

IN RE WILL OF ANTONINO VERGEL DE DIOS, DECEASED. RAMON J. FERNANDEZ, PETITIONER AND APPELLANT, HERMELO VERGEL DE DIOS AND SEVERINA JAVIER, LEGATEES AND APPELLANTS, VS. FERNANDO ...

G.R. No. 21151. February 25, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The question in this case is as to the validity of the document Exhibit A as a will, which was propounded by Ramon J. Fernandez for probate, and contested by Fernando Vergel de Dios and Francisco, Ricardo and Virgilio Rustia, the Court of First Instance of Manila having denied its probate.

The applicant takes this appeal, assigning error to the action of the lower court in holding the attestation fatally defective and in not finding Act No. 2645 void. The defects attributed to the will by the contestants are as follows, to wit:

- (a) It was not sufficiently proven that the testator knew the contents of the will.
- (b) The testator did not sign all the pages of the will.
- (c) He did not request anybody to attest the document as his last will.
- (d) He did not sign it in the presence of any witness.
- (e) The witnesses did not sign it in the presence of the testator, or of each other, nor with knowledge on the part of the testator that they were signing his will.
- (f) The witnesses did not sign the attestation clause before the death of the testator.
- (g) This clause was written after the execution of the dispositive part of the will and was attached to the will after the death of the testator.
- (h) The signatures of the testator on page 3 of Exhibit A are not authentic.

The evidence sufficiently shows that when Attorney Lopez Lizo read the will to the testator, the latter's mind was perfectly sane and he understood it; that he signed all the pages of the will proper, although he did not sign the page containing the attestation clause; that while he did not personally call the witnesses, yet the latter were invited by Attorney Lopez Lizo to act as such in his presence. The law does not require that the testator precisely be the person to request the witnesses to attest his will. It was also sufficiently established in the record, besides being stated in the attestation clause, that the testator signed the will in the presence of the three witnesses and that the latter, in turn, signed it in the presence of the testator and of each other, the testator knowing that the witnesses were signing his will; that the witnesses signed the attestation clause before the death of the testator; that this clause, with the names of the witnesses in blank, was prepared before the testator signed the will, and that the sheet containing said clause, just as those of the will proper, was a loose sheet, and that all the four sheets of which the will Exhibit A was actually composed were kept together and are the very ones presented in this case; and finally, that the signatures of the testator on page 3 of said exhibit are authentic.

It thus appearing from the record that there are no such defects as those mentioned by the opponents, and it having been proven that the testator executed said will in a language known by him and consciously, freely and spontaneously, it would seem unnecessary to go further, and the matter might be brought to a close right here, by holding the will in question valid and allowable to probate, were it not for the fact that the trial court and the opponents questioned the sufficiency and validity of the attestation clause because the sheet on which it is written is not numbered, and it is not stated there that the testator signed on the margin of each sheet of the will in the presence of the three witnesses, or that the latter signed it in the presence of the testator and of each other, and specially because said attestation clause is not signed by the testator either at the margin or the bottom thereof. As to the numbering of the sheet containing the attestation clause, it is true that it does not appear on the upper part of the sheet, but it does appear in its text, the pertinent part of which is copied hereinafter, with the words, having reference to the number of sheets of the will, underscored, including the page number of the attestation:

"* * * We certify that the foregoing document written in Spanish, a language known by the testator Antonino Vergel de Dios, consisting of three sheets actually used, correlatively enumerated, besides this sheet * * *."

If, as stated in this clause, the foregoing document consists of three sheets, besides that of the clause itself, which is in singular, it is clear that such a sheet of the attestation clause is the fourth and that the will, including said sheet, has four sheets. This description contained in the clause in question constitutes substantial compliance with the requirements prescribed by the law regarding the paging. So it was held by this Court in the case of *Abangan vs. Abangan* (40 Phil., 476), where the sheet containing the attestation, as well as the preceding one, was also not paged.

Furthermore, the law, as we shall see later on, does not require that the sheet containing nothing but the attestation clause, wholly or in part, be numbered or paged. Consequently this lack of paging on the attestation sheet does not take anything from the validity of the will.

Turning now to the question whether or not in this clause it is stated that the testator signed on the margin of each sheet of the will, in the presence of the witnesses and the latter in the presence of each other, let us see what is said in said clause on this point, and to this end its pertinent part is hereinafter transcribed and is as follows:

"* * * and he (the testator) signed at the bottom of the aforesaid will in our presence and we at his request did the same in his presence and in that of each other as witnesses to the will, and lastly, the testator, as well as we, as witnesses, signed in the same manner on the left margin of each sheet." (Italics ours.)

The underscored phrase "in the same manner" cannot in the instant case mean, and it in fact means nothing, but that the testator and the witnesses signed on the left margin of each sheet of the will "in the same manner" in which they signed at the bottom thereof, that is, the testator in the presence of the witnesses and the latter in the presence of the testator and of each other. This phrase in the same manner cannot, in view of the context of the pertinent part, refer to another thing, and was used here as a suppletory phrase to include everything and avoid the repetition of a long and difficult one, such as what is meant by it. The same section 618 of the Code of Civil Procedure, in order to avoid the repetition of the same long phrase about the testator having signed in the presence of the witnesses and the latter in the presence of each other, resorts to a similar expression in the second paragraph and says, "as aforesaid."

Concerning the absolute absence of the signature of the testator from the sheet containing the attestation clause, this point was already decided in the above cited case of *Abangan vs. Abangan*, where this court held that:

"The testator's signature is not necessary in the attestation clause because this, as its name implies, appertains only to the witnesses and not to the testator."

