

**DIONISIO FERNANDEZ, EUSEBIO REYES AND LUISA REYES,
PETITIONERS, VS. ISMAELA DIMAGIBA, RESPONDENT. MARIANO
REYES, CESAR REYES, LEONOR REYES, AND PACIENCIA REYES,
PETITIONERS, VS....**

G.R. No. 23638 and 23662. October 12, 1967

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

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REYES, J.B.L., Acting C.J.:

The heirs intestate of the late Benedicta de los Reyes have petitioned for a review of the decision of the Court of Appeals (in CA-G.R. No. 31221-R) affirming that of the Court of First Instance of Bulacan, in Special Proceeding No.831 of said Court, admitting to probate the alleged last will and testament of the deceased, and overruling the opposition to the probate.

It appears from the record that on January 19, 1955, Ismaela Dimagiba, now respondent, submitted to the Court of First Instance a petition for the probate of the purported will of the late Benedicta de los Reyes, executed on October 22, 1930, and annexed to the petition. The will instituted the petitioner as the sole heir of the estate of the deceased. The petition was set for hearing, and in due time, Dionisio Fernandez, Eusebio Reyes and Luisa Reyes, and one month later, Mariano, Cesar, Leonor and Paciencia, all surnamed Reyes, all claiming to be heirs intestate of the decedent, filed oppositions to the probate asked. Grounds advanced for the opposition were forgery, vices of consent of the testatrix, estoppel by laches of the proponent, and revocation of the will by two deeds of conveyance of the major portion of the estate made by the testatrix in favor of the proponent in 1943 and 1944, but which conveyances were finally set aside by this Supreme Court in a decision promulgated on August 3, 1954, in cases G.R. Nos. L-5618 and L-5620 (unpublished).

After trial on the formulated issues, the Court of First Instance, by decision of June 20, 1958, found that the will was genuine and properly executed; but deferred resolution on the questions of estoppel and revocation "until such time when we shall pass upon the intrinsic validity of the provisions of the will or when the question of adjudication of the properties is opportunely presented."

Oppositors Fernandez and Reyes petitioned for reconsideration, and/or new trial, insisting that the issues of estoppel and revocation be considered and resolved; whereupon, on July 27, 1959, the Court overruled the claim that proponent was in estoppel to ask for the probate of the will, but "reserving unto the parties the right to raise the issue of implied revocation at the opportune time."

On January 11, 1960, the Court of First Instance appointed Ricardo Cruz as administrator for the sole purpose of submitting an inventory of the estate, and this was done on February 9, 1960.

On February 27, 1962, after receiving further evidence on the issue whether the execution by the testatrix of deeds of sale of the larger portion of her estate in favor of the testamentary heir, made in 1943 and 1944, subsequent to the execution of her 1930 testament, had revoked the latter under Article 957(2) of the 1950 Civil Code (Art. 869

of the Civil Code of 1889), the trial Court resolved against the oppositors and held the will of the late Benedicta de los Reyes "unaffected and unrevoked by the deeds of sale." Whereupon, the oppositors elevated the case to the Court of Appeals.

The appellate Court held that the decree of June 20, 1958, admitting the will to probate, had become final for lack of opportune appeal; that the same was appealable independently of the issue of implied revocation; that contrary to the claim of oppositors-appellants, there had been no legal revocation by the execution of the 1943 and 1944 deeds of sale, because the latter had been made in favor of the legatee herself, and affirmed the decision of the Court of First Instance.

Oppositors then appealed to this Court.

In this instance, both sets of oppositors-appellants pose three main issues: (a) whether or not the decree of the Court of First Instance allowing the will to probate had become final for lack of appeal; (b) whether or not the order of the Court of origin dated July 27, 1959, overruling the estoppel invoked by oppositors appellants had likewise become final; and (c) whether or not the 1930 will of Benedicta de los Reyes had been impliedly revoked by her execution of deeds of conveyance in favor of the proponent on March 26, 1943 and April 3, 1944.

