

YAP TUA, PETITIONER AND APPELLEE, VS. YAP CA KUAN AND YAP CA LLU, OBJECTORS AND APPELLANTS.*G.R. No. 6845. September 01, 1914*

Ponente: JOHNSON, J.

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It appears from the record that on the 23d day of August, 1909, one Perfecto Gabriel, representing the petitioner, Yap Tua, presented a petition in the Court of First Instance of the city of Manila, asking that the will of Tomasa Elizaga Yap Caong be admitted to probate, as the last will and testament of Tomasa Elizaga Yap Caong, deceased. It appears that the said Tomasa Elizaga Yap Caong died in the city of Manila on the 11th day of August, 1909. Accompanying said petition and attached thereto was the alleged will of the deceased. It appears that the will was signed by the deceased, as well as Anselmo Zacarias, Severo Tabora, and Timoteo Paez.

Said petition, after due notice was given, was brought on for hearing on the 18th day of September, 1909. At that hearing several witnesses were sworn. Timoteo Paez declared that he was 48 years of age; that he had known the said Tomasa Elizaga Yap Caong; that she had died on the 11th day of August, 1909; that before her death she had executed a last will and testament; that he was present at the time of the execution of the same; that he had signed the will as a witness; that Anselmo Zacarias and Severo Tabora had also signed said will as witnesses and that they had signed the will in the presence of the deceased.

Pablo Agustin also declared as a witness and said that he was 40 years of age; that he knew Tomasa Elizaga Yap Caong during her lifetime; that she died on the 11th day of August, 1909, in the city of Manila; that before her death she had executed a last will and testament; that he was present at the time said last will was executed; that there were also present Timoteo Paez and Severo Tabora and a person called Anselmo; that the said Tomasa Elizaga Yap Caong signed the will in the presence of the witnesses; that he had seen her sign the will with his own eyes; that the witnesses had signed the will in the presence of the said Tomasa Elizaga Yap Caong and in the presence of each other; that the said Tomasa Elizaga Yap Caong signed the will voluntarily, and in his judgment, she was in the possession of her faculties; that there were no threats or intimidation used to induce her to sign the will; that she signed it voluntarily.

No further witnesses were called and there was no further opposition presented to the legalization of the said will.

After hearing the foregoing witnesses, the Honorable A. S. Crossfield, judge, on the 29th day of September, 1909, ordered that the last will and testament of Tomasa Elizaga Yap Caong be allowed and admitted to probate. The will was attached to the record and marked Exhibit A. The court further ordered that one Yap Tua be appointed as executor of the will, upon the giving of a bond, the amount of which was to be fixed later.

From the record it appears that no further proceedings were had until the 28th of February, 1910, when Yap Ca Kuan and Yap Ca Llu appeared and presented a petition, alleging that they were interested in the matters of the said will and desired to intervene and asked that a guardian ad litem be appointed to represent them in the cause.

On the 1st day of March, 1910, the court appointed Gabriel La O as guardian ad litem of said parties. Gabriel La O accepted said appointment, took the oath of office and entered upon the performance of his duties as guardian ad litem of said parties. On the 2d day of March, 1910, the said Gabriel La O appeared in court and presented a motion in which he alleged, in substance:

First. That the will dated the 11th day of August, 1909, and admitted to probate by order of the court on the 29th day of September, 1909, was null, for the following reasons:

"(a) Because the same had not been authorized nor signed by the witnesses as the law prescribes.

"(b) Because at the time of the execution of the will, the said Tomasa Elizaga Yap Caong was not then mentally capacitated to execute the same, due to her sickness.

"(c) Because her signature to the will had been obtained through fraud and illegal influence upon the part of persons who were to receive a benefit from the same, and because the said Tomasa Elizaga Yap Caong had no intention of executing the same."

Second. That before the execution of the said will, which they alleged to be null, the said Tomasa Elizaga Yap Caong had executed another will, with all the formalities required by law, upon the 6th day of August, 1909.

Third. That the said Yap Ca Kuan and Yap Ca Llu were minors and that, even though they had been negligent in presenting their opposition to the legalization of the will said negligence was excusable, on account of their age.

Upon the foregoing facts the court was requested to annul and set aside the order of the 29th day of September, 1909, and to grant to said minors an opportunity to present new proof relating to the due execution of said will. Said petition was based upon the provisions of section 113 of the Code of Procedure in Civil Actions.

While it is not clear from the record, apparently the said minors in their petition for a new trial, attached to said petition the alleged will of August 6, 1909, of the said Tomasa Elizaga Yap Caong, and the affidavits of Severo Tabora, Clotilde and Cornelia Serrano.

