

IN RE WILL OF FRANCISCO ELEAZAR, DECEASED. MIGUELA ELEAZAR, PETITIONER AND APPELLEE, VS. EUSEBIO ELEAZAR, OPPOSITOR AND APPELLANT.

G.R. No. 45978. April 24, 1939

Ponente: MORAN, J.

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MORAN, J.:

The deceased, Francisco Eleazar, omitted in his last will and testament his legitimate father, the appellant Eusebio Eleazar, expressly disinherited his lawful wife, Eulalia Nagar, and instituted the appellee herein, Miguela Eleazar, as his universal heir. The lower court admitted the will to probate and adjudged appellant and appellee each entitled to one-half of the estate.

Appellant maintains in this appeal that the institution of the appellee as universal heir should be annulled and that he be declared entitled to all the estate of the deceased.

The will, in so far as it deprives the appellant, as legitimate father of the deceased, of his legal portion, is null and void, but is valid with respect to the other half which the testator could freely dispose of and which should be considered as a legacy. (Escuin vs. Escuin, 11 Phil., 332; Arts. 814, 817, and 809, Civil Code.)

Judgment is affirmed, with costs against appellant.

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

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