

TEODORA NEYRA, PILAR DE GUZMAN AND MARIA JACOE VDA. DE BLANCO, PETITIONERS AND APPELLANTS, VS. TRINIDAD NEYRA AND EUSTAQUIO MENDOZA, OPPOSITORS AND APPELLEES.

CA-G.R. No. 4. March 21, 1946

Ponente: DE JOYA, J.

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DE JOYA, J.:

This is an appeal from a decree rendered by the Hon. Gervasio Diaz, Judge of the Court of First Instance of the City of Manila, on December 3, 1943, admitting to probate a will dated November 3, 1942, executed by the deceased Encarnacion Neyra; at the same time denying the probate of a previous will dated September 14, 1939, alleged to have been executed by the said testatrix.

Trinidad Neyra, beneficiary in the will executed on November 3, 1942, filed, on November 10, 1942, a petition in the Court of First Instance of Manila, for the probate of said will.

On December 19, 1942, Teodora Neyra, Pilar de Guzman, and Maria Jacobo Vda. de Blanco, who had not been named as beneficiaries in said will, filed on opposition to the probate of the said will dated November 3, 1942, alleging (1) that at the time of the alleged execution of the said will, the testatrix Encarnacion Neyra no longer possessed testamentary capacity; (2) that her thumb marks on said instrument had been procured by means of fraud by petitioner Trinidad Neyra, and that Encarnacion Neyra never intended to consider said document as will; (3) that the alleged will, dated November 3, 1942, had not been executed in the manner and form prescribed by law; and (4) that Encarnacion Neyra, since September 14, 1939, had executed a will, naming as beneficiaries said oppositors and others, and that said will had never been revoked or amended in any manner whatsoever.

On December 26, 1942, petitioner Trinidad Neyra filed a reply denying the allegations in the opposition.

Subsequently, said oppositors filed a counter petition, asking for the probate of the first will executed by Encarnacion Neyra, on September 14, 1939, marked as Exhibit 16. On March 16, 1943, the legatees Trinidad Neyra and Eustaquio Mendoza filed their opposition to the probate of said will marked as Exhibit 16, and amended said opposition, on September 15, 1943, to which Teodora Neyra and the others filed a reply, on September 20, 1943.

On the dates set for the hearing on the petition filed by Trinidad Neyra, and the counter petition mentioned above, said petitioner as well as the oppositors, presented evidence, testimonial and documentary. The witnesses presented by the petitioner Trinidad Neyra were Mons. Vicente Fernandez, Rev. Fr. Teodoro Garcia, Sor. Andrea Montejo, Dr. Moises B. Abad, Dr. Eladio A. Aldecoa, Atty. Ricardo Sikat, petitioner Trinidad Neyra herself, and Atty. Alejandro M. Panis, who had acted as scrivener in the preparation of said will dated November 3, 1942.

Teodora Neyra and the other oppositors also presented several witnesses, the principal among whom were Presentacion Blanco, Ceferina de la Cruz, Acislo Manuel, Dr. Dionisio Parulan, an alleged medical expert, and the oppositors Teodora Neyra and Pilar de Guzman themselves.

After considering the evidence, the lower court rendered a decree admitting to probate the will dated November 3, 1942; at the same time denying the probate of the will dated September 14, 1939.

From said decision Teodora Neyra and the other oppositors appealed to the Court of Appeals for the City of Manila, assigning several errors, which may be reduced to the following, to wit, that the trial court erred (1) in finding that Encarnacion Neyra wanted to make a new will; (2) in declaring that there was reconciliation between Encarnacion Neyra and her sister Trinidad; (3) in accepting as satisfactory the evidence submitted by the petitioner; (4) in ignoring the evidence submitted by the oppositors; and (5) in not admitting to probate the will dated September 14, 1939.

The evidence, testimonial and documentary, adduced during the trial of the case in the court below, has satisfactorily, and sufficiently established the following facts:

That Severo Neyra died intestate in the City of Manila, on May 6, 1938, leaving certain properties and two children, by his first marriage, named Encarnacion Neyra and Trinidad Neyra, and several other relatives; that after the death of Severo Neyra, the two sister's, Encarnacion Neyra and Trinidad Neyra, had serious quarrels, in connection with the properties left by their deceased father, and so serious were their dissensions that, after March 31, 1939, they had two litigations in the Court of First Instance of Manila, concerning said properties (Exhibits 8 and 9) : In the first case, filed on March 31, 1939, Trinidad Neyra and others demanded from Encarnacion Neyra et al. the annulment of the sale of the property located at No. 366 Raon Street, Manila, and it was finally decided in favor of the defendants in the Court of First Instance and in the Court of Appeals, on December 21, 1943 (G. R. No. 8162, Exhibit 9).

