

IN RE WILL OF EUSTAQUIO HAGORILES. PETRONILO GUMBAN, PETITIONER AND APPELLEE, VS. INOCENCIA GORECHO ET AL., OPPONENTS AND APPELLANTS.

G.R. No. 26135. March 03, 1927

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal by the widow, Inocencia Gorecho, and eighteen other opponents, from an order of the Court of First Instance of Iloilo probating the document presented by Petronilo Gumban as the last will and testament of the deceased Eustaquio Hagoriles. Among the errors assigned is included the finding of the trial court that the alleged will was prepared in conformity with the law, notwithstanding it did not contain an attestation clause stating that the testator and the witnesses signed all the pages of the will.

In support of their argument on the assignment of error above-mentioned, appellants rely on a series of cases of this court beginning with in the Matter of the Estate of Saguinsin ([1920], 41 Phil., 875), continuing with in In re Will of Andrada ([1921], 42 Phil., 180), Uy Coque vs. Navas L. Sioca ([1922], 43 Phil., 405), and In re Estate of Neumark ([1923], 46 Phil., 841), and ending with in Saño vs. Quintana ([1925], 48 Phil., 506). Appellee counters with the citation of a series of cases beginning with Abangan vs. Abangan ([1919], 40 Phil., 476), continuing through Aldaba vs. Roque ([1922], 43 Phil., 378), and Fernandez vs. Vergel de Dios ([1924], 46 Phil., 922), and culminating in Nayve vs. Mojal and Aguilar ([1924], 47 Phil., 152). In its last analysis, our task is to contrast and, if possible, conciliate, the last two decisions cited by opposing counsel, namely, those of Saño vs. Quintana, *supra*, and Nayve vs. Mojal and Aguilar, *supra*.

In the case of Saño vs. Quintana, *supra*, it was decided that an attestation clause which does not recite that the witnesses signed the will and each and every page thereof on the left margin in the presence of the testator is defective, and such a defect annuls the will. The case of Uy Coque vs. Sioca, *supra*, was cited, but the case of Nayve vs. Mojal and Aguilar, *supra*, was not mentioned. In contrast, is the decision in Nayve vs. Mojal and Aguilar, *supra*, wherein it was held that the attestation clause must state the fact that the testator and the witnesses reciprocally saw the signing of the will, for such an act cannot be proved by the mere exhibition of the will, if it is not stated therein. It was also held that the fact that the testator and the witnesses signed each and every page of the will can be proved also by the mere examination of the signatures appearing on the document itself, and the omission to state such evident fact does not invalidate the will.

It is a habit of courts to reaffirm or distinguish previous cases; seldom do they admit inconsistency in doctrine. Yet here, unless aided by casuistry of the extreme type, it would be impossible to reconcile the Mojal and Quintana decisions. They are fundamentally at variance. If we rely on one, we affirm. If we rely on the other, we reverse.

In resolving this puzzling question of authority, three outstanding points may be mentioned. In the first place, the Mojal decision was concurred in by only four members of the court, less than a majority, with two strong

dissenting opinions; the Quintana decision was concurred in by seven members of the court, a clear majority, with one formal dissent. In the second place, the Mojal decision was promulgated in December, 1924, while the Quintana decision was promulgated in December 1925; the Quintana decision was thus subsequent in point of time. And in the third place, the Quintana decision is believed more nearly to conform to the applicable provisions of the law.

The right to dispose of property by will is governed entirely by statute. The law of the case is here found in section 618 of the Code of Civil procedure, as amended by Act No. 2645, and in section 634 of the same Code, as unamended. It is in part provided in section 618, as amended, that "No will * * * shall be valid * * * unless * * *." It is further provided in the same section that "The attestation shall state the number of sheets or pages used, upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of three witnesses, and the latter witnessed and signed the will and all pages thereof in the presence of the testator and of each other." Codal section 634 provides that "The will shall be disallowed in either of the following cases: 1. If not executed and attested as in this Act provided." The law not alone carefully makes use of the imperative, but cautiously goes further and makes use of the negative, to enforce legislative intention. It is not within the province of the courts to disregard the legislative purpose so emphatically and clearly expressed.

We adopt and reaffirm the decision in the case of Saño vs. Quintana, *supra*, and, to the extent necessary, modify the decision in the case of Nayve vs. Mojal and Aguilar, *supra*.

It may not be said here that our ruling is predicated on technicality or injustice. The will in question was formulated in a medley of three languages, Visayan, English, and Spanish. Suspicious circumstances surrounded the making of the will by the bedridden old man, who is alleged to have signed it. However, no express pronouncements on the two important questions relating to the language of the will and the testamentary capacity of the deceased are required.

The order appealed from will be reversed, and the document Exhibit A disallowed as a will, without special pronouncement as to costs in either instance. So ordered.

Avanceña, C. J., Johnson, Street, Ostrand, and Villa-Real, JJ., concur.

