

**GREGORIA MONTAÑANO, PLAINTIFF AND APPELLANT, VS.
SILVESTRE SUESA, DEFENDANT AND APPELLEE.***G.R. No. 4724. December 24, 1909*

Ponente: MAPA, J.

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Contrary to the claims of the appellant as argued at length in her brief, the evidence presented in this case can not be reviewed by this court. She intervened and filed a complaint alleging that she was the owner of two parcels of land that had been attached as being the property of Catalino Montañano, by virtue of an order of execution issued in an action brought against him by the defendant herein, Silvestre Suesa. The appellant was defeated in the first instance, and excepted to the judgment, moving later on for a new trial on the ground that the said judgment was contrary to the weight of the evidence adduced in the case. Her motion for a new trial was presented on January 20, 1908, and on the 31st of the same month the bill of exceptions which has been submitted to this court was filed. No ruling whatever appears to have been made on said motion, consequently no provision was made to except thereto in the event it were overruled. The motion not being overruled and duly excepted to, this court can not review the evidence in the case; it can only base its decision on the facts found to have been proven in the judgment appealed from, and admitted by the parties in their respective briefs. (Sec. 497, Code of Civil Procedure, as amended by Act No. 1596; *Hijos de I. de la Rama vs. Robles and Robles*, 8 Phil. Rep., 712.)

According to the judgment the following facts have been proven:

"That the property described in the complaint was owned by the late Catalino Montañano, father of the plaintiff Gregoria Montañano; that prior to his death the said Catalino Montañano executed his last will and testament, by which he declares his children Gregoria, Catalino, and Manuel Montañano, to be heirs to the property left by him in the shares or portions respectively designated in the said will; that the said will was duly authenticated on the 2d of February, 1906, and the defendant herein, Silvestre Suesa, being appointed administrator of the estate, presented an inventory of the property left by Catalino Montañano, sr., deceased; that in numbers 8 and 38 of the said inventory the two parcels of land in controversy are described; that the plaintiff has endeavored to prove that the parcels of land claimed in her complaint were ceded to her as a gift by her father, Catalino Montañano, during his lifetime, and that she had ever since been in possession thereof, but while these facts have not been fully demonstrated, on the other hand it appears by the evidence and the will executed by Catalino Montañano, sr., that the person whom he designated to inherit the parcels of land above-referred to was his son Catalino, parcels of land situated in other barrios being left to the plaintiff Gregoria Montañano."

Lastly, it was held in the judgment that the evidence adduced by the plaintiff, both documentary and oral, does not establish her pretended ownership to the property in question.

According to the foregoing considerations of the lower court not only has the plaintiff failed to prove that she is the owner of the lands in controversy, but there is positive evidence that they belong to her brother Catalino, against whom they were attached. In the opinion of the court below this evidence consists of the duly

authenticated will of the late Catalino Montañano, their ancestor, in which it is set forth that said lands were willed by the testator to his son Catalino, entirely different parcels being assigned to the plaintiff herein. With reference to this point the judge below expresses himself in the following terms:

"As the will executed by Catalino Montañano, sr., was duly authenticated, and the portion of the property left by the testator corresponding to each one of his heirs being stated therein, one must necessarily conclude that the latter are entitled to make their own those properties indicated in the said will in the manner provided by the testator himself. If, therefore, Catalino Montañano was instituted heir under said will of the two parcels of land described in paragraph 1 of the complaint, it is unquestionable that no one but him can be recognized as the owner thereof, by title of inheritance from his father Catalino Montañano."

The appellant maintains that the trial judge erred in attributing such probatory force to the testamentary provisions of the late Catalino Montañano from the mere fact that his will had been authenticated, because as she states, although it is true that it is conclusive with respect to the proper execution of the same, and as to the capacity of the testator, yet, according to the doctrine set up in the matters of *Castañeda vs. Alemany* (3 Phil. Rep., 426) and *Pimental vs. Palanca* (5 Phil. Rep., 436), it is not so with regard to the validity of the provisions therein contained.

The true import and meaning of this doctrine is by its own terms so clear and precise that any further explanation seems unnecessary. The authentication of a will decides no other questions than such as touch upon the capacity of the testator and the compliance with those requisites or solemnities which the law prescribes for the validity of wills. It does not determine nor even by implication prejudge the validity or efficiency of the provisions; these may be impugned as being vicious or null, notwithstanding its authentication. The questions relating to these points remain entirely unaffected, and may be raised even after the will has been authenticated. This is not the case, however, with regard to the proper execution thereof, as in view of the fact that it constitutes the proper and special subject-matter therefor, it acquires by virtue thereof the character of *res adjudicata*, and can not in consequence be again brought into question, all judicial question in connection therewith being for once and forever closed. Such is the reason of the doctrine invoked by the appellant, which evidently is not susceptible of the interpretation which she seems to have attributed in her brief.

From the fact that the legalization of a will does not validate the provisions therein contained, it does not follow that such provisions lack the efficiency, or fail to produce the effects which the law recognizes when they are not impugned by anyone. In the matter of wills it is a fundamental doctrine that the will of the testator is the law governing the interested parties, and must be punctually complied with in so far as it is not contrary to the law or to public morals. With respect to the partition of the inheritance, there is the definite provision of law that when the testator makes such partition by an act *inter vivos* or by a last will, it shall be accepted in so far as it does not prejudice the legal portion of the heirs by force of law. (Art. 1056, Civil Code.)

From this it follows that, as the testator, Montañano, had by his will partitioned his property and assigned to his son Catalino, as his portion, the lands in question herein, the said testamentary provision, being binding on the heirs, constitutes *prima facie* evidence that the said lands were actually inherited by Catalino, and not by the plaintiff herein; other property was assigned to her in payment of her legal portion. Therefore, the trial judge committed no error of law when he considered said evidence in the sense that he has done, inasmuch as it has not been proven, nor has any attempt been made to prove that the said testamentary provision was impugned or annulled, or that it has ceased to be effective for any reason whatever.

The judgment appealed from is hereby affirmed with the costs of this instance against the appellant.

So ordered.

Arellano, C. J., Torres, and Carson, JJ., concur.

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