

IN THE MATTER OF THE PROBATION OF THE WILL OF THE LATE FELICITAS CABIGTING.—FLORENTINO CORDERO, PETITIONER AND APPELLEE, VS. PEDRO CABIGTING, OPPONENT AND APPELLANT.*G.R. No. 4752. November 19, 1909*

Ponente: TORRES, J.

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Counsel for Florentino Cordero filed for probate with the Court of First Instance of Pampanga, the will and testament of Felicitas Cabigting, a resident of Arayat, aged 70 years. Said will, exhibited for the purpose, set forth among other things that the testatrix was at the time lawfully married to the petitioner, Cordero, and that during the forty years they lived together they had had no issue; that when they were married neither of them brought any property to the marriage, and that therefore, all the property found after her death should be considered as property acquired during marriage, with the exception of two parcels of rice land, the first of which, of a capacity of 3 cavanese of seed, situated in the rear of the church of said pueblo, she inherited from her mother, Petrona Espino, and the other parcel, of 21 gantas of seed, situated in the barrio of Lacuit in the same pueblo, she had inherited from her deceased sister Petrona Cabigting; that as she had full liberty to dispose of her own property, having no lawful or natural ascendants or descendants, she named her said husband, Florentino Cordero, as her sole and lawful heir to all such property as she owned at the time of her death; that in addition she appointed him her sole executor, conferring upon him all powers necessary under the law; that this was the first and only testament ever executed by her, and the intervention of the courts was prohibited unless absolutely necessary; and that owing to the fact that, by reason of her weakness she was unable to sign the will, the same was signed at her request by Teodoro Jurado, who, at the hour of 5.40 p. m. on the 12th day of January, 1908, in the town of Arayat, Province of Pampanga, interpreted the will to her in the Pampanga dialect.

At the foot of the will the following appears; "At the request of Doña Felicitas Cabigting. (Signed) Teodoro Jurado."

Following the will made by the testatrix Felicitas Cabigting it is shown that it was signed at her request by Teodoro Jurado, and published by him in the name of said testatrix, who declared that it was her will and testament in the presence of three witnesses who, at her request and in her presence, and in the presence of each other, signed their respective names as witnesses of said will: "(Signed) Teodoro Jurado; (Signed) Esteban Domingo; (Signed) Jacobo Fajardo."

The court set the 1st of April, 1908, for the probate of the will. Counsel for Pedro Cabigting opposed the said probate on the ground that the testatrix was not in the full enjoyment of her mental faculties, and because the will had not been drawn and signed in the manner provided by law.

Evidence was adduced by both parties, their witnesses were examined, and the document presented by the petitioner was made of record. After hearing the proofs adduced, the trial court rendered judgment on the 11th of April of the same year, admitting to probate said testament as the last will of Felicitas Cabigting, deceased, and

appointing Florentino Cordero executor under a bond of P1,000 to be secured by two responsible bondsmen; commissioners of appraisal were also appointed to hear all claims that might be presented against the said estate in the manner prescribed by law.

In view of the foregoing decision counsel for the opposition moved in writing on the said 11th of April for a new trial and the annulment of the above decision on the ground that Pedro Cabigting had been unable to produce evidence of his parentage with the deceased, and of his interest in the matter; that proofs referring to a description of the property of the deceased which would undoubtedly have influenced the decision of the court had lately been discovered and which, notwithstanding the diligence employed, could not be offered at the trial; that the decision rendered, together with the facts said to have been proven, are manifestly contrary to the weight of the evidence, and that in addition said decision is contrary to law.

The petitioner, Florentino Cordero, opposed the foregoing motion and asked that the motion for a new trial be denied for the reason that a new trial as moved for can only be granted in an ordinary action, and not in special proceedings such as the probate of a will; that the oversight alleged by the opponent is not one of the reasons provided for by section 145 of the Code of Civil Procedure; that the evidence said to have been newly discovered is not supported by affidavits as required by law; and because the facts which the judgment holds to have been proven sufficiently justify the court's decision, and the latter is fully in accordance with the provisions and doctrines of law applicable to the case. Said motion was overruled on the 15th of April, 1908. On the same date the opposition excepted to the decision admitting the supposed will to probate, in accordance with section 781 of Act No. 190, and appealed therefrom, offering to furnish the bond fixed at P350; this was done on the same date and a certified copy of the proceedings submitted to this court.

The alleged errors in the judgment appealed from consist in that the testatrix, Felicitas Cabigting, was not in full possession of her mental faculties, nor legally qualified to execute a will, and that the same had not been executed in accordance with the law; therefore, the court should not have ordered it probated.

All persons who are not expressly prohibited by law may make a will. (Art. 662, Civil Code.)

According to article 663 thereof the following are disqualified from making wills: (1) Persons of either sex under 14 years of age; (2) persons who permanently or temporarily are not of sound mind.

The Civil Code has followed the principle, as being the most rational one, that all persons, unless they have been previously disqualified by the courts, are presumed to be of sound mind as long as the party alleging their disqualification does not show and establish the contrary.

In these proceedings no evidence whatever has been furnished by the opponent, Pedro Cabigting, tending to show that the testatrix was not of sound mind when she executed her will on the afternoon of January 12, 1908. On the contrary, the presumption that she was is corroborated by the certificate of the physician who attended her and was present at the execution of the will in question, and by the testimony of the said physician, of Attorney Emiliano Kerr, and of the witness Teodoro Jurado who, by order of the testatrix, signed for her and affixed her name to the will, wherefore it is unquestionable that Felicitas Cabigting was legally qualified at the time of executing said will.

As to the form in which the will was executed there is no reason for refusing to accept the finding of the court below to the effect that said will had been executed in accordance with the formalities and requisites required by section 618 of the Code of Civil Procedure, as found in the last two paragraphs of said testament. If the execution of the same is found to be in accordance with the law, it should be admitted to probate forthwith. As stated in the judgment appealed from, no well founded opposition appears in the proceedings, and in addition thereto the court

rightly held that said opposition was devoid of legal foundation for the reason that the said Pedro Cabigting failed to establish his legal capacity and right as a party in interest in the hereditary succession of the said Felicitas Cabigting. In the present instance it is neither possible nor permissible to admit the theory of the appellant that from the mere fact that he had impugned said will and objected to its authentication, it should be presumed that he was an interested party with legal capacity therefor. Such a theory would be absurd and is unsupported by the law or by the established rule of courts.

In view of the foregoing, and accepting the considerations contained in the judgment appealed from, it is our opinion that the same should be, and is hereby affirmed with the costs against the appellant. So ordered.

Arellano, C. J., Johnson, Carson, and Moreland JJ., concur.

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