ROMUALDEZ, J., with whom concurs VILLAMOR, J., dissenting:

I am of the opinion that the order probating the will, the subject-matter of this proceeding, must be affirmed.

I understand that the majority did not consider the other defects in the will of much importance and stressed only the absence in the attestation clause of the fact that the testator and witnesses failed to sign each and every page thereof.

To this particular point the reasoning of the majority decision are directed, considering the same as decisive in the present case. Therefore, in choosing between the case of Nayve vs. Mojal and Aguilar (47 Phil., 152) and Saño vs. Quintana (48 Phil., 506) as to which is applicable to the case before us, the majority opinion says: "If we rely on one, we affirm. If we rely on the other, we reverse."

I understand there is no conflict between the decision in the case of Nayve vs. Mojal and Aguilar and that of Saño vs. Quintana above cited. The point at issue in the first case (Nayve vs. Mojal and Aguilar) regarding which there is a difference of opinion, is the absence of the number of used sheets of pages of the will in the attestation clause. In the case of Quintana it is not the absence of the number of sheets or pages which is the question at issue, but

the fact that the witnesses failed to sign each and every page of the will on the left-hand margin in the presence of the testator.

The question before us is whether or not the fact that the testator and the witnesses had signed each and every page of the will is sufficiently stated in the attestation clause. The pertinent part of said attestation clause in dispute in the present case, reads as follows:

"* * * That the testator Eustaquio Hagoriles signed said will in our presence and that we signed the said will in the presence of the testator and in the presence of each and everyone of us; said will consists of ten used pages, including this last page."

As may be seen the number of used sheets of the will appears in this clause. Therefore, the doctrine enunciated in the case of *Nayve vs. Mojal and Aguilar* is not strictly applicable to the case before us.

It also appears that the testator signed the will in the presence of the witnesses and the latter in the presence of the former. Therefore, the case of *Quintana* above cited is not applicable herein.

The portion of the attestation clause above quoted which is in dispute, expressly states that the testator and the witnesses signed the will, consisting of ten used pages, the former in the presence of the latter and the latter in the presence of the former and in the presence of each and everyone of them.

It is true, strictly speaking, that in signing a will of ten pages it does not necessarily mean signing each and everyone of said pages, although we may say, for example, "I have read this book of a hundred pages," giving it to understand that we have read each and everyone of the hundred pages of the book. But when, as in the instant case, it is a fact, and indisputable fact, that each and everyone of the ten pages of this will was signed by the testator and the witnesses, the lack of clarity in the language of the attestation clause, in my opinion, should not be a bar to the probation of the will.

This court has rightly held that:

"The solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guarantee their truth and authenticity." (*Abangan vs. Abangan*, 40 Phil., 476.)

And from the fact stated in the attestation clause in question that the testator and the witnesses signed the ten pages of the will, which fact appears in the will itself, as may be seen upon examination of the instrument before us which was offered and admitted as evidence, it cannot be presumed to have been made in bad faith, nor a fraud or forgery committed, nor is there even a possibility of any such contingencies.

And where there is no such contingency and the required provisions of the law are substantially complied with, the free expression of the will should necessarily be recognized and respected and in no way restrained. Thus, this court, even in the cases in which the legal requirements have not been literally but only substantially complied with, is very liberal when it clearly shows that there exists no possibility of fraud, forgery or bad faith in the execution of the will.

So that even though the law requires that the testator and the witnesses sign on the margin and that each and everyone of the sheets of the will be paged, in the case of *Abangan vs. Abangan* above cited, the will was probated notwithstanding the fact that said provision had not been complied with.

Even though the law requires that the signatures of the testator and the witnesses appear on the left-hand margin of each sheet of the will, the will in the case of *Avera vs. Garcia and Rodriguez* (42 Phil., 145) was likewise probated in spite of the fact that the signatures appeared on the right-hand margin.

Although the law requires that the paging of the will must be in letters, the will of Josefa Zalamea, which was not paged in letters but Arabic numerals (*Unson vs. Abella*, 43 Phil., 494) was probated.

To follow a criterion, unnecessarily strict, in the probate of a will even if the ends of justice are completely satisfied and its precepts substantially obeyed, is contrary to the sound doctrine repeatedly laid down by this court and expressed in the case of *Abangan vs. Abangan* above-mentioned, in the following manner:

"But, on the other hand, also one must not lose sight of the fact that is not the object of the law to restrain and curtail the exercise of the right to make a will. So when an interpretation already given assures such ends," namely, to close the door against bad faith and fraud, to avoid substitution of wills, and testaments and to guarantee their truth and authenticity, "any other interpretation whatsoever, that adds nothing but demands more requisites entirely unnecessary, useless and frustrative of the testator's last will, must be disregarded."

I am of the opinion that this criterion should be strictly followed in the present case and therefore the probate of the will, the subject-matter of this action, should be affirmed.

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