In the second case, filed on October 25, 1939, Trinidad Neyra demanded from Encarnacion Neyra, one-half (1/2) of the property described therein, and one-half (1/2) of the rents, and the Court of First Instance decided in favor of the plaintiff, but at the same time awarded in favor of the defendant P727.77, under her counterclaim; and Trinidad Neyra again elevated the case to the Court of Appeals for Manila (G. R. No. 8075) Exhibit 8, which was decided, pursuant to the document of compromise marked as Exhibit D; and the petition for reconsideration filed therein still remains undecided.

That Encarnacion Neyra, who had remained single, and who had no longer any ascendants, executed a will on September 14, 1939, marked Exhibit 16, disposing of her properties in favor of the "Congregacion de Religiosas de la Virgen Maria" and her other relatives named Teodora Neyra, Pilar de Guzman and Maria Jacobo Vda. de Blanco, making no provision whatsoever in said will in favor of her only sister Trinidad Neyra, who had become her bitter enemy; that when the said will was brought to the attention of the authorities of said Congregation, after due deliberation and consideration, said religious organization declined the bounty offered by Encarnacion Neyra, and said decision of the Congregation was duly communicated to her; that in order to overcome the difficulties encountered by said religious organization in not accepting the generosity of Encarnacion Neyra, the latter decided to make a new will, and for that purpose, about one week before her death, sent for one Ricardo Sikat, an attorney working in the Law Offices of Messrs. Feria and Lao, and gave him instructions for the preparation of a new will; that Attorney Sikat, instead of preparing a new will, in accordance with the express instructions given by Encarnacion Neyra, merely prepared a draft in the form of a codicil, marked as Exhibit M, amending said will, dated September 14, 1939, again naming said religious organization, among others, as beneficiary, and said draft of a codicil was also forwarded to the authorities of said religious organization, for their consideration and acceptance.

In the meanwhile, Encarnacion Neyra had become seriously ill, suffering from Addison's disease, and on October 31, 1942, she sent for her religious adviser and confessor, Mons. Vicente Fernandez of the Quiapo

Church to make confession, after which she expressed her desire to have a mass celebrated in her house at No. 366 Raon Street, City of Manila, so that she might take holy communion, in view of her condition; that following the request of Encarnacion Neyra, Mons. Fernandez caused the necessary arrangements to be made for the celebration of holy mass in the house of Encarnacion Neyra, and, as a matter of fact, on November 1, 1942, holy mass was solemnized in her house, Fr. Teodoro Garcia, also of the Quiapo Church, officiating in said ceremony, on which occasion, Encarnacion Neyra, who remained in bed, took holy communion; that after said religious ceremony had been terminated, Father Garcia talked to Encarnacion Neyra and advised reconciliation between the two sisters, Encarnacion Neyra and Trinidad Neyra. Encarnacion Neyra accepted said advice and at about noon of the same day (November 1, 1942), sent Eustaquio Mendoza to fetch her sister Trinidad Neyra, who came at about 2.30 that same afternoon; that on seeing one another, the two greeted each other in a most affectionate manner, and became reconciled; that the two had a long and cordial conversation, in the course of which the two sisters also talked about the properties left by their deceased father and their litigations which had reached the Court of Appeals for the City of Manila, and they agreed to have the said appeal dismissed, on the condition that the property involved therein, consisting of a small house and lot, should be given exclusively to Trinidad Neyra, on the condition that the latter should waive her claim for her share in the rents of said property, while under the administration of Encarnacion Neyra, and that the two should renounce their mutual claims against one another, it was also agreed between the two sisters to send for Atty. Alejandro M. Panis, to prepare the necessary document embodying the said agreement, but Attorney Panis could come only in the afternoon of the following day, November 2, 1942, when Encarnacion gave him instructions for the preparation of the document embodying their agreement, and other instructions relative to the disposition she wanted to make of her properties in her last will and testament; that Attorney Panis prepared said document of compromise or agreement marked as Exhibit D, as well as the new will and testament marked as Exhibit C, naming Trinidad Neyra and Eustaquio Mendoza beneficiaries therein, pursuant to the express instructions given by Encarnacion Neyra, and said instruments were ready for signature on November 8, 1942; that in the afternoon of that day, November 3, 1942, Attorney Panis read said will and testament marked as Exhibit D to Encarnacion Neyra slowly and in a loud voice, in the presence of Fr. Teodoro Garcia, Dr. Moises B. Abad, Dr. Eladio Aldecoa, herein petitioner Trinidad Neyra, and others, after which he asked her if its terms were in accordance with her wishes, if she had anything else to add, or anything to be changed in said will; and as Encarnacion Neyra stated that the terms of said will were in accordance with her wishes and express instructions, she asked for the pad and the will Exhibit C and, with the help of a son of herein petitioner, placed her thumb mark at the foot of said will, in the presence of the three attesting witnesses, Dr. Moises B. Abad, Dr. Eladio R. Aldecoa, and Atty. Alejandro M. Panis, after which the attesting witnesses signed at the foot of the document, in the presence of the testatrix Encarnacion Neyra, and of each and everyone of the other attesting witnesses. Fr. Teodoro Garcia and petitioner Trinidad Neyra and several others were also present.

