

ALEJANDRA AUSTRIA, PETITIONER AND APPELLEE, VS. RAMON VENTENILLA ET AL., OPPONENTS AND APPELLANTS.

G.R. No. 6620. January 11, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that one Antonio Ventenilla, died on the 13th of March, 1909, in the municipality of Mangatarem, Province of Pangasinan, leaving a will which, after due notice in accordance with the provisions of the law, was duly admitted to probate on the 14th of April, 1909, and the said Dona Alejandra Austria was appointed administratrix of his estate, by order of the Honorable James C. Jenkins, judge of the Court of First Instance of the Province of Pangasinan.

On the 30th day of July, 1909, the said administratrix (Dona Alejandra Austria) with will annexed, presented a report of her administration of said estate, and petitioned the court, after due notification to all of the parties interested, to distribute the estate in accordance with the will and the Jaw. So far as the record shows no action was taken upon said petition until the 5th day of October, 1910.

On the 6th day of August, 1910, the said opponents, through their attorney A. B. Ritchey, presented the following petition, asking that the will of the said Antonio Ventenilla be annulled:

"PETITION FOR ANNULMENT OF A WILL.

"Now come Don Ramon Ventenilla, Eulalio Soriano V., Domingo Rosario, Maria Paz Ventenilla, Maria Ventenilla, Ramon Soriano, Carmen Rosario, Maria Ventenilla, and Oliva Dizon to impugn the instrument submitted to this court, said to be the last will and testament of the said deceased, on the following grounds:

"That before his death the deceased always intended to distribute his property in equal shares among his wife and his brothers and their representatives, and often expressed such intention before executing the instrument herein submitted, and after executing it often declared that he had distributed the same in the manner and form aforesaid;

"That the deceased could not read or write Spanish and that therefore on the date of executing said instrument he did not know what the same contained except through translation;

"That said instrument was not translated to the testator, or if so, it was not correctly translated, and that said deceased never intended to execute it as his last will and testament in the manner and form of the instrument herein submitted, and that at the time of his death he thought that the instrument executed clearly ordered the distribution in the manner aforesaid;

"That by reason of the fraud and deceit practiced upon the testator and of lack of a good translation, the instrument herein submitted is null and void;

"That the tenth paragraph of said instrument is null because of its obscurity and ambiguity and is in plain contradiction to the preceding paragraphs, and that the other paragraphs have more force and weight;

"Therefore, the petitioners pray the court:

"(1) That the testamentary provisions of the will of the deceased Antonio Ventenilla be declared null and void; that the inheritance of the said deceased be declared intestate; that his widow and Don Hermogenes Mendoza be appointed administrators under sufficient bond to protect the interests of the heirs and other interested parties;

"(2) That the will be amended, in case the court does not see fit to annul it, by declaring the tenth paragraph null;

"(3) That they be further granted any other relief which may appear just and equitable to the court.

"Lingayen, P. I., August 6, 1910.

(Sgd.) "A. B. Ritchey,
"Attorney for Petitioners."

It will be noted that the opponents made no effort to question the legality of the will, even though legal notice had been given in accordance with the law, until more than fifteen months had expired from the date on which the lower court duly admitted said will to probate.

Section 625 of the Code of Procedure in Civil Actions provides that:

"No will shall pass either the real or personal estate unless it is proved and allowed in the Court of First Instance or by appeal to the Supreme Court; and the allowance by the court of a will of real and personal estate shall be conclusive as to its due execution."

This court has held, under the provisions of this section, that "the probate of a will is conclusive as to its due execution, and as to the testamentary capacity of the testator." (Castaneda vs. Alemany, 3 Phil. Rep., 426; Pimentel vs. Palanca, 5 Phil. Rep., 436; Sahagun vs. Gorostiza, 7 Phil. Rep., 347; Chiong Joe-Soy vs. Vano, 8 Phil. Rep., 119; Sanchez vs. Pascual, 11 Phil. Rep., 395; Montaiiano vs. Suesa, 14 Phil. Rep., 676.)

When no appeal is taken from an order probating a will, the heirs can not, in subsequent litigation in the same proceedings, raise questions relating to its due execution. (Chiong Joe-Soy vs. Vano et al., 8 Phil. Rep., 119.)

The opponents not having appealed from the order admitting the will to probate, as they had a right to do, that order is final and conclusive, (Pimentel vs. Palanca, supra) unless some fraud sufficient to vitiate the proceedings is discovered. In the present case, however, the alleged fraud, in view of all the facts contained in the record, in our opinion, is not sufficiently proved to justify a reopening of the probate of the will in question, especially in view of the long delay of the parties interested.

The said section 625 was evidently taken from section 2356 of the Statutes of Vermont. In most of the States of the United States a certain number of months is given to the interested parties to appeal from an order of the court admitting to probate a will. (In the matter of the estate of Giovanni Sbarboro, 63 Cal., 5; Thompson vs. Samson, 64 Cal., 330; In the matter of the estate of Richard T. Maxwell, 74 Cal., 384; Wetherbee et al. vs. Chase, 57 Vt., 347.)

Under said section 625 and the decisions of this court, it seems that the only time given the parties who are displeased with the order admitting a will to probate, is the time given for appeals in ordinary actions. Without deciding whether or not the order admitting a will to probate can be opened for fraud, after the time allowed for an appeal has expired, we hold in the present case simply that the showing as to fraud is not sufficient to justify a reopening of the proceedings. The judgment of the lower court is, therefore, hereby affirmed with costs.

Torres, Mapa, Moreland, and Trent, JJ., concur.

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