

IN RE WILL OF PEDRO TABLIZO, DECEASED. ANTONIO AMATA AND FELIPE ALMOJUELA, PETITIONERS AND APPELLANTS, VS. JUANA TABLIZO ET AL., OBJECTORS AND APPELLEES.

G.R. No. 23483, December 18, 1925

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a proceeding commenced in the Court of First Instance of Albay by a petition filed by Antonio Amata and Felipe Almojuela, praying for the probate of the last will and testament of the deceased Pedro Tablizo, and the issuance of letters of administration to the petitioners.

Juana Tablizo and others opposed the probate of the will applied for on the following grounds: "(1) That it was not signed by the witnesses, nor executed by the deceased Pedro Tablizo, as prescribed by the Code of Civil Procedure; (2) that the deceased Pedro Tablizo was not habitually of sound mind, but on the contrary, was unconscious at the time of the execution of said document; (3) that said document was not signed by the testator freely and voluntarily, nor did he intend it to be his will on the date when it was executed; and (4) that said document was maliciously and fraudulently prepared by the two beneficiaries Antonio Amata and Felipe Almojuela, causing a date to appear thereon which is not the true date of its execution." And they prayed that the petition be denied, and it be held that Pedro Tablizo died intestate, and Tomas Tablizo be appointed special administrator of the estate left by said deceased.

After trial, whereat evidence was introduced by the petitioners, as well as the opponents, the court below entered an order declaring that the deceased Pedro Tablizo was unconscious when the document Exhibit A was executed, and that said document did not contain the, last will of the testator, and denying the probate thereof as the last will and testament of said deceased; and declaring, further, that Pedro Tablizo died intestate. From this order the petitioners took an appeal in due time and form, assigning the following supposed errors as committed by the trial court, to wit: (1) Its declaration that it entertains a reasonable suspicion that the document Exhibit A, the testament of the deceased Pedro Tablizo, does not contain the will of the testator; (2) its refusal to admit the will Exhibit A to probate and its finding that Pedro Tablizo died intestate; and (3) its failure to render judgment against the opponents for the costs of the action.

The petitioners attempted to prove that the deceased Pedro Tablizo was 82 years old and was near-sighted. Beginning May 4, 1924, he was confined to his bed by reason of senile weakness and could not stand up. On June 2 and 3, 1924, he sent for one Juan Agunday to tell him to draw his will, but the latter excused himself, saying that it was a delicate and hard task. On the evening of June 3, 1924, Pedro Tablizo caused one to look for Alipio Arcilla, but the latter could not be found, having gone to Dato. In view thereof, he ordered that Felipe Almojuela be called. As soon as the latter arrived, which took place at about 3 o'clock in the evening, Pedro Tablizo asked Antonio Amata to bring him the list of his real properties, and to read one by one the items therein for the purpose of separating the paraphernal property of his wife from his own and the conjugal property. Antonio Amata read

them one by one in the presence of Mariano Arcilla, husband of Juana Tablizo, of Felipe Almojuela and of Pedro Tablizo, giving their boundaries, kinds, areas and values. As Antonio Amata was mentioning each parcel, Pedro Tablizo was telling him to whom it must be allotted. When he said, "that is Incay's" (wife of Pedro Tablizo), he marked the item with the word "Incay," and so on, with the words "Pedro," if he said it was his; "conjugal" if he said it was conjugal; and "own cultivation" if he said it was cultivated by him exclusively, that is, land acquired by cultivation and occupied by him. There arose certain doubts as to the boundaries of one of the land's and his brother-in-law Mariano Arcilla made them clear. At 6 o'clock in the evening, the reading of the list was finished, and Pedro Tablizo asked Antonio Amata and his brother-in-law, Mariano Arcilla, as to what they thought about the will being drawn by Felipe Almojuela. Mariano Arcilla answered that he agreed that it be written by Felipe Almojuela, since no one else could do it and Alipio Arcilla was not in the town. At 6:30 Pedro Tablizo began to dictate his will to Felipe Almojuela, in the presence of his wife, of Mariano Arcilla and Antonio Amata, having finished the same at about 8 o'clock in the evening. While Felipe Almojuela was writing a clean copy of the rough draft in his house, the testator told Antonio Amata to look for Vicente Arcilla and Gregorio Sarmiento who were to act as witnesses to the will, together with Gregorio Sarmiento who was already in the house. Felipe Almojuela finished typewriting the will at 12 o'clock in that night and took it to the house of the testator, who, in the presence of Mariano Dominguez, Vicente Arcilla, Gregorio Sarmiento, Cipriano Suscito, Felipe Almojuela, Francisco Gianan, Eufrosina Tablizo and Antonio Amata, had Mariano Dominguez read it paragraph by paragraph. Cipriano Suscito and Mariano Arcilla followed with their eyes what Mariano Dominguez was reading. Before the reading of the will, the testator, in a stroke of good humor said to Mariano Dominguez, "Alas! Nitoy, I will no longer be able to help you in the next election." Upon the termination of the reading of the will, and after stating that it was his last will, Pedro Tablizo asked for it in order to sign the same. It was 1 o'clock in the morning of June 4, 1924. Gregorio Sarmiento seated Pedro Tablizo upon the bed and has been holding him, while Antonio Amata was taking a book of music, placing the will Exhibit A upon it, and presenting it to the testator for his signature. As the latter could no longer see, Eufrosina Tablizo, niece of the testator and wife of Antonio Amata, placed the pen between his fingers, held his hand and put the point of the pen on the place where he had to write his signature. The testator signed unaided on the left margin of each of the pages and at the bottom of the will in the presence of all the witnesses, who did the same in the presence of each other and of the testator. At 10 o'clock approximately in the evening of June 4, 1924, Pedro Tablizo sent for Father Cecilio Penilla and confessed. Before the confession, he had been talking with said priest. On the 9th day of June, 1924, Serapia Torcelino and her husband went to the house of the deceased looking for a carabao to purchase, and Pedro Tablizo ordered that the carabao called Tilbayong be sold. On the 10th day of the same month and year, Fathers Andres Tablizo and Mariano Surtida, paid a visit to the testator and the latter talked with them. On the 12th day of the same month and year, Father Cecilio Penilla saw him for the last time, and on said date, as on June 4, he found him lying down on his bed, being unable to move, but he could speak, and prayed correctly, first in an audible voice and then in a low voice. In his two confessions, he related his spiritual life coherently and without confusion. Antonio Amata has been living with his wife in the house of the testator, taking care of him and helping him manage his estate. It was he who attended to the payment of the land tax. Felipe Almojuela was reared by Pedro Tablizo since he was a child, having taken him from the possession of his parents and kept him in his house until he married. Pedro Tablizo died on June 20, 1924.

