

FLORENCIO MANALO, AS GUARDIAN OF THE MINORS LAZARO MENDIETA AND DARIA MENDIETA, PETITIONER, VS. HONORABLE ISIDRO PAREDES, JUDGE OF FIRST INSTANCE OF LAGUNA, AND PHILIPPINE FOOD ...*G.R. No. 24168. September 22, 1925*

Ponente: VILLA-REAL, J.

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This is a proceeding for mandamus commenced originally in this court by Florencio Manalo, as guardian of the minors Lazaro and Daria Mendieta, for the issuance of a writ of mandamus addressed to the Honorable Isidro Paredes, Judge of the Court of First Instance of Laguna, and the Philippine Food Co., ordering the publication of the petition for the probate of the will of the deceased Francisco Villegas, case No. 4217 of the Court of First Instance of Laguna; and injunction commanding the respondent judge, Honorable Isidro Paredes, to suspend the proceedings in the registration case No. 954 of the Court of First Instance of Laguna, wherein the Philippine Food Co. is the applicant and the minors Lazaro and Daria Mendieta opponents, until the termination of the proceeding for the probate of the will of Francisco Villegas, in which said minors are named legatees of the land involved in said registration case.

On March 22, 1924, Laureana Hidalgo, surviving spouse of Francisco Villegas, filed with the Court of First Instance of Laguna an application for letters of administration of the estate left by her deceased husband, who, according to the application, died intestate (rec. No. 4031, file 1, of the Court of First Instance of Laguna).

In the course of said administration and on May 5, 1924, Justina Mendieta, Lazaro Mendieta, Daria Mendieta, and Melecio Fule, supposed testamentary executor, through their attorney, Mr. Eusebio Lopez, filed a motion with the court, praying for the probate of the supposed will of Francisco Villegas, wherein most of his property was given as a legacy to said Justina Mendieta, the latter's children and the legitimate wife of the deceased Francisco Villegas (rec. No. 4031, file 1, fol. 47).

On August 8, 1924, Messrs. E. M. Lopez and V. F. Reyes, attorneys, on behalf of the executor Melecio Fule, filed a motion (Exhibit 3) wherein they stated that the attesting witnesses, Exequiel Evidente and Albino Villegas, had assured them that the supposed will had not been executed by Francisco Villegas in accordance with law, and that the executor Melecio Fule no longer took interest in the case (rec. No. 4031, fol. 116).

On June 5, 1924, having received an order of the court requiring her to produce the supposed will of Francisco Villegas, Justina Mendieta filed a motion, wherein, among other things, she said:

"That having learned of the aforesaid order of this court, I hereby freely and spontaneously state that I know not of any will executed by the deceased Francisco Villegas, except the one that I had had said deceased Francisco Villegas sign on January 18, 1924, which he signed at my request and inducement in order that my children begotten by him might have a share in his estate, as said deceased did in fact sign said will only in my presence and compelled by the pressure exerted by me and for my aforesaid children." (Rec. No. 4031, file 1,

fol. 70.)

Notwithstanding the foregoing motions, the court, on September 3, 1924, ordered the publication in the newspaper *El Debate*, of Manila, of the application of Melecio Fule and of Justina Mendieta, Lazaro Mendieta, and Daria Mendieta for the probate of the supposed will of the deceased Francisco Villegas, setting said application for hearing on the 3d day of October, 1924 (rec. No. 4031, file 1, fol. 192).

On September 5, 1924, Justina Mendieta, together with her children Lazaro Mendieta and Daria Mendieta, filed another application for the probate of the same will through their attorneys, Messrs. Azada and Veluz (rec. No. 4031, file 1, fol. 199), and on October 13, 1924, the same attorneys and Attorney Marcelino Lontok, on behalf of Justina Mendieta and her minor children, filed a motion for the appointment of a guardian ad litem for said minors (rec. No. 4031, file 2, fol. 117).

At the trial, which was held October 16, 1924, the court below appointed Justina Mendieta, natural mother of said minors, as their guardian ad litem. Laureana Hidalgo entered her objection to the probate of the will (rec. No. 4031, file 2, fol. 136) and immediately the court proceeded to hear the evidence of the parties, each and everyone of the attesting witnesses of the supposed will, named Tomas Dizon, Albino Villegas, and Exequiel Evidente having testified, and the applicants having introduced Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, and N and the opponent Exhibits 1, 2, 3, and 4, the trial having been suspended thereafter, to be continued on October 24, 1924.

