

IN THE MATTER OF THE ESTATE OF RUFINA AREVALO. ARISTON BUSTAMANTE, ADMINISTRATOR AND APPELLANT, VS. PETRONA AREVALO ET AL., OPPOSITORS AND APPELLEES.*G.R No. 47306. July 31, 1942*

Ponente: BOCOBO, J.

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The main issue in this case is whether or not Exhibit C, presented by appellant for allowance as the last will and testament of the deceased Rufina Arevalo, is a forgery. The Court of First Instance of Manila held that it was a forged document, and allowed an earlier will, Exhibit 6, whose authenticity was unquestioned. The value of the estate is over P50,000.

The questioned document was prepared and signed in duplicate. It consists of two pages and is dated October 2, 1937. It appears to be signed by Rufina Arevalo and by three witnesses, Manuel M. Cruz, Remigio Colina and Angel Sanchez. The formal requisites of a will have been complied with.

An initial fact that arrests the attention is the formulation by the appellees of the allegation of forgery even before seeing the questioned document. Said charge of forgery was signed on April 22, 1938, although Exhibit C, which had been in a sealed envelop, was not opened by order of the court till the next day, April 23, 1938. 'It is true that the opposition by the appellees was not actually filed in court till April 23, but it was signed by appellees' attorneys on April 22, was subscribed and sworn to by Amando Clemente on April 22, and a copy thereof was sent by registered mail to Attorney Nicasio Yatco on April 22. Moreover, in the morning of April 23, appellees' attorneys, Messrs. Jose Belmonte and Vicente Delgado, announced their opposition to the will Exhibit C in open court, before said document was opened by order of the court on that day.

One of the principal reasons of the court a quo for believing Exhibit C to be a forgery is that in the genuine signatures the terminal stroke of the capital "li" in "Rufina" is not joined with the letter "u," while in Exhibit C such ending is united with the letter "u" in the two marginal signatures, although in the central signature appearing on page 2, the two letters are separated. The probate court believes that this difference between the marginal and the central signatures is due to the fact that the forger first used the check of "La Previsora" (Exhibit I) as the model in falsifying the marginal signatures, but having been shown another signature with the characteristic already mentioned—separation of the two letters—he tried to imitate said peculiarity in making the central signature.

We believe the probate court has overlooked the well-established principle that in passing upon questioned documents, the test is the general character of the writing rather than any minute and precise comparison of individual letters or lines. In *People vs. Bustos* (45 Phil., 30), this Court held:

"It is a first principle in writing that exact coincidence between two signatures is absolute proof that one or the other is a forgery. There must be some difference before authenticity can be admitted; and the general rule is that authenticity reposes upon a general characteristic resemblance, coupled with specific differences, such as

naturally result from the infinite variety of conditions controlling the muscles of the writer at each separate effort in forming his signature." (Italics supplied.)

In the present case, a careful scrutiny of all the questioned and the standard signatures has convinced us that they have been written by the same person because they show the same general type, quality and characteristics, with natural variations. We are, therefore, inclined to give credence to the expert testimony to that effect presented by the appellant.

Moreover, a forger who has to make two or more signatures usually sees to it that all the signatures are uniform for fear that any difference might arouse suspicion. In this case, however, in some questioned signatures the letters "R" and "u" are separated, but in others, they are united. Osborne in "Questioned Documents" (pp. 368, 360) says:

"Another indication of genuineness in a holographic document or a considerable amount of writing, or in two or more disputed signatures, are certain natural variations in the details of the writing. It is difficult for the inexperienced or unthinking examiner to understand that a certain extent of variation in a group of several signatures and variation in repeated words and letters in a continuous holographic document can be evidence of genuineness. The forger does not understand this necessity for natural variation and, as nearly as he can, makes words and letters just alike.

* * * * *

"It necessarily follows, therefore, that if the several lines of a disputed document, or several signatures under investigation, show these natural variations of writing of the same word or letter, all of course within the scope of variation of the genuine writing, this variation itself, surprising and paradoxical as it may appear, is as strong evidence of genuineness as the opposite condition is evidence of forgery." (Italics supplied.)

Furthermore, it is to be noted that the document in question was prepared and signed in duplicate, so that there are six signatures of Rufina Arevalo, instead of only three. It is reasonable to believe that a forger would reduce the number of signatures to be forged so as to lessen the danger of detection. In this case, Attorney Nicasio Yatco, who supervised the execution of Exhibit C, must have known that it was not necessary to make a signed duplicate of the will.

