

IN RE PROBATE OF THE WILL OF JOSEFA DIONISIO. TEOFILA DIONISIO, PETITIONER AND APPELLEE, VS. ANGELA DIONISIO OPPONENT AND APPELLANT.

G.R. No. 21177, December 22, 1923

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from an order of the Court of First Instance of Bulacan admitting to probate a document alleged to be the last will and testament of the deceased Josefa Dionisio.

The petition for the probate of the document was opposed by Angela Dionisio, a niece of the deceased, on the grounds (1) that the document has not been executed in the form required by law for a valid will, (2) that at the time of its execution the deceased was mentally incapacitated, and (3) that the alleged signatures of the deceased to the document are forgeries.

(1) In connection with the first ground for the opposition, the appellant maintains that the attestation clause of the alleged will is defective in that it does not state the number of sheets or pages used in the document, nor the fact that the testatrix signed every page thereof, and that it, therefore, is invalid under section 618 of the Code of Civil Procedure as amended by Act No. 2645. The section, as amended, reads as follows:

"No will, except as provided in the preceding section, shall be valid to pass any estate, real or personal, nor charge or affect the same, unless it be written in the language or dialect known by the testator and signed by him, 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 each other. 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. 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."

The document here in question is executed in the Tagalog language. The attesting clause reads as follows:

"Kaming nakalagda sa ibaba nito ay pinatotohanan namin na ang testadora na si G. Josefa Dionisio ay nasa kaniyang mahusay na kaisipan, at isinaysay na ang kasulatang nasa itaas nito ay siya niyang huling kalooban at testamento at pumirma sa harap naming tatlo sa ibaba ng kasulatan at sa mga guilid ng bawat dalawang pagina, at lumagda naman kami sa ibaba nito at sa bawat guilid ng dalawang pagina sa harap ng testadora, at bawat isa sa aming lahat."

This is thus translated into Spanish by one of the official interpreters of the Court of First Instance of Manila:

"Nosotros los abajo firmantes atestiguamos que la testadora, Josefa Dionisio, esta en su buen juicio y declaro

que el documento arriba escrito es su ultima disposicion y testamento y ella lo firmo en la presencia de nosotros tres al pie del documento y en los margenes de las dos paginas y tambien firmamos a continuacion y en los margenes de las dos paginas en la presencia de la testadora y en la presencia de cada uno y todos nosotros."

The appellant contends that this translation is incorrect and that it should read:

"Nosotros, los abajo firmados, certificamos que la testadora Josefa Dionisio esta en su sano juicio y declaro que la escritura preinserta es su ultima voluntad y testamento y afirmo en presencia de nosotros tres al pie del mismo y en los margenes de cada dos paginas, y nosotros tambien firmamos al pie de esta clausula y en cada margen de dos paginas en presencia de la testadora y cada uno de todos nosotros."

As will be seen, if the translation made by the official interpreter is correct, the attestation clause in the document does state the number of pages used and also the fact that the testatrix signed all of the pages. If, on the other hand, the version given by the appellant is correct, the meaning would, at least, be obscure and the clause would hardly meet the requirements of the law.

Several members of the court, who possess a knowledge of the Tagalog language, have examined the two translations and are of the opinion that the one made by the official translator is correct and in conformity with the idiomatic usage of the Tagalog tongue; that anyone familiar with the language, reading the Tagalog version of the clause in question, would understand it in the sense given it by the official translator; and that the literal translation furnished by the appellant, while word for word correct, is not idiomatic. If this is true—and as to that we have no doubt—the clause is sufficient in law.

(2) There is practically no evidence tending to show that Josef a Dionisio was of unsound mind, at the time of the execution of the alleged will.

(3) The greater part of the evidence before us relates to the third ground for the opposition; i. e., that the signatures of the deceased, as appearing in the document, are forgeries, and eight of the nine assignments of error presented by the appellant bear directly upon this point. Without entering into an extended discussion of the evidence, it is sufficient to say that, in our opinion, it amply supports the finding of the court below that the signatures in question are genuine. We share with the trial judge his distrust of the testimony of the "expert" Pedro Serrano Laktaw, and we are also of the opinion that such minor differences as there are between the disputed signatures and the admitted signatures of the deceased are due to differences in her physical condition. At the time the will was executed she was extremely feeble and practically a paralytic, a fact which naturally would affect the appearance of her handwriting. Neither do we find any merit in the appellant's assignments of error Nos. 3, 4, 5, 6, 7, and 8.

The order appealed from is affirmed, with the costs against the appellant. So ordered.

Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.

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