

IN RE ESTATE OF PIRASO, DECEASED. SIXTO ACOP, PETITIONER AND APPELLANT, VS. SALMING PIRASO ET AL., OPPONENTS AND APPELLEES.

G.R. No. 28946. January 16, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This appeal was taken from the judgment of the Court of First Instance of Benguet, denying the probate of the instrument Exhibit A, as the last will and testament of the deceased Piraso.

The proponent-appellant assigns the following as alleged errors of the lower court:

"1. In holding that in order to be valid the will in question should have been drawn up in the Ilocano dialect.

"2. In not holding that the testator Piraso did not know the Ilocano dialect well enough to understand a will drawn up in said dialect.

"3. In refusing to admit the will in question to probate."

The fundamental errors assigned refer chiefly to the part of the judgment which reads as follows:

"The evidence shows that Piraso knew how to speak the Ilocano dialect, although imperfectly, and could make himself understood in that dialect, and the court is of the opinion that his will should have been written in that dialect."

Such statements were unnecessary for the decision of the case, once it has been proved without contradiction, that the said deceased Piraso did not know English, in which language the instrument Exhibit A, alleged to be his will, is drawn. Section 618 of the Code of Civil Procedure, strictly provides that:

"No will, except as provided in the preceding section" (as to wills executed by a Spaniard or a resident of the Philippine Islands, before the present Code of Civil Procedure went into effect), "shall be valid to pass any estate, real or personal, nor charge or affect the same, unless it be written in the language or dialect known by the testator," etc. (Parenthesis and italics ours.) Nor can the presumption in favor of a will established by this court in *Abangan vs. Abangan* (40 Phil., 476), to the effect that the testator is presumed to know the dialect of the locality where he resides, unless there is proof to the contrary, even be invoked in support of the probate of said document Exhibit A, as a will, because, in the instant case, not only is it not proven that English is the language of the City of Baguio where the deceased Piraso lived and where Exhibit A was drawn, but that the record contains positive proof that said Piraso knew no other language than the Igorrote dialect, with a smattering of Ilocano; that is, he did not know the English language in which Exhibit A is written. So that even if such a presumption could have been raised in this case it would have been wholly contradicted and destroyed.

We consider the other questions raised in this appeal needless and immaterial to the adjudication of this case, it having been, as it was, proven, that the instrument in question could not be probated as the last will and testament

of the deceased Piraso, having been written in the English language with which the latter was unacquainted.

Such a result based upon solidly established facts would be the same whether or not it be technically held that said will, in order to be valid, must be written in the Ilocano dialect; whether or not the Igorrote or Inibaloi dialect is a cultivated language and used as a means of communication in writing, and whether or not the testator Piraso knew the Ilocano dialect well enough to understand a will written in said dialect. The fact is, we repeat, that it is quite certain that the instrument Exhibit A was written in English, which the supposed testator Piraso did not know, and this is sufficient to invalidate said will according to the clear and positive provisions of the law, and inevitably prevents its probate.

The judgment appealed from is affirmed, with the costs of this instance against the appellant. So ordered.

Avancena, C. J., Malcolm, Villamor, Ostrand, and Villa-Real, JJ., concur.

Judgment affirmed.

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