As for the probate court's opinion that the forger must have used Exhibit I (a check issued by "La Previsora" to Rufina Arevalo) as a model in falsifying the marginal signatures, it is highly improbable that said check was in the hands of Rufina Arevalo or of her attorney, Nicasio Yatco, on or about October 2, 1937, when the document in question was signed. The check had been issued on June 30, 1936, or over a year before, and it must have been returned by the bank concerned to "La Previsora" in the ordinary course of business, because it was produced by the Manager of "La Previsora." It should likewise be observed that the signature on the first page of the duplicate will (Exhibit C-3) does not have the supposed peculiarity of the standard signatures, that is, the separation between "R" and "u." If, as the lower court states, the forger upon being shown a model other than Exhibit I, imitated said characteristic separation in making the central or body signature on the original will Exhibit C, it is indeed strange that he should not do the same immediately thereafter on the first page of the duplicate will but that he should, instead, repeat the mistake he had made on the marginal signatures on the original will.

Finally, to conclude that a forgery has been committed, the evidence should be forcefully persuasive. Before we are disposed to find that an attorney-at-law has so debased himself as to aid and abet the forgery of a will, which would not only send him to jail for many years but would ruin his future, we must require proof sufficiently strong to prevail against every fair and thoughtful hesitancy and doubt. And the instrumental witnesses have testified that Rufina Arevalo signed the will in their presence. It is hard to believe they would commit perjury as it has not been shown they had any interest in this case.

Therefore, we find that the will of Rufina Arevalo, dated October 2, 1937 and marked Exhibit C, is genuine and should be allowed. It is unnecessary to discuss the incidental issues of fact so ably presented by counsel and examined in detail by the probate court, inasmuch as the foregoing disposes of the basic question raised. The relative position of the contending devisees in the affection of the deceased; whether Rufina Arevalo could go alone to the law office of Attorney Yatco on October 2, 1937 to sign the will Exhibit C; the alleged resentment of the testatrix toward Amando Clemente when she signed the second will, and similar questions are not of sufficient significance to alter the conclusion herein arrived at. In fact, they merely tend to becloud the main issue.

The next question to be inquired into is whether or not the later will (Exhibit C) dated October 2, 1937, whose probate is herein approved, has entirely revoked the earlier will, Exhibit 6, dated January 9, 1936. Though both parties admit that the first will has been revoked by the second, yet we deem it necessary to discuss the question because a member "of this Court thinks the earlier will can stand in part. It appears that the undivided interest of Rufina Arevalo in two parcels of land and the improvements thereon which belonged to the conjugal partnership between Bernabe Bustamante, who had died before the making of the two wills, and Rufina Arevalo, was expressly devised to Amando Clemente in the earlier will but was not specifically mentioned in the later will. In the first will, Exhibit 6, Rufina Arevalo, who had no forcible heirs, gave to Ariston Bustamante, her nephew, three lots and the buildings thereon; devised a parcel of land and the houses standing thereon to her cousin, Petrona Arevalo Viuda de Zacarias, and to her niece, Carmen Papa de Delgado; and finally disposed, in favor of Amando Clemente, another cousin, of a piece of land and the houses thereon, and of her undivided interest in the two parcels of land and the improvements thereon, which belonged to the conjugal partnership, also making said Amando Clemente the residuary legatee. But in the second will, Exhibit C, she designates Ariston Bustamante her only heir in these terms:

"Segundo—Nombro como mi unico heredero, Ariston Bustamante, de todas mis propiedades dejadas ya mueble o inmueble que se describen mas abajo:

- (a) Original Certificate of Title of Manila No, 5059
- (b) Original Certificate of Title of Manila No. 4681
- (c) Transfer Certificate of Title of Manila No. 19061
- (d) Original Certificate of Title of Manila No. 5066
- (e) Original Certificate of Title of Manila No. 4682."

Her undivided interest in the two pieces of land of the conjugal partnership, with Torrens titles No. 4887 and No. 15628, devised to Amando Clemente in the earlier will, is not specifically mentioned in the later will, Exhibit C. Moreover, the second will has no revocation clause.

At first sight, it would seem that the earlier will can stand with respect to Rufina Arevalo's share in said two parcels of land belonging to the conjugal partnership. But a closer examination of the later will counteracts such initial reaction.

In the first place, the testatrix in the second will names Ariston Bustamante her only heir to all her property, both personal and real, her words in Spanish being: "Nombro como mi unico heredero, Ariston Bustamante, de todas mis propiedades dejadas ya mueble o inmueble." (Italics supplied.) It is true that in enumerating her parcels of land, she did not specify her interest in the two lots of the conjugal partnership. But this omission must have been due either to an oversight or to the belief that it was premature to name said two parcels as the conjugal partnership was still being liquidated. In either case, the testatrix must have thought that her comprehensive words "mi unico heredero de todas mis propiedades dejadas ya mueble o inmueble" would be sufficient to cover all her property, whether specially listed or not.

