

GREGORIO MACAPINLAC, PETITIONER AND APPELLEE, VS. MARIANO ALIMURONG, OPPONENT AND APPELLANT.

G.R. No. 5149. March 22, 1910

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Simplicia de los Santos having died on June 19, 1907, her surviving husband, Gregorio Macapinlac, submitted her will to the Court of First Instance of Pampanga for probate. Mariano Alimurong, a nephew of the deceased, opposed the proceedings and requested that "the will of the deceased, Doña Simplicia de los Santos, be declared null and void for either of the two reasons" which he expresses, and which are:

"(1) Because the will was not executed and signed by the witnesses in accordance with the provisions of the Code of Civil Procedure now in force.

"(2) Because it was executed under duress and undue and illegal influence on the part of the persons benefited thereby or of a person acting in their interests."

The trial having been held and evidence adduced, the trial court declared the following facts to be proven:

"(1) That at 6 o'clock on the evening of June 17, 1907, Simplicia de los Santos, who was sick but in full possession of all her faculties, executed her will, which is the document attached to the record, Exhibit No. 1 of the petitioner.

"(2) That after the execution of such will on Monday, the testatrix died early on the morning of the following Wednesday.

"(3) That, as a preliminary act, a rough copy of the said will was made up, which rough copy was read to the testatrix, and the latter ordered an additional clause to be added thereto, in connection with a legacy that she desired to make in favor of some of her old servants who had rendered good service.

"(4) That, after the rough copy was amended by the addition of the above-mentioned clause, a clear copy thereof was made up and was again read to the testatrix, who approved it in all of its parts, and, as she was unable to sign, she requested Amando de Ocampo to sign for her and the latter wrote the following words with his own hand. 'At the request of the testatrix D,¹ Simplicia de los Santos, I signed - Amando de Ocampo.' Immediately afterwards and also in the presence of the same testatrix and of each other, the witnesses Jose Juico, Gabino Panopio, Eusebio Dayao, Juan Angeles, Jose Torres, Alejo San Pedro, and Gregorio Sangil signed at the bottom of the will.

"In view of the said facts the lower court concludes - the will executed by Simplicia de los Santos must be admitted to probate. The provisions of section 618 of the Code of Procedure in Civil Actions and Special Proceedings are fully complied with. The will bears the name of the testatrix written by Amando de Ocampo in her presence and by her express direction, and has been witnessed and signed by more than three trustworthy witnesses, in the presence of the testatrix and of each other."

The judgment was as follows:

"It is ordered that Exhibit No. 1, duly translated, be probated as. the last will of Simplicia de los Santos and that the corresponding letters of administration be issued in favor of Gregorio Macapinlac, the surviving husband of the said Simplicia de los Santos, the protest of the adverse party being dismissed, with the costs."

The opponent appealed, and the appeal having been submitted to this court, together with the allegations of both parties, it appears that the appellant has alleged the following assignments of error:

- That the proceedings were not dismissed, because the witnesses for the petitioner did not sign their respective testimony.
- That it was declared that the will of the deceased Simplicia de los Santos was executed with all legal formalities.
- That it was not declared that the will of the deceased Simplicia de los Santos was executed under undue and illegal influence on the part of the persons benefited thereby or of a person acting in their interests.

With reference to the first assignment of error, inasmuch as no question was raised in the first instance in the form of a motion and denied by the court below and exception taken and brought up on appeal, there is no ground on which we may take into consideration such assignment and decide a matter not covered by the appeal and with reference to which a decision by this court is not properly sought.

In regard to the second assignment, in view of the facts set forth and of the findings made by the trial court, according to the preponderance of the evidence, it can not be rationally shown that the conclusion should have been otherwise, nor does it appear that the conclusion infringes any statute or legal doctrine for the enforcement of which this court should review the evidence.

But, besides the question of fact, the appellant submits another question of law, viz, whether or not the will was signed in accordance with the law, and he affirms that it was not, inasmuch as the law requires that when a person signs in place of the testator he should write the name of the latter in the will as the signature; this was not done by Amando de Ocampo in the will in question, as he did not sign it with the name of the testatrix.

It is shown by the evidence that the will was wholly written in the handwriting of the subscribing witness, Gregorio Sangil, and at the foot thereof the following words appear in a new paragraph and sufficiently apart:

"At the request of the testatrix, Da. Simplicia de los Santos, I signed.

"For Simplicia de los Santos.

"Amando de Ocampo."

As a question of fact, the authenticity of the words "For Simplicia de los Santos," prefixed to the signature, is impugned as not having been written at the time of the execution of the will.

And, as a question of law, it is claimed that the form of signing for the testatrix "At the request of the testatrix Da. Simplicia de los Santos, I signed: Amando de Ocampo," is not in accordance with the requirements of the law.

Regarding the first question, the trial court concluded that "the posterior insertion of the words 'For Simplicia de los Santos' can not affect the validity of the will."

Therefore, it can be considered as nonexistent, and the other as the only form of signature by the testatrix, the authenticity of which has not been impugned or which the trial court admits as conclusive, and is the only one taken into account in its findings of fact. Although the said words "For Simplicia de los Santos" be considered as inserted subsequently, which we neither affirm nor deny, because a specific determination either way is unnecessary, in our opinion the signature for the testatrix placed outside of the body of the will contains the name of the testatrix as if she signed the will, and also the signature of the witness who, at her request, wrote the name

of the testatrix and signed for her, affirming the truth of this fact, attested by the other witnesses then present. And this fully complies with the provisions of section 618 of the Act.

With reference to the third assignment of error, the court below found:

" * * * and the influence which, according to the adverse party, was exercised upon the testatrix by Father Lupo is not shown. While the rough copy of the will was being made, Father Lupo simply discussed with those who were making the rough draft the question of the more appropriate use of some phrases in Pampango. It is true that he went in and out of the room of the testatrix several times, and that from time to time he showed a relic to her, but there is no evidence to indicate that Father Lupo influenced the testatrix directly and caused her to be influenced in any way."

Against this finding of fact, based upon the preponderance of the evidence as weighed by the trial court, we find no reason or ground for deciding this question of fact in any other way. We find no data showing that the person above mentioned directly influenced the provisions of the will; that such is the illegal and improper influence which the law condemns as overcoming that freedom by which the last will of a man must be expressed.

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

Torres, Johnson, Carson, and Moreland, JJ., concur.

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