

TESTATE ESTATE OF THE LATE ADRIANA MALOTO, ALDINA MALOTO CASIANO, CONSTANCIO MALOTO, PURIFICACION MIRAFLOR, ROMAN CATHOLIC CHURCH OF MOLO, AND ASILO DE MOLO, PETITIONERS, VS. CO...*G.R. No. 76464. February 29, 1988*

Ponente: SARMIENTO, J.

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This is not the first time that the parties to this case come to us. In fact, two other cases directly related to the present one and involving the same parties had already been decided by us in the past. In G.R. No. L-30479,[1] which was a petition for certiorari and mandamus instituted by the petitioners herein, we dismissed the petition ruling that the more appropriate remedy of the petitioners is a separate proceeding for the probate of the will in question. Pursuant to the said ruling, the petitioners commenced in the then Court of First Instance of Iloilo, Special Proceeding No. 2176, for the probate of the disputed will, which was opposed by the private respondents presently, Panfilo and Felino, both surnamed Maloto. The trial court dismissed the petition on April 30, 1970. Complaining against the dismissal, again, the petitioners came to this Court on a petition for review by certiorari.[2] Acting on the said petition, we set aside the trial court's order and directed it to proceed to hear the case on the merits. The trial court, after hearing, found the will to have already been revoked by the testatrix, Adriana Maloto, and thus, denied the petition. The petitioners appealed the trial court's decision to the Intermediate Appellate Court which, on June 7, 1985, affirmed the order. The petitioners' motion for reconsideration of the adverse decision proved to be of no avail, hence, this petition.

For a better understanding of the controversy, a factual account would be a great help.

On October 20, 1963, Adriana Maloto died leaving as heirs her niece and nephews, the petitioners Aldina Maloto-Casiano and Constancio Maloto, and the private respondents Panfilo Maloto and Felino Maloto. Believing that the deceased did not leave behind a last will and testament, these four heirs commenced on November 4, 1963 an intestate proceeding for the settlement of their aunt's estate. The case was instituted in the then Court of First Instance of Iloilo and was docketed as Special Proceeding No. 1736. However, while the case was still in progress, or to be exact on February 1, 1964, the parties -- Aldina, Constancio, Panfilo, and Felino -- executed an agreement of extrajudicial settlement of Adriana's estate. The agreement provided for the division of the estate into four equal parts among the parties. The Malotos then presented the extrajudicial settlement agreement to the trial court for approval which the court did on March 21, 1964. That should have signalled the end of the controversy, but, unfortunately, it had not.

Three years later, or sometime in March 1967, Atty. Sulpicio Palma, a former associate of Adriana's counsel, the late Atty. Eliseo Hervas, discovered a document entitled "KATAPUSAN NGA PAGBULUT-AN (Testamento)", dated January 3, 1940, and purporting to be the last will and testament of Adriana. Atty. Palma claimed to have found the testament, the original copy, while he was going through some materials inside the cabinet drawer

formerly used by Atty. Hervas. The document was submitted to the office of the clerk of the Court of First Instance of Iloilo on April 1, 1967. Incidentally, while Panfilo and Felino are still named as heirs in the said will, Aldina and Constancio are bequeathed much bigger and more valuable shares in the estate of Adriana than what they received by virtue of the agreement of extrajudicial settlement they had earlier signed. The will likewise gives devises and legacies to other parties, among them being the petitioners Asilo de Molo, the Roman Catholic Church of Molo, and Purificacion Miraflor.

Thus, on May 24, 1967, Aldina and Constancio, joined by the other devisees and legatees named in the will, filed in Special Proceeding No. 1736 a motion for reconsideration and annulment of the proceedings therein and for the allowance of the will. When the trial court denied their motion, the petitioner came to us by way of a petition for certiorari and mandamus assailing the orders of the trial court.[3] As we stated earlier, we dismissed that petition and advised that a separate proceeding for the probate of the alleged will would be the appropriate vehicle to thresh out the matters raised by the petitioners.

Significantly, the appellate court while finding as inconclusive the matter on whether or not the document or papers allegedly burned by the househelp of Adriana, Guadalope Maloto Vda. de Coral, upon instructions of the testatrix, was indeed the will, contradicted itself and found that the will had been revoked. The respondent court stated that the presence of animus revocandi in the destruction of the will had, nevertheless, been sufficiently proven. The appellate court based its finding on the facts that the document was not in the two safes in Adriana's residence, by the testatrix going to the residence of Atty. Hervas to retrieve a copy of the will left in the latter's possession, and, her seeking the services of Atty. Palma in order to have a new will drawn up. For reasons shortly to be explained, we do not view such facts, even considered collectively, as sufficient bases for the conclusion that Adriana Maloto's will had been effectively revoked.

There is no doubt as to the testamentary capacity of the testatrix and the due execution of the will. The heart of the case lies on the issue as to whether or not the will was revoked by Adriana.

The provisions of the new Civil Code pertinent to the issue can be found in Article 830.

Art. 830. No will shall be revoked except in the following cases:

(1)

By implication of law; or

(2)

By some will, codicil, or other writing executed as provided in case of wills; or

(3)

By burning, tearing, cancelling, or obliterating the will with the intention of revoking it, by the testator himself, or by some other person in his presence, and by his express direction. If burned, torn, cancelled, or obliterated by some other person, without the express direction of the testator, the will may still be established, and the estate distributed in accordance therewith, if its contents, and due execution, and the fact of its unauthorized destruction, cancellation, or obliteration are established according to the Rules of Court.

(Emphasis Supplied.)