In that case of *Abangan vs. Abangan* it was held that the signature of the testator is not necessary in the attestation clause, but the theory is not announced that such a clause is unnecessary to the validity of the will.

For this reason such doctrine does not annul the judgment in the case of *Uy Coque vs. Navas L. Sioca* (43 Phil., 405), where in effect the doctrine, among others, was laid down that the attestation clause is necessary to the validity of the will. One of the points on which greatest stress was laid in that case of *Uy Coque* is that the requirements of the law regarding the number of the pages used, the signing of the will and of each of its pages by the testator in the presence of three witnesses, and the attestation and signing of the will and of each of its pages by the witnesses in the presence of each other cannot be proven aliunde but by the attestation clause itself which must express the compliance of the will with such requirements. But it was not held in that case of *Uy Coque* that the signature of the testator was necessary in the attestation clause, nor was such point discussed there, which was the point at issue in the case of *Abangan vs. Abangan*, supra.

The appellees, however, argue that such clause in the case of *Abangan vs. Abangan* begins at the bottom and on the same sheet in which the testamentary provisions terminated, that is to say, the will properly speaking. Even then if it is intended to commit misrepresentation or fraud, which are the things that with the requirements of the law for the making and attesting of wills it is intended to avoid, it is just the same that the clause; as in the case of *Abangan vs. Abangan*, begins at the bottom of the will properly speaking, as, like the case before us, it is wholly contained in a separate sheet. The fact is that this separate sheet, containing the attestation clause wholly or in part, is not signed in any place by the testator in the case of *Abangan vs. Abangan*, as it is not in the present case.

Section 618 of the Code of Civil Procedure, as amended by Act No. 2645, contains three paragraphs, of which the first enumerates in general terms the requirements to be met by a will executed after said Code took effect, to wit, that the language or dialect in which it is written be known by the testator, that it be signed by the latter or by another person in the name of the testator by his express direction and in his presence, and that it be attested and signed by three or more credible witnesses in the presence of the testator and of each other.

These general rules are amplified in the next two paragraphs as to the special requirements for the execution of the will by the testator and the signing thereof by the witnesses, with which the second paragraph of the section deals, and as to the attestation clause treated in the third and last paragraph of said section 618.

For this reason the second paragraph of this section 618 says:

"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, on the left margin, and said pages shall be numbered correlatively in letters placed on the upper part of each sheet.

These are the solemnities that must surround the execution of the will properly speaking, without any reference whatsoever to the attestation clause not treated in this second paragraph. It is in this second paragraph which deals only with the will (without including the attestation clause), that the signature or name of the testator and those of the witnesses are mentioned as necessary on the left margin of each and everyone of the sheets of the will (not of the attestation clause), as well as the paging of said sheets (of the will, and not of the attestation clause which is not yet spoken of).

Now, are the signatures of the testator and the paging of the will also necessary in the attestation clause? Let us see the last paragraph of this section 618 of the Code which already deals with the requirements for the attestation clause. This last paragraph reads thus:

"The attestation shall state the number of sheets or 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 three witnesses, and the latter witnessed and signed the will and all pages thereof in the presence of the testator and of each other." As may be seen this last paragraph refers to the contents of the text of the attestation, not the requirements or signatures thereof outside of its text. It does not require that the attestation be signed by the testator or that the page or sheet containing it be numbered.

From this analysis of our law now in force it appears:

First. That the will must have an attestation clause as a complement, without which it cannot be probated and with which only and not aliunde (*Uy Coque vs. Navas L. Sioca*, supra) may the requirements to be stated in its text be proven. The attestation clause must be prepared and signed, as in the instant case, on the same occasion on which the will is prepared and signed, in such a way that the possibility of fraud, deceit or suppression of the will or the attestation clause be reduced to a minimum; which possibility always exists, as experience shows, in spite of the many precautions taken by the legislator to insure the true and free expression of one's last will.

Second. That the will is distinct and different from the attestation, although both are necessary to the validity of the will, similar, in our opinion, to a document which is not public so long as it is not acknowledged before a notary, the document being a distinct and different thing from the acknowledgment, each of which must comply with different requisites, among which is the signature of the maker which is necessary in the document but not in the acknowledgment and both things being necessary to the existence of the public document.

Third. That the will proper must meet the requirements enumerated in the second paragraph of section 618 of the Code of Civil Procedure.

Fourth. That the text of the attestation clause must express compliance with the requirements prescribed for the will.

In the case at bar the attestation clause in question states that the requirements prescribed for the will were complied with, and this is enough for it, as such attestation clause, to be held as meeting the requirements prescribed by the law for it.

The fact that in said clause the signature of the testator does not appear does not affect its validity, for, as above stated, the law does not require that it be signed by the testator.

We find no merit in the assignment of error raising the question as to the validity of Act No. 2645, which is valid. For the purposes of this decision, it is not necessary to reason out this conclusion, it being sufficient for the adjudication of this case to hold the first error assigned by the appellants to have been demonstrated.

The foregoing conclusions lead us to hold, as we do here-by hold, that the document Exhibit A, as the last will and testament of the deceased Antonino Vergel de Dios, meets all the requirements prescribed by the law now in force and therefore it must be allowed to probate as prayed for by the petitioner.

The judgment appealed from is reversed, and it is ordered that the lower court proceed with the probate of the will Exhibit A in accordance with law, without express pronouncement as to costs. So ordered.

Street, Malcolm, Avancena, and Johns, JJ., concur.

DISSENTING

OSTRAND, J.:

I dissent and think that the judgment appealed from should have been affirmed. In my opinion, the decision of the Court affords a striking illustration of the old adage that "a hard case makes bad law."

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