament of Isabel Cuntapay while Vicenta Umengan hinged hers on intestate succession and legal conveyances. Citing jurisprudence[3] and Article 1080[4] of the Civil Code, the MTCC opined that testacy was favored and that intestacy should be avoided and the wishes of the testator should prevail. It observed that the last will and testament of Isabel Cuntapay was not yet probated as required by law; nonetheless, the institution of a probate proceeding was not barred by prescription.

With the finding that the subject lot was already bequeathed by Isabel Cuntapay to Rosendo Lasam, the MTCC held that the siblings Abdon, Sado, Rufo and Maria Turingan no longer had any share therein. Consequently, they

could not convey to Vicenta Umengan what they did not own. On the issue then of who was entitled to possession of the subject lot, the MTCC ruled in favor of the heirs of Rosendo Lasam as it found that Vicenta Umengan's possession thereof was by mere tolerance. The dispositive portion of the MTCC decision reads:

WHEREFORE, in the light of the foregoing considerations, this Court Resolve[d] to order the EJECTMENT of VICENTA T. UMENGAN and in her place INSTITUTE THE HEIRS OF ROSENDO LASAM.

It is further ordered the defendant shall pay the Heirs of Rosendo Lasam the sum of P500.00 pesos representing the monthly rental of the land from August 2000 to the time this case shall have been terminated.

Ordering the defendant to pay the plaintiffs the amount of P20,000.00 attorney's fees plus cost of this litigation.

So Ordered.[5]

On appeal, the RTC affirmed in toto the decision of the MTCC. The RTC echoed the reasoning of the MTCC that the testamentary disposition of the property of Isabel Cuntapay should be respected, and that the heirs of Rosendo Lasam have a better right to possess the subject lot.

Undaunted, Vicenta Umengan filed an appeal with the CA. She argued that the MTCC had no jurisdiction over the case as it involved the recovery of ownership of the subject lot, not merely recovery of possession or unlawful detainer. She also assailed the RTC's and the MTCC's holding that the purported Testamento Abierto of Isabel Cuntapay prevails over Vicenta Umengan's muniments of title and, consequently, the heirs of Rosendo Lasam have a better right to the subject lot than Vicenta Umengan.

In the assailed Decision dated February 16, 2005, the CA reversed and set aside the decision of the RTC. The appellate court preliminarily upheld the jurisdiction of the MTCC over the subject matter as it found that the allegations in the complaint made out a case for unlawful detainer. The heirs of Rosendo Lasam in their complaint, according to the CA, only sought for Vicenta Umengan to vacate and surrender possession of the subject lot. The CA also rejected the contention of the heirs of Rosendo Lasam that the issue of ownership of the subject lot had already been settled in another case, Civil Case No. 4917, before RTC (Branch 3) of Tuguegarao City. The CA stated that the trial court's order dismissing the said case was not a "judgment on the merits" as to constitute *res judicata*.

However, the CA declared that the RTC, as well as the MTCC, erred in ruling that, by virtue of the purported last will and testament of Isabel Cuntapay, the heirs of Rosendo Lasam have a better right to the subject lot over Vicenta Umengan. The CA explained that the said last will and testament did not comply with the formal requirements of the law on wills.[6]

Specifically, the CA found that the pages of the purported last will and testament were not numbered in accordance with the law. Neither did it contain the requisite attestation clause. Isabel Cuntapay as testator and the witnesses to the will did not affix their respective signatures on the second page thereof. The said instrument was likewise not acknowledged before a notary public by the testator and the witnesses. The CA even raised doubts as to its authenticity, noting that while Isabel Cuntapay died in 1947 and the heirs of Rosendo Lasam claimed that they discovered the same only in 1997, a date – May 19, 1956 – appears on the last page of the purported will. The CA opined that if this was the date of execution, then the will was obviously spurious. On the other hand, if this was the date of its discovery, then the CA expressed bafflement as to why the heirs of Rosendo Lasam, through their mother, declared in the Partition Agreement dated December 28, 1979 that Isabel Cuntapay died intestate.