It is clear that the physical act of destruction of a will, like burning in this case, does not per se constitute an

effective revocation, unless the destruction is coupled with *animus revocandi* on the part of the testator. It is not imperative that the physical destruction be done by the testator himself. It may be performed by another person but under the express direction and in the presence of the testator. Of course, it goes without saying that the document destroyed must be the will itself.

In this case, while *animus revocandi*, or the intention to revoke, may be conceded, for that is a state of mind, yet that requisite alone would not suffice. *Animus revocandi* is only one of the necessary elements for the effective revocation of a last will and testament. The intention to revoke must be accompanied by the overt physical act of burning, tearing, obliterating, or cancelling the will carried out by the testator or by another person in his presence and under his express direction. There is paucity of evidence to show compliance with these requirements. For one, the document or papers burned by Adriana's maid, Guadaloque, was not satisfactorily established to be a will at all, much less the will of Adriana Maloto. For another, the burning was not proven to have been done under the express direction of Adriana. And then, the burning was not in her presence. Both witnesses, Guadaloque and Eladio, were one in stating that they were the only ones present at the place where the stove (presumably in the kitchen) was located in which the papers proffered as a will were burned.

The respondent appellate court in assessing the evidence presented by the private respondents as oppositors in the trial court, concluded that the testimony of the two witnesses who testified in favor of the will's revocation appear "inconclusive." We share the same view. Nowhere in the records before us does it appear that the two witnesses, Guadaloque Vda. de Corral and Eladio Itchon, both illiterates, were unequivocally positive that the document burned was indeed Adriana's will. Guadaloque, we think, believed that the papers she destroyed was the will only because, according to her, Adriana told her so. Eladio, on the other hand, obtained his information that the burned document was the will because Guadalupe told him so, thus, his testimony on this point is double hearsay.

At this juncture, we reiterate that "(it) is an important matter of public interest that a purported will is not denied legalization on dubious grounds. Otherwise, the very institution of testamentary succession will be shaken to its very foundations x x x." [4]

The private respondents in their bid for the dismissal of the present action for probate instituted by the petitioners argue that the same is already barred by *res adjudicata*. They claim that this bar was brought about by the petitioners' failure to appeal timely from the order dated November 16, 1968 of the trial court in the intestate proceeding (Special Proceeding No. 1736) denying their (petitioners') motion to reopen the case, and their prayer to annul the previous proceedings therein and to allow the last will and testament of the late Adriana Maloto. This is untenable.

The doctrine of *res adjudicata* finds no application in the present controversy. For a judgment to be a bar to a subsequent case, the following requisites must concur: (1) the presence of a final former judgment; (2) the former judgment was rendered by a court having jurisdiction over the subject matter and the parties; (3) the former judgment is a judgment on the merits; and (4) there is, between the first and the second action, identity of parties, of subject matter, and of cause of action. [5] We do not find here the presence of all the enumerated requisites.

For one, there is yet, strictly speaking, no final judgment rendered insofar as the probate of Adriana Maloto's will is concerned. The decision of the trial court in Special Proceeding No. 1736, although final, involved only the intestate settlement of the estate of Adriana. As such, that judgment could not in any manner be construed to be final with respect to the probate of the subsequently discovered will of the decedent. Neither is it a judgment on the merits of the action for probate. This is understandably so because the trial court, in the intestate proceeding, was without jurisdiction to rule on the probate of the contested will. [6] After all, an action for probate, as it implies, is founded on the presence of a will and with the objective of proving its due execution and validity,

something which can not be properly done in an intestate settlement of estate proceeding which is predicated on the assumption that the decedent left no will. Thus, there is likewise no identity between the cause of action in intestate proceeding and that in an action for probate. Be that as it may, it would be remembered that it was precisely because of our ruling in G.R. No. L-30479 that the petitioners instituted this separate action for the probate of the late Adriana Maloto's will. Hence, on these grounds alone, the position of the private respondents on this score can not be sustained.

One last note. The private respondents point out that revocation could be inferred from the fact that "(a) major and substantial bulk of the properties mentioned in the will had been disposed of; while an insignificant portion of the properties remained at the time of death (of the testatrix); and, furthermore, more valuable properties have been acquired after the execution of the will on January 3, 1940." [7] Suffice it to state here that as these additional matters raised by the private respondents are extraneous to this special proceeding, they could only be appropriately taken up after the will has been duly probated and a certificate of its allowance issued.

WHEREFORE, judgment is hereby rendered REVERSING and SETTING ASIDE the Decision dated June 7, 1985 and the Resolution dated October 22, 1986, of the respondent Court of Appeals, and a new one ENTERED for the allowance of Adriana Maloto's last will and testament. Costs against the private respondents.

This Decision is IMMEDIATELY EXECUTORY.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, and Paras, JJ., concur.

Padilla, J., no part.

[1] Constancio Maloto, et al. vs. Hon. Emigdio V. Nietes, etc., et al., May 14, 1969.

[2] G.R. No. L-32328.

[3] G.R. No. L-30479, supra.

[4] Vda. de Precilla vs. Narciso, No. L-27200, August 18, 1972, 46 SCRA 538, 565-566, quoted in: Maninang vs. Court of Appeals, No. L-57848, June 19, 1982, 114 SCRA 78.

[5] Heirs of Matilde Cenizal Arguson vs. Miclat, No. L-61049, April 15, 1985, 135 SCRA 678; Martinez vs. Court of Appeals, No. L-41425, November 11, 1985, 139 SCRA 558.

[6] See Circa Nila Development Corporation, et al. vs. Hon. Salvador J. Baylen, etc., et al., G.R. Nos. 69757-58, January 29, 1988.

[7] Rollo, 75.

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