

IN RE WILL OF THE DECEASED ROSARIO FABIE Y GREY. JOSE GREY, PETITIONER AND APPELLEE, VS. SERAFIN FABIE AND JOSE FABIE, OPPOSITORS AND APPELLANTS.

G.R. No. 45160. May 23, 1939

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

After the death of Rosario Fabie y Grey, her alleged will was presented to the court for probate. It was assailed on two legal grounds by Serafin Fabie and Jose Fabie, and the court, on September 19, 1935, resolving the question of lack of personality of the oppositors, held that, as the latter could not inherit intestate from their natural cousin, the testatrix, they had no interest in the will in question, hence, they have no right to impugn it, whereupon, it ordered the continuation of the probate proceedings without the intervention the said oppositors. After trial, the court probated the said will of the deceased Rosario Fabie y Grey, and appointed the petitioner, Jose Grey, executor upon filing a bond for P10,000. The oppositors excepted to the order of September 19, 1935 as well as to the decision of the 23d of said month.

They assign in their brief the following errors committed by the court:

"I. The court erred in holding that the oppositors cannot inherit intestate from their cousin Rosario Fabie Grey, in representation of the father who recognized them.

"II. The court erred in not holding that the will presented by the administrator is not executed in accordance with law.

"III. The court erred in not denying said will, independently of the rights which the oppositors may have."

In the order denying the intervention of the oppositors, the court said:

"From the evidence and data given by the parties at the trial, it appears that Jose Fabie y Gutierrez, Ramon Fabie y Gutierrez, Miguel Fabie y Gutierrez, and Vicenta Fabie y Gutierrez were legitimate brothers and sister; that the first, or Jose Fabie y Gutierrez, had a daughter called Rosario Fabie y Grey, who is the testatrix, and Ramon Fabie Gutierrez also had two acknowledged natural children named Jose Fabie and Serafin Fabie, who are the oppositors in these proceedings; and that Rosario Fabie in her will instituted as heirs her maternal cousins Jose, Juan and Francisco, surnamed Grey."

The pronouncement of the court that the oppositors cannot inherit intestate from the deceased Rosario Fabie Grey, on the assumption that the latter's will should be annulled, is clearly borne out by the facts set out and by the law.

Under article 943 of the Civil Code, the oppositors, as natural children of Ramon Fabie y Gutierrez, cannot succeed ab intestate their deceased cousin Rosario Fabie y Grey. Said article reads:

"ART. 943. A natural or legitimated child has no right to succeed ab intestate the legitimate Children and relatives of the father or mother who has acknowledged it; nor shall such children or relatives so inherit from the natural or legitimated child." (Italics ours.)

Commenting on the aforequoted article, Manresa has this to say:

"Between the natural child and the legitimate relatives of the father or mother who acknowledged it, the Code denies any right of succession. They cannot be called relatives and they have no right to inherit. Of course, there is a blood tie, but the law does not recognize it. In this, article 943 is based upon the reality of the facts and upon the presumptive will of the interested parties; the natural child is disgracefully looked down upon by the legitimate family; the legitimate family is, in turn, hated by the natural child; the latter considers the privileged condition of the former and the resources of which it is thereby deprived; the former, in turn, sees in the natural child nothing but the product of sin, a palpable evidence of a blemish upon the family. Every relation is ordinarily broken in life; the law does no more than recognize this truth, by avoiding further grounds of resentment." (7 Manresa, 3d ed., p. 110.)

But the oppositors contend that they do not attempt to succeed their cousin by their own right but by the right of representation. If Ramon Fabie were living, so they say, he would undeniably be entitled to succeed his niece Rosario Fabie y Grey, in which case, upon the death of Ramon Fabie, his natural children, the herein oppositors would succeed him, because Ramon Fabie had no legitimate children. They cite article 924 of the Civil Code which defines representation thus:

"Art. 924. The right which the relatives of a person have to succeed him in all the rights which he would have had, if alive, or if he had been capable of inheriting, is called the right of representation."

