

RUFINO RODRIGUEZ, PETITIONER AND APPELLANT, VS. CAYETANO ALCALA ET AL., OPPONENTS AND APPELLANTS. AQUILINA MIFIAS, WIFE OF THE OPPONENT ISAAC REYNOSO, NOW DECEASED, OPPONENT AND...

G.R. No. 32672. November 05, 1930

Ponente: JOHNSON, J.

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JOHNSON, J.:

This case relates to the probate of the will of the deceased Marta Alcantara. On or about March 26, 1929, a petition was filed by Rufino R. Rodriguez in the Court of First Instance of the Province of Tayabas, praying (1) that the will of the deceased Marta Alcantara be admitted to probate, and (2) that he be appointed special administrator of the estate of the deceased. The petition was accompanied by the will (Exhibit A) written in Tagalog, with its translation into English (Exhibit A-1).

To said petition Cayetano Alcala, husband of the deceased, filed an opposition. Oppositions were also filed by the spouses Maximino de Luna and Petra Rodriguez, and by Isaac Reynoso all of them relatives of the deceased. The oppositions were based on the following grounds: (1) That the will was not executed in accordance with the formalities prescribed by Act No. 190, and (2) that the signatures of the testatrix were not authentic and were procured through fraud and undue influence.

Upon the issue thus presented, the cause was brought on for trial before Francisco Enage, judge. After hearing the evidence adduced by the petitioner and the opponents in support of their respective claims, the trial court denied the petition for the probate of the will, and rendered a judgment in favor of the opponents declaring the will invalid on the ground that the attestation clause thereof was not in conformity with the requirements of section 618 of

Act No. 190, as amended. The pertinent parts of the decision read as follows:

"Aunque en realidad la testadora y los testigos instrumentales firmaron todas las paginas del testamento de autos en su margen izquierdo, no se ha hecho constar, sin embargo, este hecho en la clausula de atestiguamiento arriba transcrita. La frase que dice: 'y lo firmamos nosotros los tres testigos y la testadora en cada una de las paginas de este testamento,' no cumple con la ley. Deberia expresarse en dicha clausula, de que los testigos firmaron en 'todas y cada una de las hojas del testamento en su margen izquierdo,' como requiere la ley.

* * * * *

"Por todo lo expuesto, se deniega la legalizaci6n del testamento objeto de la solicitud de autos, con las costas al solicitante."

From that judgment both the petitioner and the opponents, with the exception of Isaac Reynoso, appealed.

The petitioner-appellant now contends that the lower court erred in not admitting the will to probate because of the alleged defect of the attestation clause in not expressly stating that the testatrix and witnesses signed each and every page of the will "on the left margin." It is contended that the omission in the attestation clause of the phrase "on the left margin" is not fatal because the "will itself shows that each and every page thereof was signed on the left margin, and that this failure of the attestation clause to specifically state the particular location of the signatures on each page is not sufficient to invalidate the will.

The opponents-appellants contend that the lower court erred in not finding that the signatures of the testatrix were procured through fraud and undue influence. The lower court deemed it unnecessary to make specific finding as to this feature of the case, and denied admission of the will to probate on the other ground alleged by the opponents, namely, that the attestation clause is not in conformity with section 618 of Act No. 190, as amended.

The portion of said section 618, pertinent to the case, reads as follows:

"* * * 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."

The attestation clause in question, as translated into Spanish, reads as follows:

"Este testamento o ultima voluntad se compone de ocho paginas todas validas y eficaces, sin tacha de ninguna clase, lo ha leido la testadora Sra. Marta Alcantara, en presencia de nosotros los tres testigos, y al terminar de leerlo la testadora, ella estampo su nombre y apellido en presencia de nosotros los tres testigos presentes y cada uno de nosotros lo firmamos tambien en presencia de la testadora y en presencia unos de los otros, y lo firmamos nosotros los tres testigos y la testadora en cada una de las paginas de este testamento."

The foregoing attestation clause expressly states that the testatrix signed the will in the presence of the witnesses and that the latter signed it in the presence of the testatrix and of each other, and that both testatrix and witnesses signed each and every page of the will. It will be noted, however, that the attestation fails to state that the testatrix signed each and every page of the will in the presence of the witnesses and that the latter signed each and every page of the will in the presence of the testatrix and of each other.

We are unable to agree with the lower court that the omission alone of the phrase "on the left margin" in the attestation clause, in the absence of any other defect, is fatal to the validity of the will. Section 618 of Act No. 190, as amended, quoted above, does not expressly provide that the phrase "on the left margin" must necessarily be inserted in the attestation clause. And in our opinion the reason is obvious, because the will itself, as in the present case, will show that all the pages thereof were signed on the left margin. Furthermore, in the case of *Avera vs. Garcia and Rodriguez* (42 Phil., 145, 146) this court held: "A will otherwise properly executed in accordance with the requirements of existing law is not rendered invalid by the fact that the paginal signatures of the testator and attesting witnesses appear in the right margin instead of the left." This ruling shows that the inclusion of the phrase "on the left margin" in the attestation is not indispensable to the validity of the will.

