

IN RE WILL OF MAXIMO SARMIENTO, DECEASED. BARBARA ECHAVARRIA, PETITIONER AND APPELLANT, VS. ROMAN SARMIENTO ET AL., OPPOSITORS AND APPELLEES.

G.R. No. 45260, November 28, 1938

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The sole question of law raised in this appeal is whether a will the attestation clause of which does not mention the number of pages composing the will, is valid.

On August 24, 1935, Maximo Sarmiento executed a document which, on his death, was presented to the Court of First Instance for probate as his will. Said document, which was marked Exhibit A, ends with a clause which literally reads as follows:

"In testimony whereof, I sign at the end and on each of the left margins of this will of mine, which is composed of five pages including this one, in Batangas, Batangas, P. I., this 24th of August, 1935."

After the signature of Maximo Sarmiento is found the following attestation clause:

"ATTESTATION.

"We who sign hereunder do hereby state and certify that Maximo Sarmiento executed his last will and testament before us, signing in the presence of each and every one of us at the end and on each of the left margins of the same on his own free and spontaneous will; and as witnesses to his said testament, we likewise certify and state that we each sign at the foot of this attestation clause and on each and every one of the left margins of the will in the presence of each other and in that of the testator.

"In testimony whereof, we sign as above-stated these presents in Batangas, Batangas, this 24th day of August, 1935.

(Sgd.)

"MAXIMO DIMAANO

(Sgd.)

"PERFECTO CONDEZ

(Sgd.)

"GODOFREDO ROSALES"

By reason of the fact that the clause above-quoted, was not drafted in accordance with the provisions of section 618 of the Code of Civil Procedure, as amended by Act No. 2645, the court denied probate of the alleged will of the deceased Maximo Sarmiento. Petitioner and appellant, in her brief, assigns as error of the court its holding that

the attestation clause was not executed in accordance with law.

Section 618 of the Code of Civil Procedure, as amended, provides:

"Sec. 618. Requisites of Will.—No will, except as provided in the preceding section, shall be valid to pass any estate, real or personal, nor charge or affect the same, unless it be written in the language or dialect known by the testator and signed by him, or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of each other. The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, on the left margin, and said pages shall be numbered correlatively in letters placed on the upper part of each sheet. The attestation shall state the number of sheets or pages used, upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of three witnesses, and the latter witnessed and signed the will and all pages thereof in the presence of the testator and of each other."

According to the provisions of the section above-quoted, one of the mandatory requirements imposed by law is that the number of pages composing a will must be stated in its attestation clause. The purpose of this legal provision is obvious. Like all other legal requirements provided for by the Code, its purpose is to surround the due execution of a will with strong legal guarantees and to insure its authenticity. Much had been said before and the attorney for the appellant even now discusses with great ability the question of whether or not the omission in an attestation clause of a statement of the number of pages composing the will renders invalid the last will of a testator. It is a fact that since this court promulgated its decision in the case of *Gumban vs. Gorecho* (50 Phil., 30), it has been definitely established that the lack of compliance with the law as to the requirement above-mentioned, as well as to all others imposed by the Code, invalidates a will. In the decision aforesaid the authorities relative to the attestation clause in wills were reviewed, this court saying:

"The right to dispose of property by will is governed entirely by statute. The law of the case is here found in section 618 of the Code of Civil Procedure, as amended by Act No. 2645, and in section 634 of the same Code, as unamended. It is in part provided in section 618, as amended, that 'No will * * * shall be valid * * * unless * * *'. It is further provided in the same section that 'The attestation shall state the number of sheets or pages used, upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of three witnesses, and the latter witnessed and signed the will and all pages thereof in the presence of the testator and of each other.' Codal section 634 provides that 'The will shall be disallowed in either of the following cases: 1. If not executed and attested as in this Act provided.' The law not alone carefully makes use of the imperative, but cautiously goes further and makes use of the negative, to enforce legislative intention. It is not within the province of the courts to disregard the legislative purpose so emphatically and clearly expressed."

See also *Quinto vs. Morata* (54 Phil., 481), and *Rodriguez vs. Alcala* (55 Phil., 150), in which the doctrine laid down in the case of *Gumban vs. Gorecho*, aforesaid, has been followed and maintained.

The decision appealed from is affirmed with costs against the appellant. So ordered.

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

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