It was observed by the CA that as against these infirmities in the claim of the heirs of Rosendo Lasam, Vicenta Umengan presented a Deed of Sale and a Deed of Donation to justify her possession of the subject lot. The CA

noted that she has also possessed the subject property since 1955. Such prior possession, the CA held, gave Vicente Umengan the right to remain in the subject lot until a person with a better right lawfully ejects her. The heirs of Rosendo Lasam do not have such a better right. The CA stressed that the ruling on the issue of physical possession does not affect the title to the subject lot nor constitute a binding and conclusive adjudication on the merits on the issue of ownership. The parties are not precluded from filing the appropriate action to directly contest the ownership of or the title to the subject lot.

The decretal portion of the assailed decision of the CA reads:

WHEREFORE, premises considered, the appeal is GRANTED. The August 29, 2003 decision of the RTC, Branch 1, Tuguegarao City, Cagayan in Civil Case No. 5924 is hereby REVERSED and SET ASIDE. Private respondents' complaint for unlawful detainer against petitioner is dismissed for lack of merit.

SO ORDERED.[7]

The heirs of Rosendo Lasam sought the reconsideration thereof but their motion was denied by the CA in its Resolution dated May 17, 2005.

The heirs of Rosendo Lasam (petitioners) now come to the Court alleging that the CA committed reversible error in setting aside the decision of the RTC, which had affirmed that of the MTCC, and dismissing their complaint for unlawful detainer against respondent Vicenta Umengan.

Petitioners argue that the CA erred when it held, on one hand, that the MTCC had jurisdiction over the subject matter of the complaint as the allegations therein make out a case for unlawful detainer but, on the other hand, proceeded to discuss the validity of the last will and testament of Isabel Cuntapay.

Petitioners insist that respondent is holding the subject lot by mere tolerance and that they, as the heirs of Rosendo Lasam who was the rightful owner of the subject lot, have a better right thereto. It was allegedly error for the CA to declare the last will and testament of Isabel Cuntapay as null and void for its non-compliance with the formal requisites of the law on wills. The said matter cannot be resolved in an unlawful detainer case, which only involves the issue of material or physical possession of the disputed property. In any case, they maintain that the said will complied with the formal requirements of the law.

It was allegedly also erroneous for the CA to consider in respondent's favor the deed of sale and deed of donation covering portions of the subject lot, when these documents had already been passed upon by the RTC (Branch 3) of Tuguegarao City in Civil Case No. 4917 when it dismissed the respondent's complaint for partition of the subject lot. The said order allegedly constituted res judicata and may no longer be reviewed by the CA.

Petitioners emphasize that in an unlawful detainer case, the only issue to be resolved is who among the parties is entitled to the physical or material possession of the property in dispute. On this point, the MTCC held (and the same was affirmed by the RTC) that petitioners have a better right since the "merely tolerated" possession of the respondent had already expired upon the petitioners' formal demand on her to vacate. In support of this claim, they point to the affidavit of Heliodoro Turingan, full brother of the respondent, attesting that the latter's possession of the subject lot was by mere tolerance of Rosendo Lasam who inherited the same from Isabel Cuntapay.

According to petitioners, respondent's predecessors-in-interest from whom she derived her claim over the subject lot by donation and sale could not have conveyed portions thereof to her, as she had claimed, because until the present, it is still covered by OCT Nos. 196 and 1032 under the names of Pedro and Leona Cuntapay. Their respective estates have not been settled up to now.

It is also the contention of petitioners that the CA should have dismissed outright respondent's petition filed therewith for failure to comply with the technical requirements of the Rules of Court. Specifically, the petition was not allegedly properly verified, lacked statement of material dates and written explanation on why personal service was not made.

