

**TEOPISTA CASTRO ET AL., PLAINTIFFS AND APPELLEES, VS.
ANTONIO MARTINEZ GALLEGOS ET AL., DEFENDANTS—RAMON
VELEZ, APPELLANT.**

G.R. No. 3880. March 09, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

From the appeal brought to this court by means of a bill of exceptions, and after review of the facts, there is found:

1. That Marcelina Cuico y Rodis was the owner of a house built of wood and nipa on Calle Cadiz, city of Cebu, valued at 200 pesos, not including the ground whereon the same is erected, which, although belonging to her, was, according to the title of ownership held by her and recorded in the registry of property, only worth 100 pesos.
2. That on the 17th of October, 1896, before a notary and the proper number of witnesses she executed a nuncupative will under which she died and wherein she disposed of the house in which she lived, being the one referred to in the foregoing paragraph, and of some furniture and credits of small importance.
3. By one of its clauses she bequeathed 10 pesos to each one of her nephews, the children of her brother Valentin, named Godofredo, Mateo, Quintin, Roniana, Salud, and Constancia, all of the surname of Cuico y Rodis.
4. Of these, Mateo, Quintin, and Constancia, and another of the name of Ignacio, together with Teopista Castro challenged the will, after Mateo and Quintin had on the 19th of January, 1897, received their legacies, filing their complaint on the 15th of October, 1902, against certain persons, and on the 22d of September, 1903, against others.
5. Under the will Antonio Martinez Gallegos and Evaristo Ildis were appointed executors, and in compliance with clause 4 of the same they sold the house and ground for the price of 500 pesos to Pedro Ferragut on the 22d of January, 1897, and afterwards Ferragut, on the 10th of February following, sold it for the same price to Tomas Osmefia; the latter in turn, on the 18th of January, 1902, sold it to Martinez Gallegos, and the latter finally, on the 28th of May, 1903, sold it to Ramon Velez y Santos for the price of 2,500 pesos. The statement contained in the brief of the appellees, namely, "that Gallegos sold or pretended to sell the house on the 22d of January, 1897, and to buy the same in his own name nineteen days later, that is, on the 10th of February of the same year" (p. 3), does not appear to be true.

Admitting the foregoing, the actual facts in this case are as follows:

1. That the plaintiffs named asked in their amended complaint that judgment be entered in their favor "declaring them to be the owners of the property of the late Marcelina Cuico y Rodis; for the possession of said property, or in case that the same could not be found, for the sum of 4,000 pesos as indemnity, and for the sum of 1,500 pesos for the loss and damage suffered and the products not received, for costs in the proceedings, and any other remedy which may be considered just." (B. of E., 7.)

2. That according to the judgment of the Court of First Instance of Cebu, "the defendants named therein are Pablo Singson, etc., Juan Villa, etc., Ramon Velez, and Ramon Velez, jr.; said defendant Ramon Velez, assignee of Antonio Martinez Gallegos, was substituted as defendant in lieu of said defendant Gallegos named in the first complaint." (B. of E., 15.)

3. That answer to the complaint having been made and the trial of the case having taken place, the said court sets forth in its decision the following facts: "At the time of her death she (the testatrix) was in possession and claimed to be the owner of a house and lot situated in the said city and Province of Cebu, at No. 19, Calle Cadiz, the boundaries of which * * * From the evidence adduced in this case it does not appear that the said Marcelina Cuico y Kodis left other property at the time of her death, and the plaintiffs offered no proof whatever to support the allegations contained in their complaint regarding the articles of jewelry and other personal property stated in said complaint, nor was any proof offered regarding their value, or as to the disposal of the same." (B. of E., 10.)

4. That it is a conclusion of the judgment: "With reference to the defendant Ramon Velez, jr., he was not summoned as defendant, nor did he appear voluntarily to answer the complaint as was done by his codefendant Ramon Velez; it does not appear from the evidence that he was in any way connected as a party in interest in the subject-matter of this litigation." (B. of E., 14.) Thus it is that at its close it reads: "It is further ordered that the complaint against Ramon Velez, jr., be and is hereby dismissed." (B. of E., 20.)

5. That it is also a conclusion of the judgment: "At the trial of this case it was admitted by the parties as a fact, and the court so finds, that the house and lot the object of this litigation were sold * * * the defendants offered proof which established two sales made by Antonio Martinez Gallegos, one of which was to Pedro Ferragut y Campos, in the year 1897, and the other to Ramon Velez y Santos in 1903, * * * From the evidence adduced in this case no proof appears as to the apportionment by the executors of the proceeds of the sale between the principal legatees Pablo Singson etc., and Juan Villa, etc., nor regarding the rentals and profits, and the disposal thereof, or with respect to the elements of the loss and damage for illegal possession, and the questions left for the decision of this court are simply the validity of the will in question, and the right of possession of said real estate at No. 19 Calle Cadiz, the value of which is P3,500." (B. of E., 18.)

