

IN RE WILL OF THE DECEASED GABINA MEDINA. ALEJANDRO SAMIA, PETITIONER AND APPELLEE, VS. IRENE MEDINA ET AL., OPPOSITORS AND APPELLANTS.

G. R. No. 40581. August 25, 1934

Ponente: GODDARD, J.

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GODDARD, J.:

This is an appeal from a decision of the Court of First Instance of Pampanga admitting to probate a will purporting to be that of the deceased Gabina Medina, who died in the month of September, 1930. The will in question was originally admitted to probate by the trial court without any opposition. However, five days before the expiration of the period of six months provided in section 113 of the Code of Civil Procedure, the oppositors-appellants filed a motion with the lower court to have the case reopened, which was granted over the objection of the original petitioner, Alejro Samia, who died before the rehearing of this case was substituted by the present petitioner-appellee.

The will in question purports to have been executed on September 22, 1928, in Arayat, Pampanga, bears the thumb mark of Gabina Medina, with her name written by Jose Berenguer who also signed the document. The attesting witnesses were Mariano D. Vengzon, Luis Pineda Lorenzo Tinio.

The grounds of opposition of the oppositors-appellants are that the will in question was not signed by the witnesses in the presence of the others, that at the time the will purports to have been executed, the deceased Gabina Medina was mentally incapable of executing it.

The principal witnesses of the oppositors in support of the allegation that the deceased was mentally incapable of executing the will in question on September 22, 1928, were Dr. Generoso Ocampo who treated the deceased Gabina Medina in 1928, Father Roberto Roque a servant, Juana Mallari, who, it is alleged, had taken care of the deceased since the latter part of the year 1926 up to the early part of the year 1930.

The first of the above-mentioned witnesses testified that in the year 1920 he treated the deceased that since that time she has shown symptoms of senility of an illness known as "tabes dorsalis"; that in 1924 she had slight atrophy in the hs feet could no longer st up; that during the second quarter of the year 1928 he was again called to treat her he found her suffering with "ataxia locomotrix with dementia senile" that she could not talk nor hear could not move. The second witness testified that her last confession was on or about the month of January or February, 1928, that when he went to confess her in May of that year, he could no longer understand her she would laugh weep in answer to his questions. The witness Juana Mallari testified that from the year 1926 up to the time that the deceased was moved to her new house in the year 1928 it was difficult to understand what she said, that two months later she had completely lost her power of speech could not move her has feet that she was also suffering from inability to control her urine bowel movements.

On the other h the evidence for the petitioner shows that previous to the year 1928, during that year, in the year 1929 the deceased was able to talk coherently intelligibly although she was suffering from rheumatism.

In connection with the above, the trial court said in part:

"* * * Es un hecho, que el solicitante presento varios testigos de contra pruebas que contradijeron a los de la oposicion, encontrose entre ellos otro sacerdote catolico, el P. Casto Ocampo, el cual dijo que confeso a Gabina Medina en 1929, y lo hizo todavia bien; el Fiscal General Auxiliar Sr. Salvador A. Santos, que afirmo haber podido hablar a aquella en mayo y noviembre de 1928, y una vez en 1929; y el Dr. Sixto de los Angeles, que declaro que la enfermedad que aquella padecia, segun los sintomas dados por el Dr. Ocampo, no debia ser 'tabes dorsal,' sino otra de la medula espinal."

One very important exhibit in favor of the petitioner is a photograph of the deceased with petitioner's daughter who was then about ten months old, which was taken about the month of October, 1928, just one month after the date of the will in question. This photograph its negative show the deceased seated on a chair with the child on her lap, her arms around her and her hands clasped in front of the child. This photograph negatives the contention of the oppositors, at least, as to the physical condition of the deceased testatrix at about the time the will in question was executed.

Doctor Sixto de los Angeles testifying about "tabes dorsalis" stated that this illness has no direct relation to the mental condition of a person affected by it, as stated by Drs. Church Peterson, in their work entitled "Nervous Mental Diseases", page 454, 8th edition, "Tabetics often manifest large mental activities retain their business capacity to the end."

Admitting that the testatrix was physically ill in the year 1928, physical ailments debility due to old age do not preclude the possession of mental capacity to make a will. To have testamentary capacity does not necessarily mean that the testator should be in full possession of all his reasoning faculties. The presumption is that every adult is sane. In the case of *Torres Lopez de Bueno vs. Lopez* (48 Phil., 772), this court held:

"3. Neither old age, physical infirmities, feebleness of mind, weakness of the memory, the appointment of a guardian, nor eccentricities are sufficient singly or jointly to show testamentary incapacity. The nature rationality of the will is of some practical utility in determining capacity. Each case rests on its own facts must be decided by its own facts.

"5. The presumption is that every adult is sane. * * *

"8. To constitute a sound disposing mind, it is not necessary that the mind shall be wholly unbroken, unimpaired, or unshattered by disease or otherwise, or that the testator should be in the full possession of his reasoning faculties. The question is not so much, what was the degree of memory possessed by the testator, as, had he a disposing memory? (Buswell on Insanity, sec. 365; *Campbell vs. Campbell* [1889], 130 111., 466, *Bagtas vs. Paguio* [1912], 22 Phil., 227.)

"10. An examination of the Philippine cases on testamentary capacity discloses a consistent tendency to protect the wishes of the deceased whenever it be legally possible. These decisions also show great tenderness on the part of the court towards the last will testament of the aged."

Regarding the other ground advanced by the oppositors that the formalities prescribed by law for the execution of the will have not been complied with, the trial court had this to say:

"Leyendo las pruebas de la parte solicitante, uno concluiria que el testamento de que se trata fue" otorgado realmente por Da. Gabina Medina en su cabal juicio, porque los dos testigos instrumentales, Sres. Mariano Vengson y Luis Pineda, pues el otro habia fallecido, y el Sr. Jose Berenguer que firmo el nombre de la finada, no solamente fueron unanimes en su examen directo, sino tambien en el minucioso interrogativo indirecto, a que fueron sometidos por los ilustres abogados de los opositores, y porque dos al menos de ellos, los dos primeros, parece que deben ser dignos de credito, toda vez que el Sr. Vengson es farmacitico, y el Sr. Pineda,

abogado y Juez de Paz." In view of all the evidence of record this court subscribes to this view.

The decision of the lower court admitting the will to probate is affirmed, with costs in this instance against the oppositors-appellants.

Malcolm, Imperial, Butte, Diaz, JJ., concur.

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