

QUINTINA R. SABADO, APPLICANT AND APPELLANT, VS. LEONCIA FERNANDEZ, OPPOSITOR AND APPELLEE.*G.R. No. 47731. June 27, 1941*

Ponente: LAUREL, J.

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Hermogenes R. Sabado, before his death which occurred on March 13, 1938, executed a will which was presented in the court below as Exhibit A. He left neither descendants nor ascendants. His sister, Quintina E. Sabado, moved for the allowance of the will. The widow of the deceased, Leoncia Fernandez, opposed the allowance. The Court of First Instance of Pangasinan disallowed the will, on the ground that the attestation clause is defective and does not state that the witnesses signed the will in the presence of the testator as required by section 618 of the Code of Civil Procedure. From this disallowance, appeal was taken by the movant to the Court of Appeals, which certified the case to this court, pursuant to the provisions of section 145-H of the Revised Administrative Code, as amended by Commonwealth Act No. 3.

There is no question regarding the authenticity of the will; neither is there any allegation of bad faith or fraud in the execution of the will in question. The attestation clause of the will recites as follows:

"We the undersigned, Elena Santos, Tomas B. Tadeo, and Natalio D. Robles, hereby declare: That we know Hermogenes Sabado the testator, that he signed the foregoing testament in our presence and we sign the same in the presence of each of us; the testator has read the testament and understood the same; it is written in English known by the testator; it is written only in one page; before signing the same it was read to him and he understood it; and we hereby sign as witnesses.

"San Manuel, February 25, 1938 A. D.

(Sgd.) "Natalio D. Robles

"Elena Santos

"Tomas B. Tadeo"

It is contended that the pronoun "us" in the attestation clause refers to witnesses and not to the testator. The testator is mentioned in the antecedent clause and the word "us" may be held to refer both to the testator and the witnesses from the general tenor of the attestation clause. Granting the mistake or imperfection, it is one of language. Grammar is a subject worthwhile mastering, but few people are probably thus privileged; some are unfamiliar with its conventional intricacies, while others happen to neglect the rules thereof. Omission of this kind should not give rise to the frustration of the recognized testamentary right of the citizen under the circumstances of the present case. In *Leyries vs. Leynez*, G. R. No. 46097, promulgated October 18, 1939, we said:

"The alleged defect in the attestation clause of the controverted will is that it fails to state that the testator and the three witnesses signed each and every page of the will in the manner prescribed by law, because it merely states 'firmamos el presente cada uno en presencia de los otros, o de los demas y de la del mismo testador Valerio Leynez.' In deciding this question the Court of Appeals, however, ruled:

'A la luz de las jurisprudencias arriba citadas, en la clausula de atestiguamiento discutida en el asunto de autos, no encontramos un cumplimiento sustancial del requisito exigido por la ley, de que en ella se haga constar que el testador y los testigos han firmado unos en presencia de otros, todas y cada una de las paginas usadas del testamento, requisito que no se puede comprobar mediante un examen del testamento; ni se puede establecer por medio de su prueba aliunde.'

"Against this conclusion of the Court of Appeals, petitioner puts forwards the contention that it has decided a question of substance in a way not probably in accord with the law and the applicable decisions of this court (Rule 47, paragraph A (1) of Supreme Court). The rule of liberal construction of the applicable law should, petitioner avers, be held to apply in the case at bar, and in support of her contention she invokes a long array of cases (Abangan vs- Abangan, 40 Phil., 476; Avera vs. Garcia and Rodriguez, 42 Phil., 145; Aldaba vs. Roque, 43 Phil., 378; Unson vs. Abella, 43 Phil., 494; Fernandez vs. Vergel de Dios, 46 Phil, 922; Nayve vs. Mojal, 47 Phil, 152; De Gala vs. Gonzales, 53 Phil., 104; Rey vs. Cartagena, 56 Phil., 282; Dichoso de Ticson vs. De Gorostiza, 57 Phil., 437; Sebastian vs. Panganiban, 59 Phil., 653; De Guzman vs. Celestino, G. R. No. 35273, April 25, 1932; Policarpio vs. Baltazar, G. R. No. 36349, November 14, 1932; Malate vs. Olea, G. R. No. 36154, December 16, 1932; In re Estate of Harry Edgar Jennings, 1933, G. R. No. 37758). To this line of cases those of Rodriguez vs. Yap et al., G. R. No. 45924, May 18, 1939, and Grey vs. Fabie et al., G. R. No. 45160, May 23, 1939, may perhaps be added. Respondent, on the other hand, equally invokes a number of cases wherein, he contends, the rule of strict construction was made to prevail. (Uy Coque vs. Navas L. Sioca, 43 Phil., 405; In re Estate of Newmark, 46 Phil., 841; Safio vs. Quintana, 48 Phil., 506.; Gumban vs. Gorecho, 50 Phil., 30; Quinto vs. Morata, 54 Phil., 481; Rodriguez vs. Alcala, 55 Phil. 150.)

