

VICENTA LIMJUCO, PETITIONER AND APPELLANT, VS. MAURICIA GANARA, RESPONDENT AND APPELLEE.*G.R. No. 4187. October 06, 1908*

Ponente: WILLARD, J.

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The appellant, Vicenta Limjuko, presented to the Court of First Instance of the Province of La Laguna for probate what purported to be the last will of Juan Limjuko. The court below denied the petition of the appellant for the probate of the document, holding that it never had been signed by Juan Limjuko. From the document itself it appears that Juan Limjuko was 104 years of age. It is dated on the 17th day of July, 1902, and he died on the same day. He declares therein that Blasa Ganara was his second wife and that he had by her three children who, as well as his wife Blasa Ganara, were all dead at the time of making the document, and he made the appellant, Vicenta Limjuko, his only heir.

The probate of the will was opposed by Mauricia Ganara as the guardian of the minor Gertrudis Limjuko, who was born in 1900 and who, the guardian alleged, was the legitimate daughter of Juan Limjuko and Blasa Ganara. No mention of this child was made in the will.

Of the three witnesses to the document, one, Ciriaco Calacalsada, was dead at the time of the trial. The other two witnesses, Julian Narciso and Teodoro Calambacal, testified that they were present at the execution of the will and saw the testator Juan Limjuko, sign it. If their testimony can be believed, the will was duly executed in accordance with the law.

The only evidence presented by the appellee was the testimony of two witnesses. One of them stated that in 1901 Juan Limjuko's right hand was paralyzed so that he could not write. He testified that in that same year, when his wife, Blasa Ganara, desired to borrow money from a third person, Juan Limjuko was not able to sign the document evidencing the loan on account of this defect. The testimony of the other witness for the appellee was limited to this transaction relating to the loan. In our opinion, this evidence is entirely insufficient to overcome the positive testimony of the two witnesses who swore that they actually saw the testator sign the will.

Among other grounds alleged by the appellee in opposition to the probate was the fact that by the terms thereof he had disinherited his legitimate daughter and only heir, Gertrudis Limjuko. We have already held that this furnishes no ground for refusing probate to the document if it was duly executed in accordance with the law. In the case of *Castañeda vs. Alemany* (3 Phil. Rep., 426), it was said (p. 428):

"To establish conclusively as against everyone, and once for all, the facts that a will was executed with the formalities required by law and that the testator was in a condition to make a will, is the only purpose of the proceedings under the new code for the probate of a will. (Sec. 625.) The judgment in such proceedings determines and can determine nothing more. In them the court has no power to pass upon the validity of any provisions made in the will. It can not decide, for example, that a certain legacy is void and another one valid."

This case has since been followed by this court. (*Pimentel vs. Palanca*, 5 Phil. Rep., 436; *Sahagun vs. Gorostiza*, 7

Phil. Rep., 347.)

The judgment of the court below is reversed, and the case remanded with instructions to admit the will to probate. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

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