Secondly, in the opening paragraph of the second will, the following words appear: "hago constar ft todos este mi ultimo testamento y vohintad expresado en Castellano lenguaje que conozco y poseo, y queriendo diaponer de mis bienes por virtud de este mi testamento." (Italics supplied.) Though she knew that she had made a first will, she nevertheless said that the second will was her last one. This would seem to signify that her last will, cancelling her previously expressed wish, was to make Ariston Bustamante her only heir. Furthermore, when she said she wanted to dispose of her property by means of the second will ("queriendo disponer de mis bienes por virtud de este mi testamento"), it would appear to be her intention that no property of hers should be left undisposed of in the second will. This fact is corroborated in the second clause wherein she names Ariston Bustamante as her only heir to all her property whether personal or real.

We believe, therefore, that the first will has been entirely revoked. Though it might appear right that Amando Clemente should receive something from the estate because he, together with Ariston Bustamante, has been raised by the testatrix, and both are her relatives, nevertheless it would be venturesome for us to advance our own idea of a just distribution of the property in the face of a different mode of disposition so clearly expressed by the testatrix in the later will. As she had no forcible heirs, she was absolutely free to give her estate to whomsoever she chose, subject of course to the payment of her debts. It would be a dangerous precedent to strain the interpretation, of a will in order to effect what the court believes to be an equitable division of the estate of a deceased person. The only function of the courts in these cases is to carry out the intention of the deceased as manifested in the will. Once that intention has been determined through a careful reading of the will or wills, and provided the law on legitimes has not been violated, it is beyond the pale of judicial cognizance to inquire into the fairness or unfairness of any devise or bequest. It might be said that it is hard to understand how, in a temporary anger at Amando Clemente, the testatrix would entirely cut him off from the inheritance. We should not, however, sit in judgment upon her motives and sentiments, first because, as already stated, nothing in the law restrained her from disposing of her property in any manner she desired, and secondly, because there are no adequate means of ascertaining the inward processes of her conscience. She was the sole judge of her own attitude toward those who expected her bounty.

In view of the foregoing, the decision appealed from, declaring the second will Exhibit C a forgery and allowing the first will Exhibit 6, should be and is hereby reversed, and another judgment shall be entered allowing the later will Exhibit C, which has entirely revoked the earlier will Exhibit 6.

No special pronouncement on costs is made. Let the record of this case be returned to the court of origin for further proceedings. So ordered.

Yulo, C. J., and Moran, J., concur.

CONCURRING

OZAETA, J.,

I concur in the finding that the will Exhibit C is genuine. I think, however, that the discussion in the majority opinion of whether or not said Exhibit C entirely revoked the previous will Exhibit 6 is unnecessary, inasmuch as both parties in their brief have admitted the affirmative. There being no controversy between the parties on that score, there seems to be no occasion for the Court to render an opinion thereon.

CONCURRING AND DISSENTING

PARAS, J.,

The testatrix in this case executed two wills, one on January 9, 1936, and the other on October 2, 1937. In the first will, the testatrix specifically referred to seven parcels of land of considerable value and to certain personal properties. Three of these parcels of land and all the personal properties are given to Amando Clemente, another three to Ariston Bustamante, and the seventh parcel to Petrona Arevalo and Carmen Papa. In the second will, the testatrix particularly referred to only five parcels of land and certain personal properties, all of which are given to Ariston Bustamante, as her universal heir. The second will does not make mention of two of the three parcels given to Amando Clemente under the first will.

The question that arises is whether the second will has the effect of revoking the first. In my opinion, where, as in the present case, the two wills can be reconciled, the first should be considered revoked only in so far as it is inconsistent with the second. As the second will was executed only twenty-one months after the first, the testatrix, who has been conclusively shown to be of sound mind at the time of the execution of the later will, could not have forgotten that she owned two other parcels of land, especially if they are of considerable value. Even the lawyer who drafted the second will was aware that the testatrix owned the said two parcels, because they were included in the inventory made of her properties in connection with the administration proceedings of the estate of her deceased husband. This omission could have been made only on purpose, and, coupled with the circumstance that the second will does not expressly revoke the first which has not been burned, torn, cancelled or obliterated, inevitably leads to the inference that the testatrix in fact intended to make the first Will effective as to the two parcels of land above referred to.

Section 623 of the Code of Civil Procedure provides:

"No will shall be revoked, except by implication of law, otherwise than by some will, codicil, or other writing executed as provided in case of wills; or by burning, tearing, cancelling, or obliterating the same with the intention of revoking it, by the testator himself, or by some other person in his presence, and by his express direction."

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"If partially conflicting, that of the latter date will operate to revoke the former so far as the provisions of the two are conflicting or incompatible, and in such case both wills are entitled to probate." (68 Corpus Juris 806.)

"Where there is no revocation in a later will of all former wills, two separate and distinct wills may be probated, especially when the probating of one only of the instruments would leave an intestacy as to part of the estate. This rule applies even though the later instrument states that it is the last will and testament of the testator, as the line of such words in a later instrument does not of itself revoke a prior will." (Id. p. 886.)

I therefore vote for the probate of both wills.

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