6. That it is also said in the same judgment: "The defendants Pablo Singson, the promisor in charge, etc., and Juan Villa, as representative, etc., have not presented any proof to sustain the allegation that under the will they have received nothing from the executors, and thus they have elected to put themselves in the same position as that in which is found Ramon Velez; that is, as the assignee of Antonio Martinez Gallegos." (B. of E., 19.)

7. That with reference to the two questions submitted to the decision of the court, the same are decided in the following manner: "This court having considered as a matter of fact, that the will was not only null and illegal but also fraudulent, it naturally results that all the transfers made by Antonio Martinez Gallegos were and are null and illegal, and that the title to, and right of possession of No. 19 Calle Cadiz has always remained with the heirs of Marcelina Cuico y Kodis, and that they are entitled to the possession and to the proceeds of the sale of same, if there were any, now retained by the said defendants. The court orders and decrees that the alleged deeds of conveyance, and each of them, executed by Antonio Martinez Gallegos as executor or personally as owner, that is, the bill of purchase and sale of said Antonio Martinez Gallegos together with Evaristo Rodis, second executor, to Pedro Ferragut y Campos under date of the 22d of January, 1897, and the bill of purchase and sale of Antonio Martinez Gallegos to Ramon Velez, under date of the 28th of May, 1903, be, and are hereby, declared to be canceled, null, and without effect. That the said defendants are hereby ordered to deliver to the said plaintiffs the possession of the ground and property at No. 19 Calle Cadiz, by means of a sufficient instrument or instruments of a legal form and executed and delivered according to law, conveying to the said plaintiffs for their own use and benefit, and to all other heirs of Marcelina Cuico, deceased, all of the interest, right, and title to said property, and

in default thereof the plaintiffs shall be entitled to recover the sum of 3,500 pesos with interest thereon at the rate of 6 per cent per annum from the 15th day of October, 1902. In order that the ruling of the court permitting the assignment of the said property and the execution and delivery of the instruments of conveyance to said plaintiffs may be complied with a term of sixty days is hereby granted, to count from the entry and publication of this judgment, order, and decree, otherwise the plaintiffs shall be entitled to recover the sum of P3,500 pesos previously stated in this decision. It is further ordered that the complaint against Ramon Velez, jr., be, and the same is, hereby dismissed. The plaintiffs shall recover costs in this instance as against the remaining defendants, and in case of default they shall obtain an order for execution against the same in conformity with the terms of this decision and decree."

8. That the defendants having been notified of the above decision on the 14th of August, 1906, on the 20th following they asked that the same be set aside and a new trial granted on the ground that it was manifestly contrary to the weight of the evidence and furthermore contrary to law.

9. That on the 26th of January, 1907, the plaintiffs filed the following motion: "The plaintiffs in the above-entitled case, in conformity with the order of this court dated January 19, 1907, hereby renounce all such rights as they may have against the defendants Pablo Singson, Juan Villa, and Antonio Martinez Gallegos by reason of the judgment entered herein by this Court of First Instance, and the plaintiffs set forth that the said waiver and remission of the sentence is absolute, without the right to file another complaint, based on the facts contained in the original complaint, against the three persons herein before named." Under the aforesaid order of the court of the 19th of January, 1907, should this waiver not be made, "a new trial of this case would be held" (B. of E., 25 and 10. And this was due to the fact that in the amended complaint Antonio Martinez Gallegos was not included, and because the defendants Pablo Singson and Juan Villa do not appear to have had any relation with the property specified in the will. (B. of E., 22 and 23.)

10. That upon the bill of exceptions having been submitted to this court, Ramon Velez, the only appellant, alleged the following errors of law:

"(1) The court below erred when declaring null, fraudulent, and illegal the will of Marcelina Guico, offered and admitted as Exhibit A of the plaintiffs.

" (2) The court below erred when denying the motion for a new trial requested by the appellant, and when dismissing the case on the motion of the attorney for the plaintiffs with respect to the defendants Antonio Martinez Gallegos, Pablo Singson, and Juan Villa, after judgment had been rendered, and at a different session of court than that in which the same was rendered."

With regard to the nullity of the will, the grounds on which the trial court based its decision were three: (1) That Marcelina Cuico was not of sound mind, nor in control of her mental faculties, nor was she capable of disposing of her property at the time and place of its execution; (2) that the signature of Jose A. Casals which appears as the signature of the will is not in law sufficient as the legal signature of said Marcelina Cuico; (3) that the will was not executed or signed by Marcelina Cuico, nor by anyone in her name, or at her request.

It has been considered that "under the circumstances, the plaintiff Teopista Castro protested against the execution of the will as being a fraud, and said protest has not been denied by the surviving witnesses to the will," and "that the testimony of Teopista Castro as to the mental capacity of Marcelina, and also with regard to her said protest, is very strongly corroborated by the declaration of Miguel Bondoc, an entirely disinterested witness." And Bondoc says nothing more than "that Teopista had told him that an attempt was made to place a pen between the fingers of the testatrix in order that she might sign her will, and that she, upon hearing of it, turned around and immediately went downstairs." Teopista Castro declares that she said this to Bondoc, but nothing about the lack of mental

capacity of Marcelina Cuico, nor of her protest in connection with the same as related by her. No protest on the part of this plaintiff appears in the record as against the execution of the will, unless it be that in which she herself declares: "I asked Sr. Gallegos what was the use of her making out a will when as a matter of fact I am the only heir, and Sr. Gallegos said to me: if the will were not made out, I might find difficulties with the nieces and nephews who could institute proceedings for the ownership." (Folio 66.)