As to the first point, oppositors-appellants contend that the order allowing the will to probate should be considered interlocutory, because it failed to resolve the issues of estoppel and revocation propounded in their opposition. We agree with the Court of Appeals that the appellant's stand is untenable. It is elementary that a probate decree finally and definitively settles all questions concerning capacity of the testator and the proper execution and witnessing of his last will and testament, irrespective of whether its provisions are valid and enforceable or otherwise. (*Montaño vs. Suesa*, 14 Phil. 676; *Mercado vs. Santos*, 66 Phil. 215; *Trillana vs. Crisostomo*, 89 Phil. 710). As such, the probate order is final and appealable; and it is so recognized by express provisions of Section 1 of Rule 109, that specifically prescribes that "any interested person may appeal in special proceedings from an order or judgment x x x where such order or judgment: (a) allows or disallows a will."

Appellants argue that they were entitled to await the trial Court's resolution on the other grounds of their opposition before taking an appeal, as otherwise there would be a multiplicity of recourses to the higher Courts. This contention is without weight, since Rule 109, section 1, expressly enumerates six different instances when appeal may be taken in special proceedings.

There being no controversy that the probate decree of the Court below was not appealed on time, the same had become final and conclusive. Hence, the appellate courts may no longer revoke said decree nor review the evidence upon which it is made to rest. Thus, the appeal belatedly lodged against the decree was correctly dismissed.

The alleged revocation implied from the execution of the deeds of conveyance in favor of the testamentary heir is plainly irrelevant to and separate from the question of whether the testament was duly executed. For one, if the will is not entitled to probate, or its probate is denied, all questions of revocation become superfluous: in law, there is no such will and hence there would be nothing to revoke. Then, again, the revocation invoked by the oppositors-appellants is not an express one, but merely implied from subsequent acts of the testatrix allegedly evidencing an abandonment of the original intention to bequeath or devise the properties concerned. As such, the revocation would not affect the will itself, but merely the particular devise or legacy. Only the total and absolute revocation can preclude probate of the revoked testament (*Trillana vs. Crisostomo*, *supra*).

As to the issue of estoppel, we have already ruled in *Guevara vs. Guevara*, 98 Phil. 249, that the presentation and probate of a will are requirements of public policy, being primarily designed to pro-*tec*t the testator's expressed

wishes, which are entitled to respect as a consequence of the decedent's ownership and right of disposition within legal limits. Evidence of it is the duty imposed on a custodian of a will to deliver the same to the Court, and the fine and imprisonment prescribed for its violation (Revised Rule 75). It would be a non sequitur to allow public policy to be evaded on the pretext of estoppel. Whether or not the order overruling the allegation of estoppel is still appealable or not, the defense is patently unmeritorious and the Court of Appeals correctly so ruled.

The last issue, that of revocation, is predicated on paragraph 2 of Article 957 of the Civil Code of 1950 (Art. 869 of the Code of 1889), which recites:

"ART. 957. The legacy or devise shall be without effect:

(1) x x x

(2) If the testator by any title or for any cause alienates the thing bequeathed or any part thereof it being understood that in the latter case the legacy or devise shall be without effect only with respect to the part thus alienated. If after the alienation the thing should again belong to the testator, even if it be by reason of nullity of the contract, the legacy or devise shall not thereafter be valid, unless the reacquisition shall have been effected by virtue of the exercise of the right or repurchase;

xxx."

It is well to note that, unlike in the French and Italian Codes, the basis of the quoted provision is a presumed change of intention on the part of the testator. As pointed out by Manresa in his Commentaries on Article 869 of the Civil Code (Vol. 6, 7th Ed., p. 743) --

"Este caso se funda en la presunta voluntad del testador. Si este, despues de legar, se desprende de la cosa por titulo lucrativo u oneroso, hace desaparecer su derecho sobre ella, dando lugar a la presuncion de que ha cambiado de voluntad, y no quiere que el legado se cumpla. Mas para que pueda presumirse esa voluntad, es necesario que medien actos del testador que la indiquen. Si la perdida del derecho sobre la cosa ha sido independiente de la voluntad del testador, el legado podra quedar sin efecto, mas no en virtud del numero 2: del articulo 869, que exige siempre actos voluntarios de enajenacion por parte del mismo testador."