Upon the 10th day of March, 1910, upon the hearing of said motion for a rehearing, the Honorable A. S. Crossfield, judge, granted said motion and ordered that the rehearing should take place upon the 18th day of March, 1910, and directed that notice should be given to the petitioners of said rehearing and to all other persons interested in the will. At the rehearing a number of witnesses were examined.

It will be remembered that one of the grounds upon which the new trial was requested was that the deceased, Tomasa Elizaga Yap Caong, had not signed the will (Exhibit A) of the 11th of August, 1909; that in support of that allegation, the protestants, during the rehearing, presented a witness called Tomas Puzon. Puzon testified that he was a professor and an expert in handwriting, and upon being shown the will (of August 11, 1909) Exhibit A, testified that the name and surname on Exhibit A, in his judgment were written by two different hands, though the given name is the same as that upon Exhibit 1 (the will of August 6, 1909), because he found in the name "Tomasa" on Exhibit A a similarity in the tracing to the "Tomasa" in Exhibit 1; that comparing the surname on Exhibit A with the surname on Exhibit 1 he found that the character of the writing was thoroughly distinguished and different by the tracing and by the direction of the letters in the said two exhibits; that from his experience and observation he believed that the name "Tomasa" and "Yap Caong," appearing in the signature on Exhibit A were written by different persons.

Puzon, being cross-questioned with reference to his capacity as an expert in handwriting, testified that while he was a student in the Ateneo de Manila, he had studied penmanship; that he could not tell exactly when that was, except that he had concluded his course in the year 1882; that since that time he had been a telegraph operator for

seventeen years and that he had acted as an expert in handwriting in the courts in the provinces.

Gabriel La O was called as a witness during the rehearing and testified that he had drawn the will of the 6th of August, 1909, at the request of Tomasa Elizaga Yap Caong; that it was drawn in accordance with her request and under her directions; that she had signed it; that the same had been signed by three witnesses in her presence and in the presence of each other; that the will was written in her house; that she was sick and was lying in her bed, but that she sat up to sign the will; that she signed the will with great difficulty; that she was in her right mind.

The said Severo Tabora was also called as a witness again during the rehearing. He testified that he knew Tomasa Elizaga Yap Caong during her lifetime; that she was dead; that his signature as a witness to Exhibit A (the will of August 11, 1909) was placed there by him; that the deceased, Tomasa Elizaga Yap Caong, became familiar with the contents of the will because she signed it before he (the witness) did; that he did not know whether anybody there told her to sign the will or not; that he signed two wills; that he did not know La O; that he did not believe that Tomasa had signed the will (Exhibit A) before he arrived at the house; that he was not sure that he had seen Tomasa Elizaga Yap Caong sign Exhibit A because there were many people and there was a screen at the door and he could not see; that he was called as a witness to sign the second will and was told by the people there that it was the same as the patient, in the house but outside the room where the patient was; that the will was signed by Paez and himself; that Anselmo Zacarias was there; that he was not sure whether Anselmo Zacarias signed the will or not; that he was not sure whether Tomasa Elizaga Yap Caong could see the table on which the will was written at the time it was signed or not; that there were many people in the house; that he remembered the names of Pedro and Lorenzo; that he could not remember the names of any others; that the will remained on the table after he signed it; that after he signed the will he went into the room where Tomasa was lying; that the will was left on the table outside; that Tomasa was very ill; that he heard the people asking Tomasa to sign the will after he (the witness) had signed it; that he saw Paez sign the will; that he could not remember whether Anselmo Zacarias had signed the will, because immediately after he and Paez signed it, he left because he was hungry; that the place where the table was located was in the same house, on the floor, about two steps down from the floor on which Tomasa was.

Rufino R. Papa was called as a witness for the purpose of supporting the allegation that Tomasa Elizaga Yap Caong was mentally incapacitated to make the will dated August 11, 1909 (Exhibit A). Papa declared that he was a physician; that he knew Tomasa Elizaga Yap Caong; that he had treated her in the month of August; that he visited her first on the 8th day of August; that he visited her again on the 9th and 10th days of August; that on the first visit he found the sick woman completely weak—very weak from her sickness, in the third stage of tuberculosis; that she was lying in bed; that on the first visit he found her with but little sense, the second day also, and on the third day she had lost all her intelligence; that she died on the 11th of August; that he was requested to issue the death certificate; that when he asked her (Tomasa) whether she was feeling any pain or anything of that kind, she did not answer at all; that she was in a condition of stupor, induced, as he believed, by the stage of uraemia from which she was suffering.