On November 4, 1942, the testatrix Encarnacion Neyra, due to a heart 'attack, unexpectedly died.

Although the "Congregation de Religiosas de la Virgen Maria" had again decided not to accept the provision made in its favor by the testatrix Encarnacion Neyra in the proposed codicil prepared by Atty. Ricardo Sikat, said de-cision could not be communicated to the testatrix, before her death.

Mons. Vicente Fernandez and Fr. Teodovo Garcia testified as to the request made on October 31, 1942, by Encarnacion Neyra for the celebration of holy mass in her house, on November 1, 1942; that said mass was in fact solemnized in her house, on that date, in the course of which the testatrix Encarnacion Neyra took holy communion; that on the same day, after the mass, Encarnacion held a long conversation with Father Garcia, in the course of which, said priest advised her to have reconciliation with her sister Trinidad; and that said advice was accepted by Encarnacion.

By the testimony of Trinidad Neyra, it has been shown that Encarnacion sent Eustaquio Mendoza to fetch her, and that in fact she came to the house of Encarnacion, at about 2.30 o'clock in the afternoon that same day, November 1, 1942, with said Eustaquio Mendoza; that on seeing one another, Encarnacion and Trinidad Neyra greeted each other most affectionately, forgiving one another, after which they talked about the property left by their deceased father and the litigation pending between them; and the two sisters agreed to settle their case, which had been elevated to the Court of Appeals for the City of Manila, concerning a certain house and lot, on the understanding that said property should be given exclusively to Trinidad, and that the latter should renounce her claim against Encarnacion, for her share in the rents collected on said property, and, at the same time, Encarnacion renounced her claim for P727.77 against Trinidad; and that it was also agreed between the two sisters that Atty. Alejandro M. Panis should be called to prepare the necessary papers for the settlement of said case. Presentacion Blanco, a witness for the oppositors, also testified substantially to the foregoing facts.

By the testimony of Trinidad Neyra and Atty. Alejandro M. Panis, and the other attesting witnesses, it has also been shown that Atty. Alejandro M. Panis came in the afternoon of the following day, November 2, 1942, and received instructions from Encarnacion Neyra, not only for the preparation of said agreement, but also for the preparation of a new will, and consequently Attorney Panis prepared said document of compromise and the Mall, dated November 3, 1942, which were both thumb marked, in duplicate, in the afternoon of that day, by Encarnacion Neyra, who was then of sound mind, as shown by her appearance and conversation, aided by a son of Trinidad Neyra, on her" bed in the sala, in the presence of the attesting witnesses, Dr. Moises B. Abad, Dr. Eladio R. Aldecoa, and Atty. Alejandro M. Panis, who signed in the presence of the testatrix and of each other.

Father Teodoro Garcia was also present at the signing of the will, at the request of Encarnacion Neyra, and so was Trinidad Neyra.

On November 4, 1942, due to a heart attack as a consequence of Addison's disease, perhaps, Encarnacion Neyra expired, at about 3 o'clock in the morning.

Oppositor Teodora Neyra, her young daughter Ceferina de la Cruz, and Presentacion Blanco, daughter of oppositor Maria Jacobo Vda. de Blanco, practically corroborated the testimony of the witnesses of the petitioner, with reference to the signing of documents, in the bedroom of Encarnacion Neyra, on November 3, 1942.

Teodora Neyra, Presentacion Blanco and Ceferina de la Cruz, witnesses for the oppositors, testified, however, that when the thumb mark of Encarnacion Neyra was affixed, as stated above, to the document of compromise in question, dated November 3, 1942, she was sleeping on her bed in the sala; and that the attesting witnesses" were not present, as they were in the caida.

But Ceferina de la Cruz, witness for the oppositors, also stated that the attesting witnesses signed the documents thumb marked by Encarnacion Neyra, in the sala near her bed, thus contradicting herself and Teodora Neyra and Presentacion Blanco.

