

IN THE MATTER OF THE TESTATE ESTATE OF THE LATE JOSEFA VILLACORTE, CELSO ICASIANO, PETITIONER AND APPELLEE, VS. NATIVIDAD ICASIANO AND ENRIQUE ICASIANO, OPPOSITORS AND APPELLANTS.

G.R. No. 18979. June 30, 1964

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from an order of the Court of First Instance of Manila admitting to probate the document and its duplicate, marked as Exhibits "A" and "A-1", as the true last will and testament of Josefa Villacorte, deceased, and appointing as executor Celso Icasiano, the person named This special proceeding was begun on October 2, 1958 of the original, Exhibit "A" as the alleged will of Josefa Villacorte, deceased, and for the appointment of petitioner Celso Icasiano as executor thereof. The court set the proving of the alleged will for November 8, 1958, and caused notice thereof to be published for three (3) successive weeks, previous to the time appointed, in the newspaper "Manila Chronicle", and also caused personal service of copies thereof upon the known heirs.

On October 31, 1958, Natividad Icasiano, a daughter of the testatrix, filed her opposition; and on November 10, 1958, she petitioned to have herself appointed as a special administrator, to which proponent objected. Hence, on November 18, 1958, the court issued an order appointing the Philippine Trust Company as special administrator.

On February 18, 1959, Enrique Icasiano, a son of the testatrix, also filed a manifestation adopting as his own Natividad's opposition to the probate of the alleged will.

On March 19, 1959, the petitioner proponent commenced the introduction of his evidence; but on June 1, 1959, he filed a motion for the admission of an amended and supplemental petition, alleging that the decedent left a will executed in duplicate with all the legal requirements, and that he was, on that date, submitting the signed duplicate (Exhibit "A-1"), which he allegedly found only on or about May 26, 1959. On June 17, 1959, oppositors Natividad Icasiano de Gomez and Enrique Icasiano filed their joint opposition to the admission of the amended and supplemental petition, but by order of July 20, 1959, the court admitted said petition; and on July 30, 1959, oppositor Natividad Icasiano filed her amended opposition. Thereafter, the parties presented their respective evidence, and after several hearings the court issued the order admitting the will and its duplicate to probate. From this order, the oppositors appealed directly to this Court, the amount involved being over P200,000.00, on the ground that the same is contrary to law and the evidence.

The evidence presented for the petitioner is to the effect that Josefa Villacorte died in the City of Manila on September 12, 1958; that on June 2, 1956, the late Josefa Villacorte executed a last will and testament in duplicate at the house of her daughter Mrs. Felisa Icasiano at Pedro Guevara Street, Manila, published before and attested by three instrumental witnesses, namely; attorneys Justo P. Torres, Jr. and Jose V. Natividad, and Dr. Vinicio B. Diy; that the will was acknowledged by the testatrix and by the said three instrumental witnesses on the same date before attorney Jose Oyengco Ong, Notary Public in and for the City of Manila; and that the will was actually

prepared by attorney Fermin Samson, who was also present during the execution and signing of the decedent's last will and testament, together with former Governor Emilio Rustia of Bulacan, Judge Ramon Icasiano, and a little girl. Of the said three instrumental witnesses to the execution of the decedent's last will and testament attorneys Torres and Natividad were in the Philippines at the time of the hearing, and both testified as to the due execution and authenticity of the said will. So did the Notary Public before whom the will was acknowledged by the testatrix and attesting witnesses, and also attorney Fermin Samson, who actually prepared the document. The latter also testified upon cross examination that he prepared one original and two copies of Josefa Villacorte's last will and testament at his house in Baliuag, Bulacan, but he brought only one original and one signed copy to Manila, retaining one unsigned copy in Bulacan.

The records show that the original of the will, which was surrendered simultaneously with the filing of the petition and marked as Exhibit "A", consists of five pages, and while signed at the end and in every page, it does not contain the signature of one of the attesting witnesses, Atty. Jose V. Natividad, on page three (3) thereof; but the duplicate copy attached to the amended and supplemental petition and marked as Exhibit "A-1" is signed by the testatrix and her three attesting witnesses in each and every page.