When the case was called on October 24, 1924, for the continuation of the trial, Justina Mendieta, for herself and in her capacity as guardian ad litem of her minor children Lazaro Mendieta and Daria Mendieta, represented by their attorneys, Messrs. Marcelino Lontok and Marcial Azada, on the one hand, and Laureana Hidalgo, represented by her attorney, Mr. J. E. Blanco, on the other, submitted to the court an agreement wherein Justina Mendieta stated that she withdrew her application for the probate of the supposed will of the 'deceased Francisco Villegas on the ground that the evidence was insufficient to justify the probate of said will, and consequently, she prayed that said will be held not allowable to probate and that the deceased died intestate, without leaving any more heirs than his legitimate wife, Laureana Hidalgo, and his two adulterous children, Lazaro and Daria Mendieta, and that the property of the deceased be distributed in accordance with said agreement (rec. No. 4031, file 2, fol. 171).

By an order dated October 25, 1924, the court approved said stipulation and rendered judgment, holding that the supposed will of Francisco Villegas could not be probated, and awarding to the heirs of the deceased the estate left by Francisco Villegas in accordance with said agreement (rec. No. 4031, file 2, fol. 173). From this order no appeal has been taken.

On January 7, 1925, one Gelacio Malihan, who claimed to be first cousin of the deceased Francisco Villegas, filed with the court a new application for the probate of the same supposed will of the deceased Francisco Villegas (rec. No. 4217).

As may be seen from the facts above stated, the will, the probate of which is applied for in the petition dated January 7, 1925, is the same one that was the subject of the application of May 5, 1924, and of September 5, 1924. The only difference lies in that the first application was filed by Justina Mendieta and her minor children Lazaro Mendieta and Daria Mendieta and Melecio Fule, supposed testamentary executor, all represented by the attorney, Mr. Eusebio M. Lopez; the second by Justina Mendieta and her minor children Lazaro Mendieta and Daria Mendieta, represented by the attorneys Messrs. Azada and Veluz; and the third and last by one Gelacio Malihan who claimed to be first cousin of the deceased Francisco Villegas.

The proceeding for the probate of a will is a proceeding in rem (40 Cyc., p. 1265), and the court acquires

jurisdiction over all the persons interested through the publication of the notice prescribed by section 630 of the Code of Civil Procedure, and any order that may be entered is binding against all of them. Through the publication ordered by the Court of First Instance of Laguna of the application for the probate of the supposed will of Francisco Villegas, filed by Justina Mendieta and her minor children Lazaro and Daria Mendieta and Melecio Fule, testamentary executor, through their attorney, Mr. Eusebio Lopez, said court acquired jurisdiction over all such persons as were interested in the supposed will, including Gelacio Malihan. The court having tried said application for probate, hearing all the testimony of the attesting witnesses of the said supposed will, the applicant Justina Mendieta for herself and as guardian ad litem of her minor children, represented by their attorneys, Messrs. Marcelino Lontok and Marcial Azada, on the one hand, and Laureana Hidalgo, widow of Francisco Villegas, represented by her attorney, Jesus E. Blanco, on the other, having submitted a stipulation wherein the former withdrew her application and the latter reserved certain rights over the estate left by Francisco Villegas in favor of Justina Mendieta and her minor children; and the court having approved said stipulation and declared that Francisco Villegas died intestate according to said agreement, all the parties became bound by said judgment; and if any of them or other persons interested were not satisfied with the court's decision, they had the remedy of appeal to correct any injustice that might have been committed, and cannot now through the special remedy of mandamus, obtain a review of the proceeding upon a new application for the probate of the same will, in order to compel the respondent judge to comply with his ministerial duty imposed by section 330 of the Code of Civil Procedure; because this remedy, being extraordinary, cannot be used in lieu of appeal, or writ of error (26 Cyc., 177; 18 R. C. L., par. 443); especially when the parties interested have agreed to disregard the testamentary provisions and divide the estate as they pleased, each of them taking what pertained to him (25 R. C. L., 359).

The first ground of the petition for mandamus is a consequence of the second and we need not deal with it.

As to the motion of the petitioner that the record of the proceeding be transmitted to the Attorney-General for investigation, in order to discover any irregularity or fraud that may have been committed, and to institute the proper proceeding against those who may be found guilty, this court will take no action unless specific charges are filed.

For all of the foregoing, the petition for mandamus is denied with the costs against the petitioner. So ordered.

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

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