The opponents, who are all brothers and sisters and children of brothers and sisters of the testator, attempted to prove that the will was clandestinely prepared by Antonio Amata and Felipe Almojuela and signed on the midnight of June 19, 1924, Pedro Tablizo then lying down on his bed, weakened by old age and his sickness, lying down with his mouth upward and open, the eyes closed and the feet and arms extended, being unable to move, see, speak or know those surrounding him, it being necessary that Antonio Amata should, as he did, place the pen in his fingers, hold him by the arm and guide him while signing the will upon a pillow.

The only questions to be decided in this appeal are: (1) When was the will made and signed?; (2) who drew and signed it?; and (3) was the mind of the testator perfectly sound when he made and signed the will?

As to the first question, the preponderance of the evidence shows that the testator dictated to Felipe Almojuela the rough draft of his will, the latter having typewritten it clean, and finished the drawing thereof at midnight. Notwithstanding the distrust with which the trial judge received the testimony of the petitioners, as they had intervened in the preparation of the will, and are the ones most benefited, he could not help giving credit to their testimony and that of their witnesses upon the date when the will was made and signed, that is, from 3 o'clock in the evening of the third day up to 1 o'clock in the morning of the 4th of June, 1924. In view of the fact that the testator did not die until June 20, 1924, it was to the interest of the opponents to fix it at June 19, 1924, in order to make credible the theory that the testator was unconscious when his will was executed and signed.

Turning now to the second question, the very witness for the opponents, Father Cecilio Penilla, testified that at 10 o'clock approximately in the night of June 4, 1924, the date when the will was signed, and on the 12th day of the same month and year, the testator had sent for him in order to confess and on both occasions he intelligently and intelligibly talked with him, relating his spiritual life coherently and clearly although he was lying down on his bed and could not move or stand up without assistance. It is a fact also uncontroverted that on June 9, 1924, he ordered a carabao sold, designating it by its name Tilbayong. On the 10th day of the same month, he received the visit of Fathers Andres Tablizo and Mariano Surtida with whom he has been conversing. All these prior, coetaneous and subsequent circumstances show that Pedro Tablizo was perfectly of sound mind at the time of making his last will.

With regard to the third question, we have, already seen that the will was made on June 3, 1924, and signed immediately thereafter at an early hour in the morning of the 4th day of the same month and year. The date of the execution of the will is important in the determination of the mental condition of the testator. If the opponents and their witnesses testified falsely upon this essential point, under the rule *falsus in uno falsus in omnibus*, they are not entitled to any credit upon the other essential points of their testimony, unless corroborated by other witnesses whose credibility is beyond suspicion. "On the other hand, the testimony of the petitioners and their witnesses upon the making of the will is so clear, positive and consistent, and the succession of facts upon which they testified and their incidents is so natural, that it cannot but convince any one who should read it without bias. If, as above stated, the petitioners and their witnesses are entitled to a greater credit than the opponents and their witnesses, and if, as above seen, the testator was in perfectly sound mental condition, there can be no doubt that it was the testator who signed his signature on the will placed upon a book of music. The testimony of the opponents and their witnesses is improbable that the will was signed upon a pillow. A pillow being soft, as it is, cannot serve as a support for writing purposes.

Where the testator is in perfectly sound mental Condition, neither old age, nor ill health, nor the fact that somebody had had to guide his hand in order that he could sign, is sufficient to invalidate his will. (28 R. C. L., pars. 44 and 68; L. R. A. [1915 D], page. 906; 35 L. R. A., 102.)

For the foregoing reasons, we are of the opinion that the order appealed from must be, as is hereby, revoked with the costs against the appellees, and it is ordered that the will of Pedro Tablizo be admitted to probate. So ordered.

Avanceña, C, J., Street, Malcolm, Ostrand, Johns, and Romualdez, JJ., concur.

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