The testimony presented by the proponents of the will tends to show that the original, of the will and its duplicate were subscribed at the end and on the left margin of each and every page thereof by the testatrix herself and attested and subscribed by the three mentioned witnesses in the testatrix's presence and in that of one another as witnesses (except for the missing signature of attorney Natividad on page three (3) of the original; that pages of the original and duplicate of said will were duly numbered; that the attestation clause thereof contains all the facts required by law to be recited therein and is signed by the aforesaid attesting witnesses; that the will is written in the language known to and spoken by the testatrix; that the attestation clause is in a language also known to and spoken by the witnesses; that the will was executed on one single occasion in duplicate copies; and that both the original and the duplicate copy were duly acknowledged before Notary Public Jose Oyengco Ong of Manila on the same date—June 2, 1956.

Witness Natividad, who testified on his failure to sign page three (3) of the original, admits that he may have lifted two pages instead of one when he signed the same, but affirmed that page three (3) was signed in his presence.

Oppositors-appellants in turn introduced expert testimony to the effect that the signatures of the testatrix in the duplicate (Exhibit A-1) are not genuine, nor were they written or affixed on the same occasion as the original, and further aver that granting that the documents were genuine, they were executed through mistake and with undue influence and pressure because the testatrix was deceived into adopting as her last will and testament the wishes of those who will stand to benefit from the provisions of the will, as may be inferred from the facts and circumstances surrounding the execution of the will and the provisions and dispositions thereof, whereby proponents-appellees stand to profit from properties held by them as attorneys-in-fact of the deceased and not enumerated or mentioned therein, while oppositors-appellants are enjoined not to look for other properties not mentioned in the will, and not to oppose the probate of it, on penalty of forfeiting their share in the portion of free disposal.

We have examined the record and are satisfied, as the trial court was, that the testatrix signed both original and duplicate copies (Exhibits "A" and "A-1", respectively) of the will spontaneously, on the same occasion, in the presence of the three attesting witnesses, the notary public who acknowledged the will, and Atty. Samson, who actually prepared the documents; that the will and its duplicate were executed in Tagalog, a language known to and spoken by both the testator and the witnesses, and read to and by the testatrix and Atty. Fermin Samson together before they were actually signed; that the attestation clause is also in a language known to and spoken by

the testatrix and the witnesses. The opinion of expert for oppositors, Mr. Felipe Logan, that the signatures of the testatrix appearing in the duplicate original were not written by the same hand, which wrote the signatures in the original will leaves us unconvinced, not merely because it is directly contradicted by expert Martin Ramos for the proponents, but principally because of the paucity of the standards used by him to support the conclusion that the differences between the standard and questioned signatures are beyond the writer's range of normal scriptural variation. The expert has, in fact, used as standards only three other signatures of the testatrix besides those affixed to the original of the testament (Exh. A); and we feel that with so few standards the expert's opinion that the signatures in the duplicate could not be those of the testatrix becomes extremely hazardous. This is particularly so since the comparison charts Nos. 3 and 4 fail to show convincingly that there are radical differences that would justify the charge of forgery, taking into account the advanced age of the testatrix, the evident variability of her signatures, and the effect of writing fatigue, the duplicate being signed right after the original. These factors were not discussed by the expert.

Similarly, the alleged slight variance in blueness of the ink in the admitted and questioned signatures does not appear reliable, considering that standard and challenged writings were affixed to different kinds of paper, with different surfaces and reflecting power. On the whole, therefore, we do not find the testimony of the oppositor's expert sufficient to overcome that of the notary and the two instrumental witnesses, Torres and Natividad (Dr. Diy, being in the United States during the trial, did not testify).

