

DOMINGO CALUYA, PETITIONER AND APPELLANT, VS. LUCIA DOMINGO, RESPONDENT AND APPELLEE.

G.R. No. 7647. March 27, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Ilocos Norte denying the probate of a will.

The learned court below based its judgment upon three grounds. The first one was that, although the testator had signed by mark, it nowhere appeared in the will who had written the signature or that it had been written at his request. The second, that the witness Antonino Pandaraoan could not really have signed the attestation clause because, at the time it was executed, he was attending a session of the municipal council of Piddig as a member thereof. Third: That as to the other witness, Segundino Asis, the will mentioned and confirmed a sale of land to him by the testator, and he being thereby an interested party his testimony could not be believed.

We do not believe that any of the objections are well founded and the judgment refusing its probate must, therefore, be reversed.

Section 618 of the Code of Civil Procedure provides in part:

"No will, except as provided in the preceding section, shall be valid to pass any estate, real or personal, nor charge or affect the same, unless it be in writing and signed by the testator, or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of each other. * * *"

It is nowhere required, that, where the testator is unable to write, the fact that his signature was written by some other person, at his request and express direction, should appear in the body of the will itself. In the case of *Barut vs. Cabacungan* (21 Phil. Rep., 461, 463) we held the following:

"From these provisions it is entirely clear that, with respect to the validity of the will, it is unimportant whether the person who writes the name of the testatrix signs his own or not. The important thing is that it clearly appears that the name of the testatrix was signed at her express direction in the presence of three witnesses and that they attested and subscribed it in her presence and in the presence of each other. That is all the statute requires. It may be wise as a practical matter that the one who signs the testator's name signs also his own; but that is not essential to the validity of the will. Whether one person or another signed the name of the testatrix in this case is absolutely unimportant so far as the validity of her will is concerned. The plain wording of the statute shows that the requirement laid down by the trial court, if it did lay it down, is absolutely unnecessary under the law; and the reasons underlying the provisions of the statute relating to the execution of wills do not in any sense require such a provision. From the standpoint of language it is an impossibility to draw from the words of the law the inference that the person who signs the name of the testator must sign his own name also. The law requires only three witnesses to a will, not four.

"Nor is such requirement found in any other branch of the law. The name of a person who is unable to write may be signed by another, by express direction, to any instrument known to the law. There is no necessity whatever, so far as the validity of the instrument is concerned, for the person who writes the name of the principal in the document to sign his own name also. As a matter of policy it may be wise that he do so inasmuch as it would give such intimation as would enable a person proving the document to demonstrate more readily the execution by the principal. But as a matter of essential validity of the document, it is unnecessary. The main thing to be established in the execution of the will is the signature of the testator. If that signature is proved, whether it be written by himself or by another at his request, it is none the less valid, and the fact of such signature can be proved as perfectly and as completely when the person signing for the principal omits to sign his own name as it can when he actually signs. To hold a will invalid for the lack of the signature of the person signing the name of the principal is, in the particular case, a complete abrogation of the law of wills, as it rejects and destroys a will which the statute expressly declares is valid."

The section above quoted also provides that "the attestation clause shall state the fact that the testator signed the will, or caused it to be signed by some other person, at his express direction, in the presence of three witnesses, and that they attested and subscribed it in his presence and in the presence of each other. But the absence of such form of attestation shall not render the will invalid if it is proven that the will was in fact signed and attested as in this section provided."

Not only does the attestation clause comply with the requirements of this section, but it appears clearly proved in evidence that the name of the testator was signed by another person at his request and under his direction and in his presence and in the presence of the witnesses to the will. Moreover, as appears from the last clause of the section, if the attestation clause is defective, or even absent, the will is nevertheless valid provided it is satisfactorily proved that it was in fact signed and executed as provided by law.

As to the second objection, namely, that Antonino Pandaraoan could not have signed the will as a witness thereto, as stated in the attestation clause, because he was attending a meeting of the municipal council of Piddig at the time the will is alleged to have been executed, we believe this also to be without merit. It does appear in the evidence of the opposition that the witness Pandaraoan was attending a meeting of the municipal council of Piddig from something like 10 o'clock till 12.30 o'clock of the day on which the will was executed and that the will was executed sometime between 10 and 12 o'clock. Too much weight, however, can not be given to the testimony relative to the precise time of the execution of the will. The barrio of Piddig is only a short distance from the house in which the will was executed and it would have taken but a short time to cover the distance. The witness Pandaraoan himself testified directly and positively that, after having left the meeting, of the municipal council, he went to the house of the testator by appointment and there signed the will as stated in the attestation clause. He asserts that he covered the distance on horseback. The other witnesses to the will support this declaration. Not only this, but the notary public who drew up the will and who translated it to the testator and who was present at the time of its execution, declared and testified that the witnesses whose names appear upon the will were present at the time it was executed by the testator and that they signed the same at his request and in his presence and in the presence of each other. All of the witnesses to the will unite in declaring that they were there present at the time the will was executed and that they signed as witnesses in the presence of the testator and of each other. The mere fact that there was a session of the municipal council of Piddig about the same time that the will was executed is not necessarily conclusive against the fact that ' Antonino Pandaraoan was present and signed as a subscribing witness as he declares. Mistakes in time are easily made among witnesses who measure time not so much by clocks or watches as by the sun. Antonino Pandaraoan testified that the municipal council began its session about 10 o'clock; that in order to attend the execution of the will, as he had agreed with the notary public he would do, he was obliged to leave the session before it terminated; that he so left the session, mounted a horse and arrived at the house of the testator at about 12 o'clock, in time to take part in the execution of the will as stated

in the attestation clause.

We do not believe that the clear and positive testimony of the witnesses to the will and of the notary public is overcome by the evidence offered in opposition to the probate.

As to the third ground upon which the court based its decision; namely, that the will having mentioned and confirmed a sale of land, to Segundino Asis, one of the witnesses to the will, while not rendering the will entirely invalid, throws great doubt upon the legality of its execution and especially the testimony of said witness relating thereto.

Section 622 provides:

"If a person attests the execution of a will, to whom or to whose wife or husband, or parent, or child, a beneficial devise, legacy, or interest, of or affecting real or personal estate, is given by such will, such devise, legacy, or interest shall, so far only as concerns such person, or the wife or husband, or parent or child of such person, or anyone claiming under such person or such wife or husband, or parent or child, be void, unless there are three other competent witnesses to such will, and such person so attesting shall be admitted as a witness as if such devise, legacy, or interest had not been made or given. But a mere charge on the real or personal estate of the testator, for the payment of debts, shall not prevent his creditors from being competent witnesses to his will."

As will readily be seen on reading this section, nothing in the will before us relative to the sale of land to Segundino Asis creates such an interest therein, as falls within the provisions thereof. Indeed, no interest of any kind was created by the will in favor of Segundino Asis, nor did it convey or transfer any interest to him. It simply mentioned a fact already consummated, a sale already made. Even if, however, the will had conveyed an interest to Segundino Asis, it would not have been for that reason void. Only that clause of the will conveying an interest to him would have been void; the remainder could have stood and would have stood as a valid testament.

We are confident from a thorough examination of the record that a fair preponderance of the evidence is in favor of the proponents, and there being no legal impediment to the probate the court erred in refusing it.

The judgment appealed from is hereby reversed and the cause remanded to the court whence it came with instructions to legalize and probate the will in accordance with the petition.

Arellano, C. J., Carson and Trent, JJ., concur.

DISSENTING

ARAULLO, J.

I do not concur in the result and in one of the grounds thereof.

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