They also cite article 925 of the same Code reading:

"Art. 925. The right of representation shall always take place in the direct descending line, but never in the ascending."

In supporting their contention, however, the oppositors have omitted and put out of view the second paragraph of the said article 925 to this effect:

"In the collateral line it shall take place only in favor of the children of brothers or sisters, whether they be of the whole or half blood."

The oppositors-appellants are not children of brothers or sisters of the deceased Rosario Fabie y Grey, but of the latter's uncle, Ramon Fabie, hence, it is unnecessary to state that the right of representation does not lie in this case. From this it inevitably follows that the oppositors have no interest whatsoever in the will of the deceased Rosario Fabie y Grey, wherefore, they are not entitled to intervene in the proceedings for the probate of the said will. (Paras vs. Narciso, 35 Phil., 244.)

In view of this result, we find no occasion to discuss the second legal question raised by the oppositors in their second assigned error which states: "The court erred in not holding that the will presented by the administrator is not executed in accordance with law." If there is no true opposition, as we have seen, to the probate of the questioned will, the second assigned error does not call for refutation.

Nonetheless, the courts being bound, before they can allow a will presented for probate, to examine whether or not the legal requirements for its execution have been obeyed, we now pass to inquire into this question.

The will executed by Rosario Fabie y Grey closes with the paragraph literally reading as follows:

"In witness whereof, after reading and understanding this my said testament, I state that it represents my intention and will, and I have signed the same under my hand on the left margin of each of the pages of which the said will is composed, and at the foot of the fifth (5th) page, which signatures I made in the presence of each and all of the three instrumental witnesses, Mr. Halim Ysmael, Mr. B. G. Manalac and Mr. Jose V. Concepcion, and they signed in my presence and in the presence of each other, in this City of Manila,

Philippine Islands, today, October 26, of the year of our Lord nineteen hundred thirty-four (1934), at 6 o'clock p. m., in my residence."

After the signature of the testatrix follows the attestation clause reading:

"We, Mr. Halim Ysmael, residing on Second St., No. 3, San Juan, Rizal; Mr. B. G. Manalac, residing on Evangelista St., No. 641, Manila, and Mr. Jose V. Concepcion, residing on Ayala St., No. 36, Manila; of age and with full capacity to witness this will, certify and witness that the testatrix, Dona Rosario Fabie y Grey, stated to us that the said document is her last will and testament, which is written in the Spanish language which she knows; that the said will and this attestation contain five (5) pages correlatively numbered from one to five on the upper portion of each page in Arabic figures and in letters, each of which was signed by the testatrix on the left margin and at the foot of the fifth (5th) page, as well as by each of us in the presence of the testatrix and in the presence of each of the witnesses on the left margin of each of the five pages and at the foot of this fifth page containing the attestation, in one continuous and uninterrupted act, in this City of Manila, P. I., today, October 26, 1934."

The foregoing attestation clause does not show expressly that the testatrix signed at the foot of the will and on the left margin of the pages thereof in the presence of the witnesses; but the comparative conjunction "as well as by each of us in the presence of the testatrix * * *", sufficiently indicates that the testatrix signed in the presence of the witnesses just as the latter have signed in the presence of the testatrix.

Moreover, at the end of the will, as shown by the aforequoted paragraph, the testatrix stated that "I have signed the same under my hand on the left margin of each of the pages of which the said will is composed, and at the foot of the fifth (5th) page, which signatures I made in the presence of each and all of the three instrumental witnesses * * *". It is beyond doubt, therefore, that the testatrix signed the will in question in the presence of the instrumental witnesses, and the argument is unavailing that the alleged defect in the attestation clause has been cured by evidence aliunde, because the evidence in the present case appears in the will itself.

The appealed order and decision are affirmed, with the costs to the oppositors. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Moran, JJ., concur.

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