

**TESTATE ESTATE OF VICENTE SINGSON PABLO, DECEASED.
ROSALIA ROSARIO VDA. DE SINGSON, PETITIONER-APPELLEE, VS.
JOSEFINA F. VDA. DE LIM, OPPOSITOR-APPELLEE, EMILIA
FLORENTINE ET AL...**

G.R. No. 48627. February 19, 1943

Ponente: OZAETA, J.

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OZAETA, J.:

Don Vicente Singson Pablo, a lawyer of Vigan, Ilocos Sur, died on April 15, 1938, without any descendant or ascendant, his nearest surviving relatives being his widow Doña Rosalia Rosario, four brothers, and four nieces, the children of a deceased sister. He left a will which was duly probated, clause 8 of which reads as follows:

"Octavo.—Ordeno y mando que todos mis bienes no dispuestos de otro modo en este testamento, se distribuiran en partes iguales a todos los que tienen derecho a ello."

The widow, as administratrix, presented a project of partition in which the properties not disposed of in the will were adjudicated to the four brothers and the four nieces of the deceased "in the proportion provided in paragraph 8 of the will." The brothers, appellants herein, objected to the project of partition insofar as it includes the nieces of the deceased, on the ground that under clause 8 of the will, in relation to article 751 of the Civil Code, they were not entitled to any share. The nieces also objected to the project of partition, alleging that certain other specified properties had been omitted therefrom, which formed part of the properties not disposed of and which under clause 8 of the will "should be distributed in equal parts to all who are entitled thereto." The trial court sustained the contention of the nieces (appellees herein) and ordered the administratrix "to amend the project of partition so as to include therein the said properties and that all of those not disposed of in the will be adjudicated in equal parts to the brothers and nieces of the deceased."

The only question raised in this appeal is the interpretation of clause 8 of the will above quoted. Said clause provides that "all of my properties not disposed of otherwise in this testament shall be distributed in equal parts to all who are entitled thereto." In this connection appellants invoke article 751 of the Civil Code, which provides that "a disposition made in general terms in favor of the testator's relatives shall be understood as made in favor of those nearest in degree."

The trial court noted that the testator, who was a lawyer, did not use the word "relatives" in the clause in question. We do not need to decide here whether, had the testator used the word "relatives," the nieces would be excluded. The authorities differ on the interpretation of article 751. Some hold that under said article the nephews and nieces inherit by representation together with the brothers and sisters of the testator, as in legal succession; while others, Manresa among them, hold that said article excludes nephews and nieces when brothers and sisters survive. We think the testator, by referring to "all who are entitled thereto," instead of referring to his "relatives," precisely meant to avoid the uncertainty of the interpretation of article 751 and to indicate his wish that the residue of his estate be distributed in equal parts to all who would have been entitled to inherit from him had he died intestate.

The order appealed from is affirmed, with costs. So ordered.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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