This last contention of petitioners deserves scant consideration. The technical requirements for filing an appeal are not sacrosanct. It has been held that while the requirements for perfecting an appeal must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business, the law does admit of exceptions when warranted by circumstances.[8] In the present case, the CA cannot be faulted in choosing to overlook the technical defects of respondent's appeal. After all, technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties.[9]

The Court shall now resolve the substantive issues raised by petitioners.

It is well settled that in ejectment suits, the only issue for resolution is the physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. However, the issue of ownership may be provisionally ruled upon for the sole purpose of determining who is entitled to possession de facto.[10]

In the present case, petitioners base their claim of right to possession on the theory that their father, Rosendo Lasam, was the sole owner of the subject lot by virtue of the newly discovered last will and testament of Isabel Cuntapay bequeathing the same to him. Respondent is allegedly holding the subject lot by mere tolerance of Rosendo Lasam and, upon the petitioners' formal demand on her to vacate the same, respondent's right to possess it has expired.

On the other hand, respondent hinges her claim of possession on the legal conveyances made to her by the children of Isabel Cuntapay by her first husband, namely, Maria, Rufo, Sado and Abdon. These conveyances were made through the sale and donation by the said siblings of their respective portions in the subject lot to respondent as evidenced by the pertinent deeds.

The CA correctly held that, as between the respective claims of petitioners and respondent, the latter has a better right to possess the subject lot.

As earlier stated, petitioners rely on the last will and testament of Isabel Cuntapay that they had allegedly newly discovered. On the basis of this instrument, the MTCC and RTC ruled that petitioners have a better right to the possession of the subject lot because, following the law on succession, it should be respected and should prevail over intestate succession.

However, contrary to the ruling of the MTCC and RTC, the purported last will and testament of Isabel Cuntapay could not properly be relied upon to establish petitioners' right to possess the subject lot because, without having been probated, the said last will and testament could not be the source of any right.

Article 838 of the Civil Code is instructive:

Art. 838. No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court.

The testator himself may, during his lifetime, petition the court having jurisdiction for the allowance of his will. In such case, the pertinent provisions of the Rules of Court for the allowance of wills after the testator's death shall govern.

The Supreme Court shall formulate such additional Rules of Court as may be necessary for the allowance of wills on petition of the testator.

Subject to the right of appeal, the allowance of the will, either during the lifetime of the testator or after his death, shall be conclusive as to its due execution.

In *Cañiza v. Court of Appeals*,^[11] the Court ruled that: "[a] will is essentially ambulatory; at any time prior to the testator's death, it may be changed or revoked; and until admitted to probate, it has no effect whatever and no right can be claimed thereunder, the law being quite explicit: 'No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court.'"^[12]

Dr. Tolentino, an eminent authority on civil law, also explained that "[b]efore any will can have force or validity it must be probated. To probate a will means to prove before some officer or tribunal, vested by law with authority for that purpose, that the instrument offered to be proved is the last will and testament of the deceased person whose testamentary act it is alleged to be, and that it has been executed, attested and published as required by law, and that the testator was of sound and disposing mind. It is a proceeding to establish the validity of the will."^[13] Moreover, the presentation of the will for probate is mandatory and is a matter of public policy.^[14]

Following the above truisms, the MTCC and RTC, therefore, erroneously ruled that petitioners have a better right to possess the subject lot on the basis of the purported last will and testament of Isabel Cuntapay, which, to date, has not been probated. Stated in another manner, Isabel Cuntapay's last will and testament, which has not been probated, has no effect whatever and petitioners cannot claim any right thereunder.

Hence, the CA correctly held that, as against petitioners' claim, respondent has shown a better right of possession over the subject lot as evidenced by the deeds of conveyances executed in her favor by the children of Isabel Cuntapay by her first marriage.