In the case of *Abangan vs. Abangan* (40 Phil., 476, 479) this court, speaking of the object of the formal requisites prescribed by law in the execution of wills, said:

"The object of 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. Therefore the laws on this subject should be interpreted in such a way as to attain these primordial ends. But, on the other hand, also one must not lose sight of the fact that it 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, 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."

We may conclude, therefore, that a mere omission in the attestation clause of the phrase "on the left margin," which is not expressly required by the statute, when said clause is otherwise in strict conformity with the requirements of section 618 of Act No. 190, as amended, does not render a will invalid.

The cases cited by the lower court in its decision denying probate of the will (Uy Coque vs. Navas L. Sioca, 43 Phil., 405; Fernandez vs. Vergel de Dios, 46 Phil., 922; Sano vs. Quintana, 48 Phil., 506), do not support the proposition that the omission in the attestation clause of the phrase "on the left margin," in the absence of any other defect, is fatal to the validity of the will.

We are of the opinion, however, that the will should not be admitted to probate on another ground. There is a fatal defect in the attestation clause which escaped the attention of the lower court. As pointed out above, said defect consists in the failure of the attestation clause to specifically state that the testatrix signed each and every page of the will in the presence of the witnesses and that the witnesses signed each and every page thereof in the presence of the testatrix and of each other. The attestation clause simply recites that the testatrix and the witnesses signed all the pages of the will ("y lo firmamos nosotros los tres testigos y la testadora en cada una de las paginas de este testamento"). In the presence of whom they signed each and every page of the will, the attestation fails to state, in violation of the express requirements of section 618 of Act No. 190, as amended, to wit: "The attestation clause shall state * * * that the testator signed the will and every page thereof, * * * 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." This defect of the attestation clause is fatal to the validity of the will.

In the case of Uy Coque vs. Navas L. Sioca (43 Phil., 405, 407) the court 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.'

"The provisions of section 618 of the Code of Civil Procedure, as amended by Act No. 2645, that the attestation clause of a will must state the number of pages in the will, and that the witnesses signed in the presence of each other, are mandatory and non-compliance therewith invalidates the will."

In the case of Sario 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 a defect annuls the will."

This doctrine was restated and reaffirmed in the case of Gumban vs. Gorecho (50 Phil., 30).

In the case of Quinto vs. Morata (54 Phil., 481) this court, following the doctrine laid down in the cases above cited, held that:

"The attestation clause must be made in strict conformity with the requirements of section 618 of Act No. 190, as amended. Where said clause fails to show on its face a full compliance with those requirements, the defect constitutes sufficient ground for the disallowance of the will.

"Section 618 of Act No. 190, as amended, should be given a strict interpretation in order to give effect to the intention of the Legislature. Statutes prescribing formalities to be observed in the execution of wills are very

strictly construed. Courts cannot supply the defective execution of a will."

For all of the foregoing, it is held that the will in question is invalid because of the failure of the attestation clause to state in whose presence the pages of the will were signed by the testatrix and the witnesses. The judgment appealed from, denying probate of the will, should be and is hereby affirmed, with costs. So ordered.

Street, Ostrand, Johns and Villa-Real, JJ., concur.

DISSENTING

Villamor, J. with whom concurs Malcolm, J.:

The will in question was not admitted to probate by the court below for the reason that the attestation clause did not state that all the witnesses signed on the left-hand margin of each and every page of the will.

The petitioner Rufino R. Rodriguez appealed from this decision and alleged that the court below erred: (1) In declining to admit the will to probate on account of the single defect believed to be in the attestation clause; and (2) in denying the motion for a new trial and the reconsideration of said ruling.

Cayetano Alcala and others, opponents, likewise appealed from the decision of the court below alleging that the court erred only in not holding that the alleged will of Marta Alcantara had been obtained through fraud and undue influence.

According to the majority opinion, the mere omission of the words "on the left margin" from the attestation clause, words which are not expressly required by the law, when said clause otherwise strictly conforms to all the requirements set forth in section 618 of Act No. 190, as amended, does not nullify the will.

I agree with this conclusion of the majority, which is indeed the doctrine laid down in *Avera vs. Garcia* and *Rodriguez* (42 Phil., 145), and *Abangan vs. Abangan* (40 Phil., 476).

But the majority affirms the judgment appealed from on another ground, namely, that the attestation clause does not specifically state that the testatrix signed each and every page of the will in the presence of the witnesses and that the witnesses signed each and every page thereof in the presence of the testatrix and of each other.

It seems to me extremely doubtful that in a civil cause the court on appeal should have authority to decide any question not raised by assignment of error. The only question which the petitioner has raised is the nullity or validity of an attestation clause which does not state that the witnesses signed all the pages of the will on the left margin. The appeal taken by the opponents is based upon alleged fraud or undue influence used in preparing the will. The court below made no pronouncement upon this point, and neither "does this court now."

