

ESTATE OF THE DECEASED AGUSTINA CELIZ. ROSARIO REY, PETITIONER AND APPELLEE, VS. GUILLERMO CARTAGENA ET AL., OPPONENTS AND APPELLANTS.

G. R. No. 34288. November 10, 1931

Ponente: JOHNSON, J.

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JOHNSON, J.:

On March 26, 1930, Rosario Rey filed a petition in the Court of First Instance of Iloilo for the probate of the will of the deceased Agustina Celiz. She also asked that she be appointed administratrix of the estate.

To said petition Guillermo Cartagena and four others filed an opposition, alleging that said will, Exhibit A, was not the last will and testament of the deceased Agustina Celiz; that the signature appearing thereon was not her signature, and that said will was not executed in accordance with the formalities prescribed by law.

Upon the issue thus presented the cause was brought on for trial. After hearing the evidence Conrado Barrios, auxiliary judge, reached the conclusion that said will, Exhibit A, was the last will and testament of the deceased Agustina Celiz, and that it was executed in accordance with the formalities prescribed by law, and rendered a judgment admitting said will to probate.

From that judgment the opponents appealed, and now allege that the lower court erred in declaring that said will was executed in compliance with the requisites of the law.

The question raised by the appellants is whether or not the attestation clause of said will is in accordance with the requirements of section 618 of Act No. 190, as amended. The attestation clause, translated from Visayan dialect into Spanish, reads as follows:

"Nosotros, Feliciano Divinagracia, Epifanio Biiias y Macario Belga declaramos lo siguiente: Que este testamento se hizo en seis paginas de cuyo contenido esta enterada la testadora Agustina Celiz, quien lo firmo en presencia de nosotros los testigos, el cual documento se ha firmado en todos sus margenes, que nosotros los testigos hemos tambien firmado en presencia de la testadora y en la presencia del uno al otro hemos firmado nuestros nombres como testigos para dar fe a la verdad en Barotac Nuevo a 23 de diciembre de 1919."

The correctness of the translation above quoted was never questioned by the opponents during the trial. As a matter of fact, it was submitted to the court by agreement of the parties. It is therefore too late now for them to raise in this appeal any question as to the correctness of said translation.

Now, with reference to the sufficiency of said attestation clause, we are of the opinion that the same is in substantial conformity with the requirements of section 618 of Act No. 190, as amended. Said attestation clause, among other things, states: (a) That the will, Exhibit A, is composed of six pages; (b) that the testatrix signed the same and on all the margins thereof in the presence of the witnesses; and (c) that the witnesses also signed in the presence of the testatrix and in the presence of each other.

The appellants earnestly contend that the attestation clause fails to show that the witnesses signed the will and each and every page thereof because it simply says "que nosotros los testigos hemos tambien firmado en presencia de la testadora y en la presencia del uno al otro" (that we the witnesses also signed in the presence of the testatrix and of each other).

In answer to this contention it may be said that this portion of the attestation clause must be read in connection with the portion preceding it, which states that the testatrix signed the will and on all the margins thereof in the presence of the witnesses; especially, because the word also used therein establishes a very close connection between said two portions of the attestation clause. This word also should, therefore, be given its full meaning which, in the instant case, is that the witnesses signed the will in the same manner as the testatrix did. The language of the whole attestation clause, taken together, clearly shows that the witnesses signed the will and on all the margins thereof in the presence of the testatrix and of each other. In this connection we think it appropriate to quote what the lower court said:

"En su atestiguamiento se hace referencia al hecho de que la testadora y los testigos han firmado todas las mdrgenes de dicho testamento, y que los testigos tambien han firmado. Aunque en la parte del atestiguamiento referente a los testigos instrumentales no se repiten las palabras 'en todas sus margenes sin embargo, la fraseologia del mismo atestiguamiento examinada en conjunto, indica que no sola* mente la testadora sino tambien todos los testigos instrumentales han firmado todas las paginas utiles del citado testamento en sus margenes; pues la palabra tambien,' en visaya 'man significa que los testigos instrumentales han hecho lo mismo que lo que ha hecho la testadora."

In the interpretation of section 618 of Act No. 190, as amended, the court must bear in mind that the purpose of the law is not to curtail the exercise of the right to make a will, but to safeguard it; and where a will has been executed in substantial compliance with the formalities of the law, and the possibility of bad faith and fraud in the exercise thereof is obviated, said will should be admitted to probate.

In the case of *Abangan vs. Abangan* (40 Phil., 476, 479) the court, speaking of the object of the solemnities surrounding 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."

During the deliberation our attention was called to the case of *Rodriguez vs. Alcala* (55 Phil., 150). In that case the court disallowed the will on the ground that in the attestation clause there is nothing to show in whose presence the will and the pages thereof were signed by the testatrix and witnesses. As will be readily seen, the decision in that case is not applicable to the case at bar.

For all of the foregoing, the judgment appealed from admitting the will to probate should be and is hereby affirmed, with costs. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Romualdez, Villa-Real, and Imperial, JJ., concur.

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