Contrary to the claim of petitioners, the dismissal of respondent's action for partition in Civil Case No. 4917 before the RTC (Branch 3) of Tuguegarao City does not constitute *res judicata* on the matter of the validity of the said conveyances or even as to the issue of the ownership of the subject lot. The order dismissing respondent's action for partition in Civil Case No. 4917 stated thus:

For resolution is a motion to dismiss based on defendants' [referring to the petitioners herein] affirmative defenses consisting inter alia in the discovery of a last will and testament of Isabel Cuntapay, the original owner of the land in dispute.

x x x

It appears, however, that the last will and testament of the late Isabel Cuntapay has not yet been allowed in probate, hence, there is an imperative need to petition the court for the allowance of said will to determine once and for all the proper legitimes of legatees and devisees before any partition of the property may be judicially adjudicated.

It is an elementary rule in law that testate proceedings take precedence over any other action especially where the will evinces the intent of the testator to dispose of his whole estate.

With the discovery of the will of the late Isabel Cuntapay in favor of the defendants, the Court can order the filing of a petition for the probate of the same by the interested party.

WHEREFORE, in light of the foregoing considerations, let the above-entitled case be as it is hereby DISMISSED.

SO ORDERED.^[15]

For there to be *res judicata*, the following elements must be present: (1) finality of the former judgment; (2) the court which rendered it had jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions, identity of parties, subject matter and causes of action.[16]] The third requisite, i.e., that the former judgment must be a judgment on the merits, is not present between the action for partition and the complaint *a quo* for unlawful detainer. As aptly observed by the CA:

Our reading of the Orders (dated June 16, 1997 and October 13, 1997) in Civil Case No. 4917 reveals that the RTC, Branch 3, Tuguegarao, Cagayan, dismissed the complaint for partition because of the discovery of the alleged last will and testament of Isabel Cuntapay. The court did not declare respondents [referring to the petitioners herein] the owners of the disputed property. It simply ordered them to petition the court for the allowance of the will to determine the proper legitimes of the heirs prior to any partition. Instead of filing the appropriate petition for the probate of Isabel Cuntapay's will, the respondents filed the present complaint for unlawful detainer. Viewed from this perspective, we have no doubt that the court's Orders cited by the respondents are not "judgments on the merits" that would result in the application of the principle of *res judicata*. Where the trial court merely refrained from proceeding with the case and granted the motion to dismiss with some clarification without conducting a trial on the merits, there is no *res judicata*.^[17]

Further, it is not quite correct for petitioners to contend that the children of Isabel Cuntapay by her first marriage could not have conveyed portions of the subject lot to respondent, as she had claimed, because until the present, it is still covered by OCT Nos. 196 and 1032 under the names of Pedro and Leona Cuntapay. To recall, it was already agreed by the heirs of the said spouses in a Partition Agreement dated December 28, 1979 that the subject lot would belong to Isabel Cuntapay. The latter died leaving her six children by both marriages as heirs. Considering that her purported last will and testament has, as yet, no force and effect for not having been probated, her six children are deemed to be co-owners of the subject lot having their respective *pro indiviso* shares. The conveyances made by the children of Isabel Cuntapay by her first marriage of their respective *pro indiviso* shares in the subject lot to respondent are valid because the law recognizes the substantive right of heirs to dispose of their ideal share in the co-heirship and/co-ownership among the heirs. The Court had expounded the principle in this wise:

This Court had the occasion to rule that there is no doubt that an heir can sell whatever right, interest, or participation he may have in the property under administration. This is a matter which comes under the jurisdiction of the probate court.

The right of an heir to dispose of the decedent's property, even if the same is under administration, is based on the Civil Code provision stating that the possession of hereditary property is deemed transmitted to the heir without interruption and from the moment of the death of the decedent, in case the inheritance is accepted. Where there are however, two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs.

The Civil Code, under the provisions of co-ownership, further qualifies this right. Although it is mandated that each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and thus may alienate, assign or mortgage it, and even substitute another person in its enjoyment, the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership. In other words, the law does not prohibit a co-owner from selling, alienating or mortgaging his ideal share in the property held in common.

