

## **IN RE WILL OF NORBERTO CUSI, DECEASED. LEOCADIO DIMANLIG, PETITIONER AND APPELLEE, VS. VICTORIA CUSI ET AL., OPPONENTS AND APPELLANTS.**

*G.R. No. 23894. December 03, 1925*

Ponente: VILLA-REAL, J.

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### **VILLA-REAL, J.:**

This is an appeal taken by Victoria Cusi, Vicente Cusi, Mamerto Cusi, Candelaria Cusi, Juliana Cusi and Miguel Cusi, from a judgment of the Court of First Instance of Batangas, ordering the allowance and probate of the will executed by the deceased Norberto Cusi on April 3, 1900.

The appellants contend that the trial court "erred in ordering document Exhibit B to be allowed to probate as the last will and testament of the deceased Norberto Cusi," for the chief reason that the provision of the second paragraph of article 703 of the Civil Code was not complied with, which provides: "If the testator dies within this period (two months), the will shall also be void, unless application is made within three months following his death to a competent court to have the will, whether it be oral or written, incorporated in a public document."

The testator, Norberto Cusi died on August 3, 1900, in 3atangas where public order had not yet been completely restored and the courts of justice under the new sovereignty were not as yet duly organized. Under that situation, all the heirs and legatees named in the will took possession of the property which was allotted to each in the will. On March 25, 1922, the herein opponents and appellants filed with the Court of First Instance of Batangas a motion praying that Ciriaca Cusi be ordered to present to the court the will of the deceased Norberto Cusi for the probate thereof.

The preponderance of the evidence shows that Norberto Cusi was in imminent danger of death when he executed the will in question and continued to be in that state until his death. The only question to be decided is whether or not said requirement was dispensed with in view of the fact that Norberto Cusi died upon a time when a public disorder existed and it was impossible to incorporate the will in a public document. The legal provision upon this point is conclusive and makes no exception. While the law does not require an impossibility, upon the restoration of public order a proceeding must have been commenced in a competent court to comply with the requirement of the second paragraph of article 703 of the Civil Code above quoted. The impossibility to come into competent court, due to its inexistence, suspended the period fixed by the law for incorporating the will in public document, and began to run again as soon as public order was restored and the courts organized.

The foregoing is the opinion of the court. The writer hereof believes, however, that it is not amiss to state that as all the heirs and legatees named in the will took possession of the property which was allotted to each in the lifetime of the testator, without having questioned the validity of said will until the year 1924, when at the instance of the herein opponents and appellants, it was presented for probate, the latter cannot now question the partition made among themselves, because by their acts they have led one another to believe that they had a right to the portion allotted to each heir and legatee, and because by the lapse of ten years the title to the respective

portion has prescribed in their favor (sec. 41 of the Code of Civil Procedure; *Bargayo vs. Camumot*, 40 Phil., 857; 10 R. C. L., sec. 126; 40 Cyc., 1893).

For the foregoing, the judgment appealed from is reversed, and the will of Norberto Cusi is held void and of no effect, without special pronouncement as to costs. So ordered.

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

Johnson, J., did not take part.

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