On the other hand, it has been proven by the testimony of the surviving witnesses to the will, Francisco Reyes and Brigido Famador, that the testatrix dictated her will to the notary, that she was in the full enjoyment of her mental faculties, that she was in the free use of her speech, and that she had asked the witness Casals to sign for her. And in the heading of the will the notary attests that the testatrix was in the free use of her intellectual faculties, and that in his judgment and in that of the witnesses, she had the necessary legal capacity to make her will and that she was in the free use of her speech; all of the foregoing antecedents are confirmed by the detailed testimony of the priest who administered the sacraments to the sick woman and by Evaristo Rodis, a relative of the testatrix, who was appointed one of the executors and declares that he conversed with her after the execution of the will.

As the will in question was executed in 1896 under the laws then in force, the provisions of a law now in force but which did not then exist can not be invoked. At that time the notary who authorized the will had to abide by the provisions of article 64 of the Notarial Law of the 11th of April, 1890:

"If the party, or parties, executing a will are unable to sign the same, the notary shall so state, and a witness shall sign for him without the necessity of previously stating that he does so as a witness and on behalf of the testator, or testators, who are not able to do so, because it is the duty of the notary to make such statement in the instrument itself" as was stated by the notary who authorized the will in question, saying that the testatrix ratified the contents of the will, and that she did not sign the same because she was prevented by her illness, "the witness Casals doing so at her request."

"Should the testator declare that he does not know how, or is not able to sign, one of the attesting witnesses or another person shall do so for him at his request, the notary certifying thereto." (Civil Code, art. 695.)

It is a legal doctrine established in several decisions of the supreme court of justice of Spain, among them 4n those of October 28, 1864, and January 29, 1885, that "wills executed with the formalities of law are presumed valid."

It is also a legal doctrine established among others by the decision of the 31st of December, 1883, that "the normal condition of the faculties of the testator is presumed under the law."

And finally it is a legal doctrine, mentioned among other decisions in that of the 13th of February, 1889, "that it is not proper to declare the nullity of a will if it be based on incapacity attributed to the testator when the notary who authorizes the instrument certifies that according to his judgment the testator, at the time of executing the will, was of sound mind."

Consequently, neither directly nor indirectly, could the nullity of the will of Marcelina Cuico y Rodis have been declared either as a fact or as a conclusion of law.

It is a legal doctrine established by repeated decisions in cassation, among others those of April 26, 1861, October 28, 1867, and March 17 and December 17, 1873, that nothing can be done upon the ground of nullity of an act without first obtaining, or at least petitioning at the same time for a declaration of nullity; and the plaintiffs have limited themselves to asking that they be declared the owners of the property of the late Marcelina Cuico, without first obtaining, or petitioning at the same time for a declaration of nullity of the will whereby Marcelina transmitted said property to others.

In the event that the will in question was really null, the proper thing to do would be to open the intestate succession of Marcelina Cuico by means of the procedure established by law; in which action the declaration of heirs of Marcelina Cuico could be obtained with the right to demand the nullity of the acts or contracts by virtue of which the property of the intestate estate has been transferred to third persons.

Should such a procedure be followed, the present plaintiffs would not be declared to have the same rights to the inheritance of Marcelina Cuico, if, as Teopista, Castro pretends, she is but a half sister to Marcelina Cuico, while the others are nephews, the children of a full brother to the said testatrix.

Therefore, neither directly nor indirectly could it have been declared in this action that "Teopista Castro, Ignacio Mateo (Ignacio Cuico and Mateo Cuico seem to be two different persons), Quintino Cuico, and Constancia Cuico were at the time of the death of the said Marcelina Cuico y Rodis, and even now are, the legal heirs of the said Marcelina Cuico y Rodis."

For the above reasons the judgment appealed from is hereby reversed: First, in so far as it declares as "canceled and annulled the bills of purchase and sale executed by Antonio Martinez Gallegos and Evaristo Eodis, as executors to the testatrix Marcelina Cuico y Rodis on the 22d of January, 1897, in favor of Pedro Ferragut y Cam-pos, and by Antonio Martinez Gallegos in favor of Ramon Velez on the 28th of May, 1903 f and second, in so far as it is ordered that "said defendants deliver to the plaintiffs the possession of the building lot and property at 'No. 19, Calle Cadiz, by means of a document or documents sufficient in legal form giving and conveying to said plaintiffs, for their own use and benefit, and to the other heirs of Marcelina Cuico, deceased, all the interest, right, and title to said property, or, in default thereof, that the plaintiffs recover from the defendants the sum of 3,500 pesos with interest thereon at the rate of 6 per cent per annum from the 15th of October, 1902." And the plaintiffs are hereby specially sentenced to pay the costs of the first instance, without any special ruling as to costs in this instance. So ordered.

Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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