

**ESTATE OF THE DECEASED GREGORIO PUEBLO. CABMEN QUINTO, APPLICANT AND APPELLANT, VS. MARGARITA MORATA, IN SUBSTITUTION OF MATEO PUEBLO, DECEASED, CONTESTANT AND APPELLEE.**

*G. R. No. 31732. February 19, 1930*

Ponente: JOHNSON, J.

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**JOHNSON, J.:**

This is an appeal from a decision of the Honorable Manuel V. Moran, judge of the Court of First Instance of Cavite, denying the application of Carmen Quinto for the probate of the alleged will of the deceased Gregorio Pueblo, her husband.

The application for probate was filed on October 26, 1928 by Carmen Quinto, executrix of said will. It was a joint and mutual will of Gregorio Pueblo and his said wife Carmen Quinto and contained a provision that the surviving spouse shall take charge of the properties therein described and that they shall pass to the heirs and legatees at the time of the death of the surviving spouse.

To said application an opposition was filed by Mateo Pueblo, a brother of the deceased, on the following grounds: (1) That the attestation clause of said will does not state the number of pages of which the will is composed, and (2) that the attestation clause does not state that each and every page of the will was signed by the testators in the presence of the witnesses, and that the latter signed the same in the presence of the testators and in the presence of each other.

Upon the issue thus raised, and after hearing the evidence, the court rendered a judgment denying the petition on the ground that the attestation clause did not state that the witnesses signed the will in the presence of the testators, or that both the testators and the witnesses signed the will and each and every page thereof in the presence of each other. In this connection the lower court said:

"\* \* \* En la clausula de atestiguamiento del testamento en cuestion, se hace constar que los testadores firmarbn el testamento en presencia de los tres testigos instrumental y que estos firmaron el testamento los unos en presencia de los otros, pero no se hace constar que dichos testigos firmaron el testamento en presencia de los testadores, ni que estos y aquellos firmaron todas y cada una de las paginas del testamento los primeros en presencia de los segundos y vice-versa.

"En su virtud, se deniega la solicitud en la que se pide la legalizacion del alegado testamento Exhibit A de Gregorio Pueblo y Carmen Quinto, y se declara que Gregorio Pueblo murio intestado."

From that judgment the petitioner appealed and now contends:

That the lower court committed an error in denying the application of the petitioner for the probate of the will of the deceased Gregorio Pueblo.

The attestation clause of the will in question (Exhibit A-l) reads as follows:

"Nosotros los que firmamos al final de este testamento, Florentino Joya, Aguedo Soriano y Teodoro Blezamos damos fe, de haber visto o presenciado el acto de firmar en esta escritura o testamento de los esposos Gregorio Pueblo y Carmen Quinto; lo firmaron ellos en nuestra presencia, y que nosotros los testigos, lo firmamos en presencia de cada uno de nosotros, hoy 3 de noviembre de 1920. Este testamento esta compuesto de tres fojas utiles."

As will be noted, the attestation clause contravenes the express requirements of section 618 of Act No. 190, as amended by Act No. 2645, in two ways: First, it fails to state that each and every page of the will was signed by the testators and the witnesses; and, second, it fails to state that the witnesses signed each and every page of the will in the presence of the testators.

In the case of Saño vs. Quintana (48 Phil., 506) this court held 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 defect annuls the will." This doctrine was restated and reaffirmed in the case of Gumban vs. Gorecho (50 Phil., 30).

It is vigorously contended on behalf of the appellant, that the alleged defect of the attestation clause has been cured by oral evidence, which was admitted without opposition on the part of the appellee. This contention cannot be sustained. The doctrine of this court with reference to statute of frauds is not applicable to wills. The statute of frauds relates to contracts and agreements. The subject of wills and testaments and the formalities surrounding their execution are governed by separate and specific provisions of Act No. 190.

An examination of section 618 of Act No. 190, prior to, and after its amendment by Act No. 2645, shows clearly that the Legislature intended to exclude evidence aliunde, tending to establish that the will has been executed and attested in conformity with the requirements of the law, where such compliance does not appear on the face of the will itself. Prior to its amendment, section 618 contained the following saving clause: "But the absence of such form of attestation shall not render the will invalid if it is proven that the will was in fact signed and attested as in this section provided."

The most outstanding feature of the amendment of said section 618 by Act No. 2645 is the elimination of said saving clause and the greater emphasis laid on the formalities as to signatures and the attestation clause. There can be no doubt, therefore, that the intention of the Legislature, in eliminating said clause, was to exclude evidence aliunde, and that where such evidence was admitted without opposition, it should not be given effect and thus defeat the manifest intention of the Legislature in amending said section 618.

Section 618 of Act No. 190, as amended, should be given a strict interpretation. In the case of Uy Coque vs. Navas L. Sioca (43 Phil., 405) this court, speaking of the construction to be given to said section, said:

"Statutes prescribing the formalities to be observed in the execution of wills are very strictly construed. As stated in 40 Cyc, at page 1097, 'A will must be executed in accordance with the statutory requirements; otherwise it is entirely void. All these requirements stand as of equal importance and must be observed, and courts cannot supply the defective execution of a will. No power or discretion is vested in them, either to superadd other conditions or dispense with those enumerated in the statutes.'" (Uy Coque vs. Navas L. Sioca, 43 Phil., 405, 407.)

The judgment appealed from, disallowing the will of Gregorio Pueblo, is in conformity with the facts and the law, and the same should be and is hereby affirmed, with costs. So ordered.

Malcolm, Villamor, Ostrand, Johns and Villa-Real, JJ., concur.

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