As early as 1942, this Court has recognized said right of an heir to dispose of property under administration. In the case of *Teves de Jakosalem vs. Rafols, et al.*, it was said that the sale made by an heir of his share in an inheritance, subject to the result of the pending administration, in no wise, stands in the way of such administration. The Court then relied on the provision of the old Civil Code, Article 440 and Article 399 which are still in force as Article 533 and Article 493, respectively, in the new Civil Code. The Court also cited the

words of a noted civilist, Manresa: "Upon the death of a person, each of his heirs 'becomes the undivided owner of the whole estate left with respect to the part or portion which might be adjudicated to him, a community of ownership being thus formed among the co-owners of the estate which remains undivided.'"[18]

Contrary to the assertion of petitioners, therefore, the conveyances made by the children of Isabel Cuntapay by her first marriage to respondent are valid insofar as their pro indiviso shares are concerned. Moreover, the CA justifiably held that these conveyances, as evidenced by the deed of donation and deed of sale presented by respondent, coupled with the fact that she has been in possession of the subject lot since 1955, establish that respondent has a better right to possess the same as against petitioners whose claim is largely based on Isabel Cuntapay's last will and testament which, to date, has not been probated; hence, has no force and effect and under which no right can be claimed by petitioners. Significantly, the probative value of the other evidence relied upon by petitioners to support their claim, which was the affidavit of Heliodoro Turingan, was not passed upon by the MTCC and the RTC. Their respective decisions did not even mention the same.

In conclusion, it is well to stress the CA's admonition that –

x x x our ruling on the issue of physical possession does not affect title to the property nor constitute a binding and conclusive adjudication on the merits on the issue of ownership. The parties are not precluded from filing the appropriate action directly contesting the ownership of or the title to the property.[19]

Likewise, it is therefore in this context that the CA's finding on the validity of Isabel Cuntapay's last will and testament must be considered. Such is merely a provisional ruling thereon for the sole purpose of determining who is entitled to possession de facto.

WHEREFORE, premises considered, the petition is DENIED. The assailed Decision dated February 16, 2005 and the Resolution dated May 17, 2005 of the Court of Appeals in CA-G.R. SP No. 80032 are AFFIRMED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Arturo D. Brion, with Associate Justices Eugenio S. Labitoria (retired) and Eliezer R. De Los Santos, concurring.

[2] As quoted in the MTCC Decision dated November 21, 2001, p. 1; rollo, p. 79.

[3] Citing *Austria v. Reyes*, L-23079, February 27, 1970, 31 SCRA 754; *Rodriguez v. CA*, 137 Phil. 371 (1969).

[4] The provision reads in part:

ART. 1080. Should a person make a partition of his estate by an act inter vivos, or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs.

x x x

[5] Rollo, p. 81.

[6] The pertinent provisions read:

ART. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

ART. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the Office of the Clerk of Court.

[7]Rollo, pp. 61-62.

[8] Orozco v. Court of Appeals, Fifth Division, G.R. No. 155207, April 29, 2005, 457 SCRA 700.

[9] Id. at p. 709.

[10] Keppel Bank Philippines, Inc. v. Adao, G.R. No. 158227, October 19, 2005, 473 SCRA 372.

[11] 335 Phil. 1107 (1997).

[12] Id. at 1118.

[13] TOLENTINO, III CIVIL CODE OF THE PHILIPPINES, p. 151.

[14]See, for example, Guevara v. Guevara, 74 Phil. 479 (1943); Baluyut v. Paño, 163 Phil. 81 (1976) and; Roberts v. Leonidas, 214 Phil. 30 (1984).

[15] Rollo, pp. 123-124. Citations omitted.

[16]Perez v. Court of Appeals, G.R. No. 157616, July 22, 2005, 464 SCRA 89.

[17]Rollo, p. 57. Emphasis supplied.

[18] Acebedo v. Abesamis, G.R. No. 102380, January 18, 1993, 217 SCRA 186. Citations omitted.

[19]Rollo, p. 61 citing Boy v. Court of Appeals, G.R. No. 125088, April 14, 2004, 427 SCRA 196.

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