

IN THE MATTER OF THE WILL OF THE DECEASED EUGENIA ZUNIGA DEL ROSARIO. VICENTE REYES VILLAVICENCIO, APPLICANT AND APPELLEE, VS. SANTIAGO QUINIO ET AL., OPPOSITORS AND APPELLANTS.

G.R. No. 45248. April 18, 1939

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Eugenia Zuniga del Rosario died in Batangas, Batangas, on December 19, 1934, leaving a will executed with all the legal formalities, which was probated on February 1, 1935, over the opposition of some relatives.

The third clause of the said will translated from Tagalog into Spanish, reads as follows:

"Tercero : Declaro que tengo bienes inmuebles, muebles, semovientes, casa y camarin que he heredado de mis padres y hermanos y, no teniendo yo heredero forzoso como ya he dicho mas arriba, he dispuesto que mis citados bienes sean destinados solamente para la paz y felicidad de mi alma y de las de mis padres y hermanos, y tambien para el beneficio de la iglesia, en la manera siguiente:

"Que el producto de los terrenos y las rentas de la casa y camarin, se invirtiran en misas en la iglesia catolica apostolica romana de Batangas, Batangas, del mode que mas abajo se dispone, a saber:

"(a) En sufragio de mi alma, se dira una misa todos los dias durante los tres anos consecutivos desde mi muerte y para los anos subsiguientes, dos misas al ano.

"(b) Anualmente se diran dos misas: una en sufragio del alma de mi padre y otra del de mi madre que en vida se llamaron Juan del Rosario y Victoria Quinio.

"(c) Anualmente se diran dos misas dedicadas, una al sufragio de mi abuelo Padre Mariano y otra al de su hermana llamada Maria.

"(d) Una vez al ano se dira la correspondiente misa por el sufragio de cada uno de mis hermanos llamados Ignacio, Maria Asuncion, Placida, Maria Trinidad, Justiniana y Vicente apellidados del Rosario, y

"(e) Se diran anualmente una limosna de P10 a la Sagrada Virgen de este pueblo de Batangas, Batangas, y otra limosna, tambien de P10, a Santo Nino, Patron de este mismo pueblo".

Subsequently, Santiago Quinio and twenty-eight relatives of the testatrix within the fifth degree in the collateral line, filed a motion with the conformity of the Bishop of Lipa wherein, after stating how the said deceased Eugenia Zuniga del Rosario had disposed in her will of her properties by way of masses and alms, etc., they asked that they be declared heirs of said testatrix charged with the duty to comply with its provisions, as to which compliance, so they stated, they had already reached an understanding with the Bishop of Lipa whereby the said movants, within ninety days from the adjudication to them of the properties constituting the inheritance, would deposit with said Bishop the necessary amount to defray the masses for three years, and would likewise deposit in

any bank designated for the purpose an amount the interest of which would be sufficient to cover the other expenses for the annual masses and alms ordained in the will.

The executor Vicente Reyes Villavicencio opposed the foregoing petition and the court denied the latter by its order of March 30, 1936. The movants appealed and assign the following alleged errors in their brief:

"The lower court erred in finding that the entire property, and not only a part thereof, has been disposed of by the deceased in her will.

"The lower court erred in denying the oppositors-appellants their legal right to share in the property of the deceased.

"The lower court erred in not recognizing, as proper and lawful under the circumstances, the compromise entered into by and between the Bishop of Lipa and the herein oppositors-appellants, with regards to the manner by which Paragraph III of the will may be carried out and given effect, it being understood that the said mutual understanding will best promote and safeguard the manifest and primordial intention of the testatrix."

The appellants contend that even after full compliance with the will of the testatrix, a substantial balance would still remain after deducting the necessary expenses for masses and alms and the amount of the allowance for support of Eulalia del Rosario, and excluding the legacy left to Ubaldo Magbuhat and Engracio Alegria. As to that balance, the appellants contend that the deceased Eugenia Zuniga del Rosario died partly intestate and that they are entitled to succeed her with respect to that part.

Such contention is based on something entirely inconsistent with what the testatrix ordered in the third clause of her will. As will be seen, the appellants proceed on the false assumption that for every mass celebrated for the soul of the testatrix and those of her parents, brothers and sisters, something or a determinate amount from the fruits of her properties had to be given. Proceeding on this assumption, it is possible that the fruits of said properties would leave an excess which the testatrix has not disposed of. However, as we have stated, such an assumption is untenable because the testatrix has not provided that a certain amount be taken from the fruits of her properties for the celebration of the masses ordered by her, but has said: "I have provided that ray said properties be devoted only for the peace and happiness of my soul and those of my parents, brothers and sisters, and also for the benefit of the church, etc."; and, continuing, she ordered "that the fruits of the lands and the income of the house and warehouse, be spent for masses * * *" Hence, the testatrix has provided, not that something out of the fruits and income of her properties be paid for the masses which she has ordered to be celebrated for her soul and those of her parents, brothers and sisters, but that all the fruits of the lands and all the income be spent for masses. For this purpose, and doubtless foreseeing that the income of her properties would be insufficient to cover the amount of the masses and of its other provisions, the testatrix has ordered in the sixth and ninth paragraphs of her will that, if necessary, her properties be sold with leave of court. Considering the provisions of the will of the deceased Eugenia Zuñiga del Rosario in their entirety, her collateral relatives, not being forced heirs, are not entitled to succeed her as to the remainder of her properties, which does not exist, or as to the naked ownership thereof.

Said testamentary provisions, whose validity is not here questioned, should be complied with because the testatrix, not having forced heirs as in the present case, may dispose of her properties for masses and pious works for the benefit of her soul, as provided in article 747 of the Civil Code. (6 Manresa, 6th ed., p. 24.)

The circumstance that the appellants had an understanding with the Bishop of Lipa as to how they (not the executor) were to comply with the provisions made by the testatrix after they had been declared heirs and after the properties left by the deceased relative had been adjudicated to them, does not support their contentions in the

slightest, because the Bishop's intervention in this case cannot validate any arrangement calculated to defeat the testamentary provisions inasmuch as the testatrix did not leave anything to the Roman Catholic Church which might be under the administration or supervision of the Bishop.

The appealed order is affirmed with the costs of both instances to the appellants. So ordered.

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

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