Anselmo Zacarias, who had signed the will of August 11, 1909, was also called as a witness during the rehearing. He testified that he had known Tomasa Elizaga Yap Caong since he was a child; that Tomasa was dead; that he had written the will Exhibit A; that it was all in his writing except the last part, which was written by Carlos Sobaco; that he had written the will Exhibit A at the request of the uncle of Tomasa; that Lorenzo, the brother of the deceased, was the one who had instructed him as to the terms of the will; that the deceased had not spoken to him concerning the terms of the will; that the will was written in the dining room of the residence of the deceased; that Tomasa was in another room different from that in which the will was written; that the will was not written in

the presence of Tomasa; that he signed the will as a witness in the room where Tomasa was lying; that the other witnesses signed the will in the same room; that when he went into the room where the sick woman was (Tomasa Elizaga Yap Caong) Lorenzo had the will in his hands; that when Lorenzo came to the bed he showed the will to his sister (Tomasa) and requested her to sign it; that she was lying stretched out on the bed and two women, who were taking care of her, helped her to sit up, supporting her by placing their hands at her back; that when she started to write her name, he withdrew from the bed on account of the heat inside the room; when he came back again to the sick bed the will was signed and was again in the hands of Lorenzo; that he did not see Tomasa sign the will because he withdrew from the room; that he did not know whether Tomasa had been informed of the contents of the will or not; he supposed she must have read it because Lorenzo turned the will over to her; that when Lorenzo asked her to sign the will, he did not know what she said—he could not hear her voice; that he did not know whether the sick woman saw him sign the will or not; that he believed that Tomasa died the next day after the will had been signed; that the other two witnesses, Timoteo Paez and Severo Tabora, had signed the will in the room with the sick woman; that he saw them sign the will and that they saw him sign it; that he was not sure whether the testatrix could have seen them at the time they signed the will or not; that there was a screen before the bed; that he did not think that Lorenzo had been giving instructions as to the contents of the will; that about ten or fifteen minutes elapsed from the time Lorenzo handed the will to Tomasa before she started to sign it; that the pen with which she signed the will was given to her and she held it.

Clotilde Mariano testified that he was a cigarette maker; that he knew Tomasa Elizaga Yap Caong and that she was dead; that she had made two wills; that the first one was written by La O and the second by Zacarias; that he was present at the time Zacarias wrote the second one; that he was present when the second will was taken to Tomasa for signature; that Lorenzo had told Tomasa that the second will was exactly like the first; that Tomasa said she could not sign it.

On cross examination he testified that there was a lot of visitors there; that Zacarias was not there; that Paez and Tabora were there; that he had told Tomasa that the second will was exactly like the first.

During the rehearing Cornelia Serrano and Pedro Francisco were also examined as witnesses. There is nothing in their testimony, however, which in our opinion is important.

In rebuttal Julia de la Cruz was called as a witness. She testified that she was 19 years of age; that she knew Tomasa Elizaga Yap Caong during her lifetime; that she lived in the house of Tomasa during the last week of her illness; that Tomasa had made two wills; that she was present when the second one was executed; that a lawyer had drawn the will in the dining room and after it had been drawn and everything finished, it was taken to where Doña Tomasa was, for her signature; that it was taken to her by Anselmo Zacarias; that she was present at the time Tomasa signed the will; that there were many other people present also; that she did not see Timoteo Paez there; that she saw Severo Tabora; that Anselmo Zacarias was present; that she did not hear Clotilde Mariano ask Tomasa to sign the will; that she did not hear Lorenzo say to Tomasa that the second will was the same as the first; that Tomasa asked her to help her to sit up and to put a pillow to her back when Zacarias gave her some paper or document and asked her to sign it; that she saw Tomasa take hold of the pen and try to sign it but she did not see the place she signed the document, for the reason that she left the room; that she saw Tomasa sign the document but did not see on what place on the document she signed; that she heard Tomasa ask for another notary public and that a notary public came the next morning; that Tomasa was able to move about in the bed; that she had seen Tomasa in the act of starting to write her signature when she told her to get her some water.

Yap Cao Quiang was also called as a witness in rebuttal. He testified that he knew Tomasa Elizaga Yap Caong and knew that she had made a will; that he saw the will at the time it was written; that he saw Tomasa sign it on her bed; that he did not hear Lorenzo ask Tomasa to sign the will; that Lorenzo had handed the will to Tomasa to

sign; that he saw the witnesses sign the will on a table near the bed; that the table was outside the curtain or screen and near the entrance to the room where Tomasa was lying.