Nor do we find adequate evidence of fraud or undue influence. The fact that some heirs are more favored than others is proof of neither (see *In re Butalid*, 10 Phil. 27; *Bugnao vs. Ubag*, 14 Phil. 163; *Pecson vs. Coronel*, 45 Phil. 216). Diversity of apportionment is the usual reason for making a testament; otherwise, the decedent might as well die intestate. The testamentary disposition that the heirs should not inquire into other property and that they should respect the distribution made in the will, under penalty of forfeiture of their shares in the free part, do not suffice to prove fraud or undue influence. They appear motivated by the desire to prevent prolonged litigation which, as shown by ordinary experience, often results in a sizeable portion of the estate being diverted into the hands of non-heirs and speculators. Whether these clauses are valid or not is a matter to be litigated on another occasion. It is also well to note that, as remarked by the Court of Appeals in *Sideco vs. Sideco*, 45 Off. Gaz. 163, fraud and undue influence are mutually repugnant and probate shows absence of definite evidence against the validity of the will.

On the question of law, we hold that the inadvertent failure of one witness to affix his signature to one page of a testament, due to the simultaneous lifting of two pages in the course of signing, is not per se sufficient to justify denial of probate. Impossibility of substitution of this page is assured not only the fact that the testatrix and two other witnesses did sign the defective page, but also by its bearing the coincident imprint of the seal of the notary public before whom the testament was ratified by testatrix and all three witnesses. The law should not be so strictly and literally interpreted as to penalize the testatrix on account of the inadvertence of a single witness over whose conduct she had no control, where the purpose of the law to guarantee the identity of the testament and its component pages is sufficiently attained, no intentional or deliberate deviation existed, and the evidence on record attests to the full observance of the statutory requisites. Otherwise, as stated in *Vda. de Gil vs. Murciano*, 88 Phil. 260; 49 Off. Gaz. 1459, at 1479 (decision on reconsideration) "witnesses may sabotage the will by muddling or bungling it or the attestation clause".

That the failure of witness Natividad to sign page three (3) was entirely through pure oversight is shown by his own testimony as well as by the duplicate copy of the will, which bears a complete set of signatures in every page. The text of the attestation clause and the acknowledgment before the Notary Public likewise evidence that no one was aware of the defect at the time.

This would not be the first time that this Court departs from a strict and literal application of the statutory requirements, where the purposes of the law are otherwise satisfied. Thus, despite the literal tenor of the law, this Court has held that a testament, with the only page signed at its foot by testator and witnesses, but not in the left margin, could nevertheless be probated (*Abangan vs. Abangan*, 41 Phil. 476); and that despite the requirement for the correlative lettering of the pages of a will, the failure to mark the first page either by letters or numbers is not a fatal defect (*Lopez vs. Liboro*, 81 Phil. 429). These precedents exemplify the Court's policy to require satisfaction of the legal requirements in order to guard against fraud and bad faith but without undue or unnecessary curtailment of the testamentary privilege.

The appellants also argue that since the original of the will is in existence and available, the duplicate (Exh. A-1) is not entitled to probate. Since they opposed probate of the original because it lacked one signature in its third page, it is easily discerned that oppositors-appellants run here into a dilemma: if the original is defective and invalid, then in law there is no other will but the duly signed. If the original is valid and can be probated, then the objection to the signed duplicate need not be considered, being superfluous and irrelevant. At any rate, said duplicate, Exhibit A-1, serves to prove that the omission of one signature in the third page of the original testament was inadvertent and not intentional.

That the carbon duplicate, Exhibit A-1, was produced and admitted without a new publication does not affect the jurisdiction of the probate court, already conferred by the original publication of the petition for probate. The amended petition did not substantially alter the one first filed, but merely supplemented it by disclosing the existence of the duplicate, and no showing is made that new interests were involved (the contents of Exhibit A and A-1 are admittedly identical); and appellants were duly notified of the proposed amendment. It is nowhere proved or claimed that the amendment deprived the appellants of any substantial right, and we see no error in admitting the amended petition.

In view of the foregoing, the decision appealed from is affirmed, with costs against appellants.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Regala, and Makalintal, JJ., concur.

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