

**TESTATE ESTATE OF JOSEPH G. BRIMO. JUAN MICIANO,
ADMINISTRATOR, PETITIONER AND APPELLEE, VS. ANDRE BRIMO,
OPPONENT AND APPELLANT.**

G.R. No. 22595. November 01, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The partition of the estate left by the deceased Joseph G. Brimo is in question in this case.

The judicial administrator of this estate filed a scheme of partition. Andre Brimo, one of the brothers of the deceased, opposed it. The court, however, approved it.

The errors which the oppositor-appellant assigns are: (1) The approval of said scheme of partition; (2) the denial of his participation in the inheritance; (3) the denial of the motion for reconsideration of the order approving the partition; (4) the approval of the purchase made by Pietro Lanza of the deceased's business and the deed of transfer of said business; and (5) the declaration that the Turkish laws are impertinent to this cause, and the failure not to postpone the approval of the scheme of partition and the delivery of the deceased's business to Pietro Lanza until the receipt of the depositions requested in reference to the Turkish laws.

The appellant's opposition is based on the fact that the partition in question puts into effect the provisions of Joseph G. Brimo's will which are not in accordance with the laws of his Turkish nationality, for which reason they are void as being in violation of article 10 of the Civil Code which, among other things, provides the following:

"Nevertheless, legal and testamentary successions, in respect to the order of succession as well as to the amount of the successional rights and the intrinsic validity of their provisions, shall be regulated by the national law of the person whose succession is in question, whatever may be the nature of the property or the country in which it may be situated."

But the fact is that the oppositor did not prove that said testamentary dispositions are not in accordance with the Turkish laws, inasmuch as he did not present any evidence showing what the Turkish laws are on the matter, and in the absence of evidence on such laws, they are presumed to be the same as those of the Philippines. (Lim and Urn vs. Collector of Customs, 36 Phil., 472.)

It has not been proved in these proceedings what the Turkish laws are. He, himself, acknowledges it when he desires to be given an opportunity to present evidence on this point; so much so that he assigns as an error of the court in not having deferred the approval of the scheme of partition until the receipt of certain testimony requested regarding the Turkish laws on the matter. The refusal to give the oppositor another opportunity to prove such laws does not constitute an error. It is discretionary with the trial court, and, taking into consideration that the oppositor was granted ample opportunity to introduce competent evidence, we find no abuse of discretion on the part of the court in this particular.

There is, therefore, no evidence in the record that the national law of the testator Joseph G. Brimo was violated in

the testamentary dispositions in question which, not being contrary to our laws in force, must be complied with and executed.

Therefore, the approval of the scheme of partition in this respect was not erroneous.

In regard to the first assignment of error which deals with the exclusion of the herein appellant as a legatee, inasmuch as he is one of the persons designated as such in the will, it must be taken into consideration that such exclusion is based on the last part of the second clause of the will, which says:

"Second. I likewise desire to state that although, by law, I am a Turkish citizen, this citizenship having been conferred upon me by conquest and not by free choice, nor by nationality and, on the other hand, having resided for a considerable length of time in the Philippine Islands where I succeeded in acquiring all of the property that I now possess, it is my wish that the distribution of my property and everything in connection with this, my will, be made and disposed of in accordance with the laws in force in the Philippine Islands, requesting all of my relatives to respect this wish, otherwise, I annul and cancel beforehand whatever disposition found in this will favorable to the person or persons who fail to comply with this request."

The institution of legatees in this will is conditional, and the condition is that the instituted legatees must respect the testator's will to distribute his property, not in accordance with the laws of his nationality, but in accordance with the laws of the Philippines.

If this condition as it is expressed were legal and valid, any legatee who fails to comply with it, as the herein oppositor who, by his attitude in these proceedings has not respected the will of the testator, as expressed, is prevented from receiving his legacy.

The fact is, however, that the said condition is void, being contrary to law, for article 792 of the Civil Code provides the following:

"Impossible conditions and those contrary to law or good morals shall be considered as not imposed and shall not prejudice the heir or legatee in any manner whatsoever, even should the testator otherwise provide."

And said condition is contrary to law because it expressly ignores the testator's national law when, according to article 10 of the Civil Code above quoted, such national law of the testator is the one to govern his testamentary dispositions.

Said condition then, in the light of the legal provisions above cited, is considered unwritten, and the institution of legatees in said will is unconditional and consequently valid and effective even as to the herein oppositor.

It results from all this that the second clause of the will regarding the law which shall govern it, and to the condition imposed upon the legatees, is null and void, being contrary to law.

All of the remaining clauses of said will with all their dispositions and requests are perfectly valid and effective it not appearing that said clauses are contrary to the testator's national laws.

Therefore, the orders appealed from are modified and it is directed that the distribution of this estate be made in such a manner as to include the herein appellant Andre Brimo as one of the legatees, and the scheme of partition submitted by the judicial administrator is approved in all other respects, without any pronouncement as to costs. So ordered.

Street, Malcolm, Avanceña, Villamor, and Ostrand, JJ., concur.

Johnson, J., dissents.

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