

JOSE VILLAFLOR, PETITIONER AND APPELLANT, VS. DEOGRACIAS TOBIAS ET AL., OPPOSITORS AND APPELLEES.

G.R. No. 27440. December 24, 1927

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from a judgment denying a petition for the probate of a will alleged to have been executed by one Gregoria Villaflor who died in the municipality of Santo Domingo, Province of Ilocos Sur on October 7, 1925. The petition was presented by Jose Villaflor, one of the testamentary heirs of the deceased. Pilar Villaflor, Deogracias Tobias, and several others whose names do not appear in the record, contested the will upon the following grounds: (1) That it was not signed by the alleged testatrix personally though she was well able to do so at the time of the execution of the document; (2) that said testatrix did not authorize any one to sign the alleged will in her name; (3) that both before and after the execution of the document, Gregoria Villaflor signed various documents by thumb marks; (4) that although it is true that the testatrix requested that the will be prepared, she nevertheless refused to sign it because it was contrary to her desires and instructions; (5) that subsequent to the date upon which the alleged will was executed, Gregoria Villaflor on several occasions stated that it was not her testament; (6) that the alleged will was not executed or signed in conformity with the law.

The grounds upon which the court below based the rejection of the document are thus stated in its decision.

"After a careful examination of all the evidence of record, this court is of opinion that it has been sufficiently proved that Claro Lazo, the person who is alleged to have written the name of the testatrix in her behalf and by her express direction, subscribed the name and surname of the testatrix and signed the will in question without Rufino D. Soliven, one of the attesting witnesses, being present; and that neither was said Rufino D. Soliven present when Vicente Tacderas, one of the attesting witnesses, signed it; and lastly, when Rufino D. Soliven signed the will the witness Vicente Tacderas was not present.

"Besides the foregoing defect, which the court believes fatal, it also finds that the will in question, marked Exhibit B of the applicant, was typewritten on eight catalan sheets, one separated from the others; that the attestation clause was written on a separate sheet, marked page 9, when said clause could have been written totally or partially on page 8, since one-half of this latter page is blank.

"In the opinion of the court, all these circumstances tend to make the authenticity and due execution of the will in question very doubtful and suspicious. And if the testimony of the witnesses for the opposition should be taken into account as well as the circumstance that the testatrix Gregoria Villaflor has neither signed nor subscribed the alleged will, notwithstanding the fact that it has been proven in the record, that on July 12, 1923, the day on which it is alleged the said will was executed, the testatrix was in good and sound health, although she could not walk on her own feet inasmuch as she was then suffering from rheumatism or partial paralysis of the lower extremities, and that on July 27, and May 25, 1923, the testatrix Gregoria Villaflor used to mark with her thumb, if she did not sign, the document she executed, as it was proven during the trial by Exhibits 1 and 2 of the opponents, the doubt and suspicion which this court entertains in regard to the authenticity of the will in question, becomes a certainty that said testament is false."

We are reluctant to set aside the findings of the court below but they are, in our opinion, so clearly without sufficient support in the record that we are constrained to reject them. The will in question is dated July 12, 1923, and was prepared by a lawyer, Eustaquio Gallardo, and as far as appearances go, was executed in strict compliance with the provisions of section 618 of the Code of Civil Procedure for the execution of wills. The testatrix's name was signed by one Claro Lazo, a clerk in the office of the municipal treasurer of Santo Domingo, and the attesting witnesses were Vicente Tacderas, municipal president, Rufino D. Soliven, chief of police, and Mariano Pizarro, municipal treasurer, all of the town of Santo Domingo. The finding of the court below that the witness Soliven was not present when Claro Lazo signed the name of the testatrix and when Vicente Tacderas signed as witness, is based on the fact that, in testifying in this case, Claro Lazo upon being asked to enumerate the names of the persons present at the time of the signing of the document, omitted the name of Soliven. But it appears from the transcript of the testimony that he afterwards corrected his original statement and testified that Soliven, as well as the other witnesses to the will, was present while all of the signatures were affixed. This is in harmony with the testimony of all of the instrumental witnesses and is undoubtedly true; there is, indeed, nothing strange or unusual in a mistake such as that made by Lazo. It may be noted that it is not disputed that the lawyer Gallardo was present during the whole proceeding and as he appears to have possessed full knowledge of the formal requirements for the execution of a will, it is highly improbable that he would have allowed the will in question to be signed without the presence of the testatrix and of all of the witnesses.

That the attestation clause of the will is written on a separate page and not on the last page of the body of the document is, in our opinion, a matter of minor importance and is explained by the fact that if the clause had been written on the eighth page of the will in direct continuation of the body thereof, there would not have been sufficient space on that page for the signatures of the witnesses to the clause. It is also to be observed that all of the pages, including that upon which the attestation clause is written, bear the signatures of all of the witnesses and that there is no question whatever as to the genuineness of said signatures.

The fact that the name of the testatrix was written by another person, and that she did not sign by thumb-mark, is easily explained and is evidently due to an attempt on the part of the lawyer Gallardo to comply strictly with the following clause in the Spanish text of section 618 of the Code of Civil Procedure: "Excepto en el caso a que se refiere el articulo anterior, no sera valido para la trasmision de bienes muebles e inmuebles, ni los gravara y afectara, ningun testamento a menos que este escrito y que haya sido firmado por el testador, o que lleve el nombre de este, escrito por otra persona en su presencia y bajo su direccion expresa, * * *." The making of a finger mark is not "escribir" and it may be noted that Gallardo apparently is a good Spanish scholar; that it does not appear that he knows the English language; and that he therefore probably used the Spanish text of the Code.

There is some testimony on the part of the contestants to the effect that the testatrix on various occasions, subsequent to the execution of the will, had stated that it was not in conformity with her instructions and that it was not her will. Assuming that such statements were made, we can give them but little importance. The testatrix was an old woman and might well have made the statements by way of justification in conversation with persons who considered themselves wronged by the provisions of her will, but expressions of that kind cannot, of course, work the revocation of the document. The testatrix lived for over two years after the will was made and had ample opportunity to make another will if she was dissatisfied with the first.

For the reasons stated the appealed judgment is hereby reversed and it is ordered that the document in question be admitted to probate as the last will and testament of the deceased Gregoria Villaflor. No costs will be allowed. So ordered.

Avanceña, C. J., Street, Malcolm, and Villamor, JJ., concur.

Johnson, J., dissents.

DISSENTING

VILLA-REAL, J., with whom concurs JOHNS, J.:

I am of the opinion that the decision of the lower court should be affirmed.

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