Strange to say, Teodora Neyra, Presentacion Blanco and Ceferina de la Cruz also testified that Encarnacion Neyra's thumb mark was affixed to the will, only in the morning of November 4, 1942, by Trinidad Neyra and Ildefonso del Barrio, when Encarnacion was already dead.

The testimony of Dr. Dionisio Parulan, alleged medical expert, as to the nature and effects of Addison's disease, is absolutely unreliable. He had never seen or talked to the testatrix Encarnacion Neyra.

According to medical authorities, the cause or causes of the sleeping sickness, known as Addison's disease, are not yet fully known; that persons attacked by said disease often live as long as ten (10) years after the first attack, while others die after a few weeks only, and that as the disease progresses, asthenia sets in, and from 80 per cent

to 90 per cent of the patients develop tuberculosis, and complications of the heart also appear. (Cecil, Textbook of Medicine, 3d ed., 1935, pp. 1250, 1252, 1253; MacCrae, Osier's Modern Medicine, 3d ed., Vol. V. pp. 272-279).

And it has been conclusively shown in this case that the testatrix Encarnacion Neyra, at the age of 48, died on November 4, 1942, due to a heart attack, after an illness of about two (2) years.

In connection with testamentary capacity, in several cases, this court has considered the testimony of witnesses, who had known and talked to the testators, more trustworthy than the testimony of alleged medical experts.

Testamentary capacity is the capacity to comprehend the nature of the transaction in which the testator is engaged at the time, to recollect the property to be disposed of, and the persons who would naturally be supposed to have claims upon the testator, and to comprehend the manner in which the instrument will distribute his property among the objects of his bounty. (Bugnao vs. Ubag, 14 Phil., 163.)

Insomnia, in spite of the testimony of two doctors who testified for the opponents to the probate of a will, who stated that it tended to destroy mental capacity, was held not to affect the full possession of the mental faculties deemed necessary and sufficient for its execution. (Caguioa vs. Calderon, 20 Phil., 400.) The testatrix was held to have been *compos mentis*, in spite of the physician's testimony to the contrary, to the effect that she was very weak, being in the third or last stage of tuberculosis. (Yap Tua vs. Yap Ca Kuan and Yap Ca Liu, 27 Phil., 579.) The testimony of the attending physician that the deceased was suffering from diabetes and had been in a comatose condition for several days, prior to his death, was held not sufficient to establish testamentary incapacity, in view of the positive statement of several credible witnesses that he was conscious and able to understand what said to him and to communicate his desires. (Samson vs. Corrales Tan Quintin, 44 Phil., 573.) Where the mind of the testator is in perfectly sound condition, neither old age, nor ill health, nor the fact that somebody had to guide his hand in order that he might sign, is sufficient to invalidate his will. (Amata and Almojuela vs. Tablizo, 48 Phil., 485.)

Where it appears that a few hours and also a few days after the execution of the will, the testator intelligently and intelligibly conversed with other persons, although lying down and unable to move or stand up unassisted, but could still effect the sale of property belonging to him, these circumstances show that the testator was in a perfectly sound mental condition at the time of executing the will. (Amata and Almojuela vs. Tablizo, 48 Phil., 485.)

Presentacion Blanco, in the course of her cross-examination, frankly admitted that, in the morning and also at about 6 o'clock in the afternoon of November 3, 1942, Encarnacion Neyra talked to her and that they understood each other clearly, thus showing that the testatrix was really of sound mind, at the time of the signing and execution of the agreement and will in question.

It may, therefore, be reasonably concluded that the mental faculties of persons suffering from Addison's disease, like the testatrix in this case, remain unimpaired, partly due to the fact that, on account of the sleep they enjoy, they necessarily receive the benefit of physical and mental rest. And that like patients suffering from tuberculosis, insomnia or diabetes, they preserve their mental faculties until the moments of their death.

Judging by the authorities above cited, the conclusion made by the trial court that the testatrix Encarnacion Neyra was of sound mind and possessed testamentary capacity, at the time of the execution of the will, cannot be properly disturbed.

The oppositors also claim that the attesting witnesses were not present, at the time that the testatrix thumb marked the will in question, on her bed, in the sala of the house, as they were allegedly in the cadda. But it has been fully, shown that the attesting witnesses were present at the time of the signing and execution of the agreement and will

in question, in the sala, where the testatrix was lying on her bed. The true test is not whether they actually saw each other, at the time of the signing of the will, but whether they might have seen each other sign, had they chosen to do so; and the attesting witnesses actually saw it in this case. (*Jaboneta vs. Gustilo*, 5 Phil., 541.) And the thumbmark placed by the testatrix on the will is equivalent to her signature. (*Yap Tua vs. Yap Ca Kuan and Yap Ca Liu*, 27 Phil., 579.)