But apart from this aspect of the case, I believe that the declaration made by the majority that "said defect" (of the will) "consists in the failure of the attestation clause to specifically state that the testatrix signed each and every page of the will in the presence of the witnesses and that the witnesses signed each and every page thereof in the presence of the testatrix and of each other," is not supported even by the very terms of the clause in question.

The attestation clause here spoken of reads word for word as follows:

"Este testamento o ultima voluntad se compone de ocho paginas todas validas y eficaces, sin tacha de ninguna clase, lo ha leído la testadora Sra. Marta Alcantara, en presencia de nosotros los tres testigos, y al terminar de leerlo la testadora, ella estampo su nombre y apellido en presencia de nosotros los tres testigos presentes y cada uno de nosotros lo firmamos tambien en presencia, de la testadora y en presencia unos de los otros, y lo firmamos nosotros los tres testigos y la testadora en cada una de las paginas de este testamento." Section 618

of the Code of Civil Procedure, as amended, provides with respect to attestation clauses:

* * * 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."

The law then requires that the attestation clause should state: (1) The number of sheets or pages used, upon which the will is written; (2) 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 (3) that the latter witnessed and signed the will and all pages thereof in the presence of the testator and of each other.

A careful reading of the attestation clause shows that it contains the following statements: (a) The number of pages used upon which the will is written; (6) that the testatrix Marta Alcantara, after reading the will, signed her name and surname on each of the pages thereof in the presence of the three witnesses; and (c) that these three witnesses signed each one of the pages of the will in the presence of the testatrix and of one another.

While said clause is not drawn up in exactly the same terms used in the law, there can be no doubt that from the terms thereof it appears the testatrix signed each one of the eight pages of which the will is made up, in the presence of the witnesses, and that the witnesses signed each of those same pages of the will in the presence of the testatrix and of one another. And it has already been held heretofore, in *Fernandez vs. Vergel de Dios* (46 Phil., 922), that for the validity of the attestation clause it is not necessary to employ the very words used in the law, but that it will be sufficient if the facts required by the law to be stated, are intelligibly set forth.

In *Fernandez vs. Vergel de Dios* aforesaid, the court had occasion to consider the following attestation clause: ,* * * y firmo- (e] testador) 'al pie del referido testamento en presencia de nosotros, quienes, a su ruego, en su presencia y en presencia los unos de los otros hemos firmado tambien nuestros nombres como testigos del testamento, y por ultimo, en la misma forma, tanto el testador como nosotros sus testigos, hemos firmado en la margen izquierda de todas y cada una de sus hojas,' " the court held that such an attestation clause was sufficient, and admitted the will to probate. In *Nayve vs. Mojal and Aguilar* (47 Phil., 152), the attestation clause reads:

"(Firmado y declarado por el testador Don Antonio Mojal, como su ultima voluntad y Testamento, en presencia de cada uno de nosotros, y, a ruego de dicho testador Don Antonio Mojal, firmamos este presente testamento, cada uno en presencia de los otros y en la del testador.)

" 'Pedro Caro

" 'Silvebio Mokco

" 'Zoilo Masinas.' "

it was held that this clause is valid and the will was admitted to probate. In the case of *Abangan vs. Abangan* (40 Phil., 476), the following rule was laid down for judging of the formalities of a will:

"The object of 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. Therefore the laws on this subject should be interpreted in such a way as to attain these primordial ends. But, on the other hand, also one must not lose sight of the fact that it 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, 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."

Following this rule, in *Avera vs. Garcia and Rodriguez*, supra, the court held: "A will otherwise properly executed in accordance with the requirements of existing law is not rendered invalid by the fact that the paginal signatures

of the testator and attesting witnesses appear in the right margin instead of the left." In *Unson vs. Abella* (43 Phil., 494), it was held: "Paging in inventory with Arabic numerals is in compliance with the spirit of the law, requiring that the paging of a will be made in letters, and is just as valid as paging with letters A, B, C, etc."

In the case before us, the expression "lo firmamos nosotros los tres testigos y la testadora en cada una de las paginas de este testamento" at the end of the clause, taken in connection with the preceding phrase, "ella estampó su nombre y apellido en presencia de nosotros los tres testigos presentes y cada uno de nosotros lo firmamos tambien en presencia de la testadora y en presencia unos de los otros," clearly indicates that the will was signed by the testatrix upon each and every one of the eight pages in the presence of the witnesses and by the witnesses in the presence of the testatrix and of one another, which is exactly what the law requires.

If the omission of the words "left margin" does not invalidate the attestation clause, and if the particular clause under consideration contains the three elements required by the law, as we have shown, what reason can there be for affirming the judgment appealed from and thus refusing to admit the will in question to probate?

For the reasons given, I dissent from the majority opinion.

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