Lorenzo Yap Caong testified as a witness on rebuttal. He said that he knew Anselmo Zacarias and that Zacarias wrote the will of Tomasa Elizaga Yap Caong; that Tomasa had given him instructions; that Tomasa had said that she wanted to make another will; that he had seen the witnesses sign the will; that the will was on a table near the bed of Tomasa; that Tomasa, from where she was lying in the bed, could see the table where the witnesses had signed the will.

During the rehearing certain other witnesses were also examined; in our opinion, however, it is unnecessary to quote from them for the reason that their testimony in no way affects the preponderance of proof above quoted.

At the close of the rehearing the Honorable A. S. Crossfield, judge, in an extended opinion, reached the conclusion that the last will and testament of Tomasa Elizaga Yap Caong, which was attached to the record and marked Exhibit A was the last will and testament of the said Tomasa Elizaga Yap Caong and admitted it to probate and ordered that the administrator theretofore appointed should continue as such administrator. From that order the protestants appealed to this court, and made the following assignments of error:

"I. The court erred in declaring that the will, Exhibit A, was executed by the deceased Tomasa Yap Caong, without the intervention of any external influence on the part of other persons.

"II. The court erred in declaring that the testator had clear knowledge and knew what she was doing at the time of signing the will.

"III. The court erred in declaring that the signature of the deceased Tomasa Yap Caong in the first will, Exhibit 1, is identical with that which appears in the second will, Exhibit A.

"IV. The court erred in declaring that the will, Exhibit A, was executed in accordance with the law."

With reference to the first assignment of error, to wit, that undue influence was brought to bear upon Tomasa Elizaga Yap Caong in the execution of her will of August 11th, 1909 (Exhibit A), the lower court found that no undue influence had been exercised over the mind of the said Tomasa Elizaga Yap Caong. While it is true that some of the witnesses testified that the brother of Tomasa, one Lorenzo, had attempted to unduly influence her mind in the execution of her will, upon the other hand, there were several witnesses who testified that Lorenzo did not attempt, at the time of the execution of the will, to influence her mind in any way. The lower court having had an opportunity to see, to hear, and to note the witnesses during their examination, reached the conclusion that a preponderance of the evidence showed that no undue influence had been used. We find no good reason in the record for reversing his conclusions upon that question.

With reference to the second assignment of error, to wit, that Tomasa Elizaga Yap Caong was not of sound mind and memory at the time of the execution of the will, we find the same conflict in the declarations of the witnesses which we found with reference to the undue influence. While the testimony of Dr. Papa is very strong relating to the mental condition of Tomasa Elizaga Yap Caong, yet, nevertheless, his testimony related to a time perhaps twenty-four hours before the execution of the will in question (Exhibit A). Several witnesses testified that at the time the will was presented to her for her signature, she was of sound mind and memory and asked for a pen and ink and kept the will in her possession for ten or fifteen minutes and finally signed it. The lower court found that there was a preponderance of evidence sustaining the conclusion that Tomasa Elizaga Yap Caong was of sound mind and memory and in the possession of her faculties at the time she signed this will. In view of the conflict in the testimony of the witnesses and the finding of the lower court, we do not feel justified in reversing his conclusions upon that question.

With reference to the third assignment of error, to wit, that the lower court committed an error in declaring that the signature of Tomasa Elizaga Yap Caong, on her first will (August 6, 1909, Exhibit 1), is identical with that which appears in the second will (August 11, 1909, Exhibit A), it may be said:

First. That whether or not Tomasa Elizaga Yap Caong executed the will of August 6, 1909 (Exhibit 1), was not the question presented to the court. The question presented was whether or not she had duly executed the will of August 11, 1909 (Exhibit A).

Second. There appears to be but little doubt that Tomasa Elizaga Yap Caong did execute the will of August 6, 1909. Several witnesses testified to that fact. The mere fact, however, that she executed a former will is no proof that she did not execute a later will. She had a perfect right, by will, to dispose of her property, in accordance with the provisions of law, up to the very last of moment her life. She had a perfect right to change, alter, modify or revoke any and all of her former wills and to make a new one. Neither will the fact that the new will fails to expressly revoke all former wills, in any way sustain the charge that she did not make the new will.