The oppositors as well as their principal witnesses are all interested parties, as said oppositors had been named legatees in the will dated September 14, 1939, but eliminated from the will dated November 3, 1942.

On the other hand, the witnesses for the petitioner are all trustworthy men, who had absolutely no interest in the final outcome of this case. Two of them are ministers of the Gospel, while the three attesting witnesses are professional men of irreproachable character, who had known and seen and talked to the testatrix.

Furthermore, the testimony of the oppositors and their witnesses, to the effect that there could have been no reconciliation between the two sisters, and that the thumb mark of Encarnacion Neyra was affixed to the document embodying the agreement, while she was sleeping, on November 3, 1942, in their presence; and that her thumb mark was affixed to the will in question, when she was already dead, in the morning of November 4, 1942, within their view, is preposterous, to say the least. Said testimony is contrary to common sense. It violates all sense of proportion. The oppositors and their witnesses could not have told the truth; they have testified to brazen falsehoods; and they are, therefore, absolutely unworthy of belief. And to the evidence of the oppositors is completely applicable the rule *falsus in uno, falsus in omnibus*. (*Gonzalez vs. Mauricio*, 53 Phil., 728, 735.)

In the brief presented by counsel for the oppositors and appellants, to show the alleged improbability of the reconciliation of the two sisters and the execution of the will, dated November 3, 1942, they have erroneously placed great reliance on the fact that, up to October 31, 1942, the two sisters Encarnacion and Trinidad Neyra were bitter enemies. They were banking evidently on the common belief that the hatred of relatives is the most violent. Dreadful indeed are the feuds of relatives, and difficult the reconciliation. But they had forgotten the fact that Encarnacion Neyra was a religious and pious woman instructed in the ancient virtues of Christian faith and hope and charity, and that it was godly to forgive and better still to forget.

It was most natural that there should have been reconciliation between the two sisters, Encarnacion and Trinidad Neyra, as the latter is the nearest relative of the former, her only sister of the whole blood. The approach of imminent death must have evoked in her the tenderest recollections of childhood. And believing perhaps that her little triumphs had not always brought her happiness, and that she had not always been fair to her sister, who, in fact, had successively instituted two suits against her, to recover what was her due, and for which Encarnacion believed she must atone, she finally decided upon reconciliation, so that she might depart in peace.

The record shows that, of the two, Encarnacion lived in greater opulence, and that Trinidad had been demanding tenaciously her share; and as a Christian woman, Encarnacion must have known that no one has any right to enrich himself unjustly, at the expense of another. And it was, therefore, natural that Encarnacion should desire reconciliation with her sister Trinidad, and provide for her in her last will and testament.

As for Eustaquio Mendoza, who, according to the evidence, had served Encarnacion Neyra for so many years and so well, it was also natural that she should make some provision for him, as gratitude is the noblest sentiment that springs from the human heart.

The conduct of Encarnacion Neyra, in making altogether a new will, with new beneficiaries named therein, including principally her bitterest enemy of late, which is completely incompatible with the will, dated September 14, 1939, may really seem strange and unusual; but, as it has been truly said, above the logic of the head is the

feeling in the heart, and the heart has reasons of its own which the head cannot always understand, as in the case of intuitive knowledge of eternal verity.

As Encarnacion Neyra felt the advent of immortality, she naturally wanted to follow "the path of the just, which is as the shining light that shineth more and more unto the perfect day," so that her memory may be blessed. As a Christian woman, she must have loved justice, mercy and truth and to follow the law, for this is the whole duty of man.

In the present case, the court cannot find any reason or justification to alter the conclusions set forth in the decree appealed from. This court will not reverse any findings of fact by the trial court made upon conflicting testimony and depending largely upon the credibility of witnesses, who testified in the presence of the trial judge, unless the court below failed to take into consideration some material facts or circumstances, or to weigh accurately all of the material facts and circumstances presented to it for consideration. (Baltazar vs. Alberto, 33 Phil., 336; Melliza vs. Towle, 34 Phil., 345; Caragay vs. Urquiza, 53 Phil., 72, 79; Garcia vs. Garcia de Bartolome, 63 Phil., 419.)

After a careful consideration of the evidence and the law in this case, we find it legally impossible to sustain any of the errors assigned by the appellants. The judgment appealed from is, therefore, affirmed, with costs against the appellants. So ordered.

Ozaeta, Perfecto, Hilado, and Bengzon, J.J., concur.

Judgment affirmed.

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