As observed by the Court of Appeals, the existence of any such change or departure from the original intent of the testatrix, expressed in her 1930 testament, is rendered doubtful by the circumstance that the subsequent alienations in 1943 and 1944 were executed in favor of the legatee herself, appellee Dimagiba. In fact, as found by the Court of Appeals in its decision annulling these conveyances (affirmed in that point by this Supreme Court in *Reyes vs. Court of Appeals and Dimagiba*, L-5618 and L-5620, promulgated on July 31, 1954), "no consideration whatever was paid by respondent Dimagiba" on account of the transfers, thereby rendering it even more doubtful whether in conveying the property to her legatee, the testatrix merely intended to comply in advance with what she had ordained in her testament, rather than an alteration or departure therefrom.[1] Revocation being an exception, we believe, with the Courts below, that in the circumstances of the particular case, Article 957 of the Civil Code of the Philippines, does not apply to the case at bar.

Not only that, but even if it were applicable, the annulment of the conveyances would not necessarily result in the revocation of the legacies, if we bear in mind that the findings made in the decision decreeing the annulment of the subsequent 1943 and 1944 deeds of sale were also that

"it was the moral influence, originating from their confidential relationship, which was the only cause for the execution of Exhs. A and B" (the 1943 and 1944 conveyances). (Decision, L-5618 and L-5620).

If the annulment was due to undue influence, as the quoted passage implies, then the transferor was not expressing her own free will and intent in making the conveyances. Hence, it can not be concluded, either, that such

conveyances established a decision on her part to abandon the original legacy.

True it is that the legal provision quoted prescribes that the recovery of the alienated property "even if it be by reason of the nullity of the contract" does not revive the legacy; but as pointed out by Scaevola (Codigo Civil, Vol. XV, 4th Ed., pp. 324-325) the "nullity of the contract" can not be taken in an absolute sense.[2] Certainly, it could not be maintained, for example, that if a testator's subsequent alienation were avoided because the testator was mentally deranged at the time, the revocatory effect ordained by the article should still ensue. And the same thing could be said if the alienation (posterior to the will) were avoided on account of physical or mental duress. Yet, an alienation through undue influence in no way differs from one made through violence or intimidation. In either case, the transferor is not expressing his real intent,[3] and it can not be held that there was in fact an alienation that could produce a revocation of the anterior bequest.

In view of the foregoing considerations, the appealed decision of the Court of Appeals is hereby affirmed. Costs against appellants Reyes and Fernandez.

SO ORDERED.

Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Scaevola (Codigo Civil, Vol. XV, 4th ed. p. 378) aptly remarks:

"Cuando el testador, a sabiendas de la disposicion contenida en su ultiima voluntad, enajena al legatario la cosa legada, si bien esta sale del poder de aquel, va a parar al del legatario, acto que no puede interpretarse como mudanza de la voluntad, puesto que transmite la cosa a la persona a la que deseaba favorecer con ella. Por esta circunstancia, y por la de no revocar el legado, mas bien parece que persiste en su intencion de beneficiar al legatario, y que no con la propia cosa, con el derecho que le concede el art. 878. Si al donar el testador al futuro legatario la cosa que le dejaba en el testamento, indica solo una realizacion anticipada de la ultima voluntad, el venderla sin derogar la disposicion del legado parece indicar tambien que no ha habido idea modificadora de la intencion, sino que prosigue en la de favorecer al instituido, y y que no es posible conseguirlo con la cosa misma, se impone el verificarlo en la manera determinada por el articulo, o sea mediante la entrega del precio."

[2] "Deciamos anteriormente que necesitaba alguna explicacion la frase del num. 2: del art. 869; aunque sea por la nulidad del contrato, pare no apartarla de sus verdaderos y prudentes limites. Literalmente entendida, autorizaria el que fuese revocado un legado por enajenacion que hubiese realizado el testador con vicio en el consentimiento. Dice con razon el jurisconsulto frances Demante, 'que se llegaria a consecuencias contrarias a los principios mas elementales del Derecho y de la razon si, exagerando dicha doctrina, se diese efecto revocatorio a una enajenacion nula por vicio de consentimiento.' Como una voluntad impotente pare transferir la propiedad podria tener la fuerza de revocar un legado? Si la enajenacion lleva el vicio de violencia o de error, sera posible atribuir algun efecto a acto semejante? Es logico deducir entoncos que el testador se arrepintio, como dicen las Partidas, del otorgamiento de la manda?" (Scaevola, op. cit.)

[3] Cf. Torres vs. Lopez, 48 Phil. 772; Coso vs. Deza, 42 Phil. 596.

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