Third. In said third assignment of error there is involved in the statement that "The signature of Tomasa Elizaga Yap Caong, in her first will (Exhibit 1) was not identical with that which appears in her second will (Exhibit A)" the inference that she had not signed the second will and all the argument of the appellants relating to said third assignment of error is based upon the alleged fact that Tomasa Elizaga Yap Caong did not sign Exhibit A. Several witnesses testified that they saw her write the name "Tomasa." One of the witnesses testified that she had written her full name. We are of the opinion, and we think the law sustains our conclusion, that if Tomasa Elizaga Yap Caong signed any portion of her name to the will, with the intention to sign the same, that that will amount to a signature. It has been held time and time again that one who makes a will may sign the same by using a mark, the name having been written by others. If writing a mark simply upon a will is sufficient indication of the intention of the person to make and execute a will, then certainly the writing of a portion or all of her name ought to be accepted as a clear indication of her intention to execute the will. (Re Goods of Savory, 15 Jur., 1042; Addy vs. Grix, 8 Ves. Jr., 504; Baker vs. Dening, 8 Ad. & El., 94; Long vs. Zook, 13 Penn., 400; Vernon vs. Kirk, 30 Penn., 218; Cozzen's Will, 61 Penn., 196; Re Goods of Emerson, L. R. 9 Ir., 443; Main vs. Ryder, 84 Penn., 217.)

We find a very interesting case reported in 131 Pennsylvania State, 220 (6 L. R. A., 353), and cited by the appellees, which was known as "Knox's Appeal." In this case one Harriett S. Knox died very suddenly on the 17th of October, 1888, at the residence of her father. After her death a paper was found in her room, wholly in her handwriting, written with a lead pencil, upon three sides of an ordinary folded sheet of note paper and bearing the signature simply of "Harriett." In this paper the deceased attempted to make certain disposition of her property. The will was presented for probate. The probate was opposed upon the ground that the same did not contain the signature of the deceased. That was the only question presented to the court, whether the signature, in the form above indicated, was a sufficient signature to constitute said paper the last will and testament of Harriett S. Knox. It was admitted that the entire paper was in the handwriting of the deceased. In deciding that question, Justice Mitchell said:

"The precise case of a signature by the first name only, does not appear to have arisen either in England or the United States; but the principle on which the decisions already referred to were based, especially those in regard to signing by initials only, are equally applicable to the present case, and additional force is given to them by the decisions as to what constitutes a binding signature to a contract. (Palmer vs. Stephens, 1 Denio, 478; Sanborne vs. Flager, 9 Allen, 474; Weston vs. Myers, 33 Ill., 424; Salmon Falls, etc. Co. vs. Goddard, 14 How. (U. S.), 446.)"

The man who cannot write and who is obliged to make his mark simply therefor, upon the will, is held to "sign" as effectually as if he had written his initials or his full name. It would seem to be sufficient, under the law

requiring a signature by the person making a will, to make his mark, to place his initials or all or any part of his name thereon. In the present case we think the proof shows, by a large preponderance, that Tomasa Elizaga Yap Caong, if she did not sign her full name, did at least sign her given name "Tomasa," and that is sufficient to satisfy the statute.

With reference to the fourth assignment of error, it maybe said that the argument which has preceded is sufficient to answer it also.

During the trial of the cause the protestants made a strong effort to show that Tomasa Elizaga Yap Caong did not sign her name in the presence of the witnesses and that they did not sign their names in her presence nor in the presence of each other. Upon that question there is considerable conflict of proof. An effort was made to show that the will was signed by the witnesses in one room and by Tomasa in another. A plan of the room or rooms in which the will was signed was presented as proof and it was shown that there was but one room; that one part of the room was one or two steps below the floor of the other; that the table on which the witnesses signed the will was located upon the lower floor of the room. It was also shown that from the bed in which Tomasa was lying, it was possible for her to see the table on which the witnesses signed the will. While the rule is absolute that one who makes a will must sign the same in the presence of the witnesses and that the witnesses must sign in the presence of each other, as well as in the presence of the one making the will, yet, nevertheless, the actual seeing of the signatures made is not necessary. It is sufficient if the signatures are made where it is possible for each of the necessary parties, if they desire to see, may see the signatures placed upon the will.

In cases like the present where there is so much conflict in the proof, it is very difficult for the courts to reach conclusions that are absolutely free from doubt. Great weight must be given by appellate courts who do not see or hear the witnesses, to the conclusions of the trial courts who had that opportunity.

Upon a full consideration of the record, we find that a preponderance of the proof shows that Tomasa Elizaga Yap Caong did execute, freely and voluntarily, while she was in the right use of all of her faculties, the will dated August 11, 1909 (Exhibit A). Therefore the judgment of the lower court admitting said will to probate is hereby affirmed with costs.

Arellano, C. J., Torres, Carson, Moreland, and Araullo, JJ., concur.

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