

IN RE WILL OF THE DECEASED FELISA JAVIER. SULPICIO RESURRECCION, ADMINISTRATOR AND APPELLEE, VS. AGUSTIN JAVIER ET AL., OPPOSITORS AND APPELLANTS.

G. R. No. 42539. October 23, 1936

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

On October 18, 1932, Felisa Francisco Javier made a will instituting her husband Sulpicio Resurreccion as her universal heir and, among other things, left a legacy of P2,000 in favor of her brother Gil Francisco Javier. The testatrix died on January 22, 1933, and her will was probated on March 8th of said year.

On October 12, 1933, the court, finding that Gil Francisco Javier died in August, 1930, even before the testatrix made her will, ordered that the legacy of P2,000 in his favor revert to the fund of the estate.

Gil Francisco Javier's children and heirs, claiming that they are entitled to receive the legacy of P2,000 in favor of their father, appeal from the court's resolution ordering the reversion of this amount to the funds of the estate.

The important thing to determine in this appeal is the effect of a legacy made in favor of a person who was already dead not only before the death of the testatrix but even before the will was made.

The testatrix, having no forced heirs, may dispose by will of all her property or any part thereof in favor of any person qualified to acquire it (art. 763, Civil Code). Upon being instituted as legatee by the testatrix, Gil Francisco Javier lacked civil personality, which is extinguished by death, and, therefore, lacked capacity to inherit by will on the ground that he could not be the subject of a right (art. 32, Civil Code). Consequently, his institution as a legatee had absolutely no legal effect and his heirs are not now entitled to claim the amount of the legacy. They cannot even claim under the principle of representation because this takes place only in intestate inheritance. Furthermore, as the legatee died before the testatrix, he could transmit nothing to his heirs (art. 766, Civil Code). '

The appellants also contend that the will should be interpreted in the sense that the intention of the testatrix was to leave the legacy to the heirs of Gil Francisco Javier. To this effect they have introduced evidence to show that the testatrix, in making her will, knew that Gil Francisco Javier was already dead. This court, however, does not find sufficient evidence to establish this fact. The only witness who testified to this effect was Agustin Javier, Gil's brother, who alleged that he was in the house of the testatrix in May, 1931, and in a conversation with her he informed her that their brother Gil had already died, leaving a widow and children. But against this testimony was presented that of Sulpicio Resurreccion, the widower of the testatrix, who testified that Agustin Javier was in his house only once, in April or May, 1930, prior to the death of the testatrix. According to this, he could not have given to the testatrix the information about Gil's death which took place some months later, or in August, 1930.

Furthermore, if the testatrix, in making her will, knew that Gil was already dead and that he had left children, it cannot be explained why she left the legacy to Gil and not to his children, if such was her intention, particularly because, according to the evidence for the appellants, she knew one of said children named Jose.

Consequently, in either case, whether the testatrix knew that Gil was already dead or she was ignorant thereof, as she had left the legacy in favor of Gil, there is no reason to admit that it was, nevertheless, her intention to leave it to his children.

The appealed judgment is affirmed, with costs to the appellants. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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