

**IN RE ESTATE OF THE DECEASED LEONARDA MACAM Y CAPILI.
NICOLASA MACAM, PETITIONER AND APPELLANT, VS. JUANA
GATMAITAN, OPPOSITOR AND APPELLANT.**

G. R. No. 40445. August 17, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This case comprises two appeals, one taken by the petitioner Nicolasa Macam and the other by the oppositor Juana Gatmaitan, from an order of the Court of First Instance of Bulacan, the dispositive part of which reads as follows:

"In view of the neglect or abandonment by the interested parties of their respective claims during the proceedings for the probate of the will, and it appearing that the order allowing the will has already become final and executory, the court is of the opinion that it is now too late to consider the so-called codicil as well as the instrument from which Juana Gatmaitan derives her alleged right.

"Wherefore, the petition for the probate of the codicil as well as the opposition thereto filed by Juana Gatmaitan is dismissed, without prejudice to whatever right the latter may have in an appropriate proceeding before the committee on claims and appraisal, in accordance with law. So ordered."

In support of her appeal, the petitioner Nicolasa Macam assigns the following alleged errors as having been committed by the trial court in said decision, to wit:

"1. The lower court erred in holding that the parties have abandoned their respective claims during the proceedings for the probate of the will.

"2. The lower court erred in declaring that it was already too late to raise the question as to the legal efficacy of the codicil executed by the deceased.

"3. The lower court erred in dismissing the petition for the probate of the codicil before any of the parties had presented evidence pertinent to the matter."

The oppositor Juana Gatmaitan, in turn, assigns the following alleged errors as having been committed by the court a quo in said decision, to wit:

"1. The lower court erred in holding that in order for Juana Gatmaitan to preserve her rights, so far as to oppose the probate of the codicil, it was her duty to oppose to the probate of the will; and, having opposed the probate only of the codicil, she could no longer avail herself of the document in her favor, so as to affect the testamentary dispositions of the deceased Leonarda Macam.

"2. The lower court erred in dismissing the opposition of Juana Gatmaitan to the probate of the alleged codicil;"

The appellants' assignments of error, considered together, raise the following questions of law:

- Is the probate of a will by final judgment prior to that of a codicil thereof a bar to the probate of said codicil?
- Does the failure to file opposition to the probate of a will constitute a bar to the presentation of the codicil for probate?

The following pertinent facts, which are disclosed by the pleadings, are necessary for the resolution of the questions raised in this appeal:

On March 27, 1933, Nicolasa Macam filed in the Court of First Instance of Bulacan a petition for the probate of the will dated July 12, 1932, and of the codicil thereof dated February 17, 1933, executed by Leonarda Macam who died on March 18, 1933, in the municipality of Calumpit, of said Province of Bulacan, and for her appointment as executrix without bond.

When the petition was called for hearing on April 24, 1933, in the absence of the judge, the clerk of the Court of First Instance of Bulacan, upon instructions of said judge to proceed to take the evidence in the absence of any opposition, took the evidence relative to the probate of the will, no opposition to the same having been filed. Inasmuch as Juana Gatmaitan filed opposition to the probate of the codicil, said clerk deemed himself unauthorized to take the evidence relative thereto and refrained from so doing.

The will and the evidence for its probate having been submitted to the court the vacation Judge Hon. M. Rosauro, on April 28, 1933, entered an order allowing said will and appointing the petitioner Nicolasa Macam as executrix.

On July 6, 1933, after notice to the parties, the codicil was called for hearing, opposition having been filed by Juana Gatmaitan, one of the legatees instituted in the will which had already been allowed by final and executory judgment. After hearing counsel for the respective parties, Judge Francisco Enage, then presiding over the Court of First Instance of Bulacan, entered the order the dispositive part of which has been quoted at the beginning of this decision.

Section 625 of the Code of Civil Procedure provides as follows:

"SEC. 625. Allowance necessary, and conclusive as to execution.—No will shall pass either the real or personal estate, unless it is proved and allowed in the Court of First Instance, or by appeal to the Supreme Court; and the allowance by the court of a will of real and personal estate shall be conclusive as to its due execution."

Interpreting the above legal provisions as regards the scope of the allowance of a will, this court, in numerous decisions, has laid down the doctrine that the probate of a will is conclusive as to its due execution and as to the testamentary capacity of the testator, but not as to the validity of its provisions, and in probate proceedings the courts are without jurisdiction to determine questions concerning the validity of the provisions of the will. (Castaneda vs. Alemany, 3 Phil., 426; Pimentel vs. Palanca, 5 Phil., 436; Limjuco vs. Ganara, 11 Phil., 393; Austria vs. Ventenilla, 21 Phil., 180; In re Estate of Johnson, 39 Phil., 156; Riera vs. Palmaroli, 40 Phil., 105.)

"A codicil is a written instrument wherein one declares his last will, in order to take from or add something to the will, or clarify the provisions thereof." (Spanish Cyclopaedia of Law, vol. 5, page 918.)

"A codicil has been defined as some addition to or qualification of one's last will and testament." (28 R. C. L., 197.)

The exercise of the right to make a will, as a voluntary act, implies the right to revoke, and article 737 of the Civil Code expressly provides that wills are essentially revocable, provided that the partial or total revocation is made with the formalities required for making it, in accordance with the provisions of article 738 of the same Code,

The fact that a will has been allowed without opposition and the order allowing the same has become final and

executory is not a bar to the presentation and probate of a codicil, provided it complies with all the necessary formalities for executing a will required by section 614 of the Code of Civil Procedure, as amended by section 1 of Act No. 1934.

It is not necessary that the will and the codicil be probated together, as the codicil may be concealed by an interested party and it may not be discovered until after the will has already been allowed; and they may be presented and probated one after the other (40 Cyc, 1228), since the purpose of the probate proceedings is merely to determine whether or not the will and the codicil meet all the statutory requirements for their extrinsic validity, leaving the validity of their provisions for further consideration.

The appeal taken by the petitioner Nicolasa Macam is, therefore, well founded and the court a quo erred in flatly denying her petition for the probate of the codicil on the erroneous ground that said codicil should have been presented at the same time as the will.

With respect to the opposition of the oppositor-appellant Juana Gatmaitan, the fact that she failed to file opposition to the probate of the will does not prevent her from filing opposition to the probate of the codicil thereof, inasmuch as the will may satisfy all the external requisites necessary for its validity, but the codicil may, at the time of its execution, not be in conformity therewith. If the testator had testamentary capacity at the time of the execution of the will, and the will was executed in accordance with all the statutory requirements, opposition to its probate would not lie. On the contrary, if at the time of the execution of the codicil the testator lacked some of the subjective requisites legally capacitating him to execute the same, or all the statutory requirements were not complied with in the execution thereof, opposition to its probate would lie.

The court a quo, therefore, erred in dismissing the opposition filed by the oppositor-appellant Juana Gatmaitan to the probate of the codicil of the will of the deceased Leonarda Macam.

In view of the foregoing, we are of the opinion and so hold: (1) That the fact that a will has been probated and the order allowing the same has become final and executory, is not a bar to the presentation and probate of a codicil, although its existence was known at the time of the probate of the will; (2) that the failure of the oppositor to the probate of a codicil to file opposition to the probate of the will, having knowledge of such proceedings, does not constitute an abandonment of a right, nor does it deprive her of the right to oppose the probate of said codicil.

Wherefore, the order appealed from is reversed and it is ordered that the petition for the probate of the codicil filed by the petitioner Nicolasa Macam, as well as the opposition to said probate filed by the oppositor Juana Gatmaitan, be reinstated, without special pronouncement as to costs. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

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