"This court has already taken notice of these different views when, in Dichoso de Ticson vs. De Gerostiza, (57 Phil., 437; 439-440), it frankly made the following observation : 'The truth is that there have been noticeable in the Philippines two divergent tendencies in the law of wills— the one being planted on strict construction and the other on liberal construction. A late example of the former views may be found in the decision in Rodriguez vs. Alcala ([1930], 55 Phil., 150), sanctioning a literal enforcement of the law. The basic case in the other direction, predicated on reason, is Abangan vs. Abangan ([1919], 40 Phil., 476), oft cited approvingly in later decisions.' It is fairness to recognize the existence of opposing currents of legal thought, a situation which perhaps has brought about a certain degree of confusion in this field. It is also fairness to avow, however, that a more careful examination of the cases will show that, while the two tendencies mentioned is easily discernible, the conflict in many cases is more apparent than real, and the variance, if at all, in the application of the principles involved was due in some instances to the amendment of the law and in other instances to the marked differentiation of facts and the consequent personal or collective criteria in particular cases.

"We have taken pains to examine the numerous cases relied upon by the petitioner and those relied upon by the respondent, and while we do not deem it necessary to make a detailed comparison between them, we find no difficulty in selecting what we consider is the reasonable rule to apply in the case at bar. It is, of course, not possible to lay down a general rule, rigid and inflexible, which would be applicable to all cases. More than anything else, the facts and circumstances of record are to be considered in the application of any given rule. If the surrounding circumstances point to a regular execution of the will, and the instrument appears to have been executed substantially in accordance with the requirements of the law, the inclination should, in the absence of any suggestion of bad faith, forgery or fraud, lean towards its admission to probate, although the document may suffer from some imperfection of language, or other nonessential defect. This, in our opinion, is the situation in the present case, and we, therefore, hold that the requirement that the attestation clause, among other things, shall state 'that the testator signed the will and every page thereof in the presence of three witnesses, and that the witnesses signed the will in the presence of the testator and of each other,' is sufficiently complied with, it

appearing that the testator and the witnesses signed each and every page of the will according to the stipulation of the parties. (Record on Appeal, stipulation, pp. 10, 14-15); and this fact being shown in the will itself, and there being, furthermore, no question raised as to the authenticity of the signatures of the testator and the witnesses.

"An attestation clause is made for the purpose of preserving, in permanent form, a record of the facts attending the execution of the will, so that in case of failure of the memory of the subscribing witnesses, or other casualty, they may still be proved. (Thompson on Wills, 2nd ed., sec. 132.) A will, therefore, should not be rejected where its attestation clause serves the purpose of the law. The law-making body, in recognition of the dangers to which testamentary dispositions are apt to be subject in the hands of unscrupulous individuals, has surrounded the execution of wills with every solemnity deemed necessary to safeguard it. This purpose was indicated when our legislature provided for the exclusion of evidence aliunde to prove the due execution of the will. We should not, however, attribute the prohibition as indicative of a desire to impose unreasonable restraint or beyond what reason and justice permit. It could not have been the intention of the legislature in providing for the essential safeguards in the execution of a will to shackle the very right of testamentary disposition which the law recognizes and holds sacred. The pronouncement of this court in *Abangan vs. Abangan*, (40 Phil., 476, 479), expresses the sound rule to which we have recently adhered in principle (*Rodriguez vs. Yap*, G. R. No. 45924, promulgated May 18, 1939; and *Grey vs. Pabie*, G. R. No. 54160, promulgated May 23, 1939):

"The object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guaranty their truth and authenticity. Therefore the laws on this subject should be interpreted in such a way as to attain these primordial ends. But, on the other hand, also one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will. So when an interpretation already given assures such ends, any other interpretation whatsoever, that adds nothing but demands more requisites entirely unnecessary, useless and frustrative of the testators last will, must be disregarded.' "

The judgment of the lower court is reversed and the will allowed to probate, without pronouncement regarding costs. So ordered.

Avanceña, C. J., Diaz, and Horrilleno, JJ., concur.

DISSENTING

MORAN, J.:

I cannot agree with the majority opinion. The attestation clause is as follows:

"We the undersigned, Elena Santos, Tomas B. Tadeo, and Natalio D. Robles, hereby declare: That we know Hermogenes Sabado the testator, that he signed the foregoing testament in our presence and we sign the same in the presence of each of us; the testator has read the testament and understood the same; it is written in English known by the testator; it is written only in one page; before signing the same it was read to him and he understood it; and we hereby sign as witnesses."

One of the facts required by law to be stated in a attestation clause is that the will has been signed by the attesting witnesses in the presence of the testator. Statement of such fact is wanting in the at ove attestation clause, and the trial court committed no error in disallowing the will.

The majority, however, believes that the pronoun "us" in the attestation clause refers not only to the attesting witnesses but to the testator as well, and that, therefore, when the attesting witnesses said, "we sign the same in the presence of each of us," they meant that they signed the will in the presence of the testator also. Such a construction is, in my judgment, utterly groundless.

In the attestation clause it is the attesting witnesses alone who are speaking, and the words "we", "our", and "us" appearing therein can have no reference but to them alone. Whenever the testator is referred to in the attestation clause, the reference is made by his name "Hermogenes Sabado", or by the words "the testator" or "he." There can be no doubt, therefore, that the pronoun "us" appearing in the attestation clause can have no reference to the testator.

After thus giving an erroneous meaning to the pronoun "us", the majority finds, in consequence, a mistake or imperfection of language in the attestation clause, and on the ground of such supposed grammatical deficiency ignores the fatal defect of the attestation clause. Whether this trend of reasoning is a liberal or strict construction of the law is immaterial, for it is in my opinion wrong, and I cannot agree with it.

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