

THE HEIRS OF THE LATE MATILDE MONTINOLA-SANSON, PETITIONERS, VS. COURT OF APPEALS AND EDUARDO F. HERNANDEZ, RESPONDENTS.

G.R. No. 76648, February 26, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals[1] promulgated August 29, 1986 affirming in toto the decision of the Regional Trial Court of Manila, Branch XXII[2] dated March 21, 1985, the dispositive part of which reads:

"WHEREFORE, the Court renders judgment declaring the holographic will marked in evidence as Exhibit 'H' as one wholly written, dated, and signed freely by the late Herminia Montinola in accordance with law while in possession of full testamentary capacity, and allowing and admitting the same to probate.

"Upon the finality of the decision, let letters testamentary issue to the executor, Eduardo F. Hernandez, as well as the certificate of probate prescribed under Section 13 of Rule 76 of the Rules of Court.

SO ORDERED."[3]

This case arose from a petition filed by private respondent Atty. Eduardo F. Hernandez on April 22, 1981 with the Court of First Instance of Manila (now Regional Trial Court) seeking the probate of the holographic will of the late Herminia Montinola executed on January 28, 1980.[4] The testatrix, who died single, parentless and childless on March 29, 1981 at the age of 70 years, devised in this will several of her real properties to specified persons.

On April 29, 1981, private respondent who was named executor in the will filed an urgent motion for appointment of special administrator.[5] With the conformity of all the relatives and heirs of the testatrix except oppositor, the court in its order of May 5, 1981[6] appointed private respondent as Special Administrator of the testate estate of deceased.

On June 29, 1981, Matilde Montinola Sanson (petitioner), the only surviving sister of the deceased but who was not named in the said will, filed her Opposition to Probate of Will,[7] alleging inter alia: that the subject will was not entirely written, dated and signed by the testatrix herself and the same was falsely dated or antedated; that the testatrix was not in full possession of her mental faculties to make testamentary dispositions; that undue influence was exerted upon the person and mind of the testatrix by the beneficiaries named in the will; and that the will failed to institute a residual heir to the remainder of the estate.

After a hearing on the merits, the probate court, finding the evidence presented in support of the petition to be conclusive and overwhelming, rendered its decision allowing the probate of the disputed will.

Petitioner thus appealed the decision of the probate court to the Court of Appeals which affirmed in toto the decision.[8]

On September 24, 1986, petitioner filed with the respondent court a motion for new trial.[9] Attached to her motion was the Affidavit of Merit of Gregorio Montinola Sanson, petitioner's son, alleging that witnesses have been located whose testimonies could shed light as to the ill health of testatrix as well as undue influence exerted on the latter.

The appellate court in its resolution of October 13, 1986,[10] denied the motion for new trial of petitioner on the following grounds: (1) the Affidavit of Merit attached to the motion alleged that efforts were exerted to locate unnamed witnesses only after the court's decision was handed down, and (2) the unnamed witnesses would allegedly shed light on the fact of grave illness of the testatrix as well as the undue influence exerted on her which are merely corroborative or cumulative since these facts were brought to light during the trial.

The motion for reconsideration of petitioner dated October 27, 1986[11] was likewise denied by the appellate court in its resolution of November 20, 1986[12] on the ground that the affidavit of one Patricia Delgado submitted with the motion constitutes cumulative evidence and the motion being in reality a second motion for reconsideration which is prescribed by law.

In the petition now before Us, petitioner assigned the following errors:

"I

THE RESPONDENT COURT OF APPEALS ERRED IN DENYING PETITIONERS' MOTION FOR NEW TRIAL ON THE GROUND THAT THE EVIDENCE SOUGHT TO BE PRESENTED IS MERELY CUMULATIVE.

II

THE SAID COURT ERRED IN DENYING PETITIONERS' MOTION FOR RECONSIDERATION OF THE RESOLUTION DENYING THE AFORESAID MOTION FOR NEW TRIAL.

III

AT ANY RATE, THE SAID COURT ERRED IN HOLDING THAT THE HOLOGRAPHIC WILL IN QUESTION WAS WHOLLY WRITTEN, DATED AND SIGNED BY THE LATE HERMINIA MONTINOLA.

IV

THE SAID COURT ERRED IN NOT FINDING THAT THE ALLEGED WILL WAS FRAUDULENTLY ANTEDATED TO CONCEAL ITS ACTUAL DATE OF EXECUTION AND TO SHIELD IT FROM PROBABLE DISPUTES AS TO THE TESTAMENTARY CAPACITY ON THE PART OF THE ALLEGED TESTATRIX AT THE TIME OF ITS ACTUAL EXECUTION.

V

THE SAID COURT ERRED IN HOLDING THAT THE LATE HERMINIA MONTINOLA WAS NOT SUBJECTED TO UNDUE PRESSURE AND IMPROPER IMPORTUNINGS ON THE PART OF THOSE STANDING TO BENEFIT FROM THE ALLEGED WILL.

VI

THE SAID COURT ERRED IN ALLOWING THE HOLOGRAPHIC WILL IN QUESTION TO PROBATE."

In the meantime, petitioner who passed away on November 3, 1986, was substituted by her heirs.

In the first and second assigned errors, petitioners maintain that the appellate court erred in denying the motion for new trial insisting that the new evidence sought to be presented is not merely corroborative or cumulative.

On the other hand, the contention of private respondent is that the motion for new trial was a pro-forma motion

because it was not in accordance with Sec. 1, Rule 53 of the Rules of court. We find merit in this contention.

Section 1, Rule 53 provides -

"Before a final order or judgment rendered by the Court of Appeals becomes executory, a motion for new trial may be filed on the ground of newly discovered evidence which could not have been discovered prior to the trial in the court below by the exercise of due diligence and which is of such a character as would probably change the result. The motion shall be accompanied by affidavits showing the facts constituting the grounds therefor and the newly discovered evidence."

The affidavit of merit executed by Gregorio Montinola Sanson alleged the following:

"x x x;

"3.

That in her plea for new trial in the said case, I have exerted efforts to locate witnesses whose whereabouts were not known to us during the trial in the lower court, but I have finally succeeded in tracking them down;

"4.

That despite their initial reluctance to testify in this case, I am convinced that they would testify under proper subpoena for purposes of shedding light on the fact that the testatrix was gravely ill at or about the time that the questioned will was allegedly executed;

"5.

That they had the clear opportunity to know the circumstances under which the purported will was executed; and that they know for a fact that there was 'undue influence' exerted by petitioner and other relatives to procure improper favors from the testatrix;

" x x x."[13]

Said motion for new trial is not in substantial compliance with the requirements of Rule 53. The lone affidavit of a witness who was already presented during the hearing is hardly sufficient to justify the holding of a new trial. The alleged new witness were unnamed without any certainty as to their appearance before the court to testify. Affiant attests only on his belief that they would testify if and when they are subpoenaed by the court. Furthermore, the allegations in the affidavit as to the undue influence exerted on the testatrix are mere conclusions and not statement of facts. The requisite affidavits must state facts and not mere conclusions or opinions, otherwise they are not valid.[14] The affidavits are required to avoid waste of the court's time if the newly discovered evidence turns out to be immaterial or of any evidentiary weight.

Moreover, it could not be said that the evidence sought to be presented is new having been discovered only after the trial. It is apparent from the allegations of affiant that efforts to locate the witnesses were exerted only after the decision of the appellate court was handed down. The trial lasted for about four years so that petitioner had ample time to find said alleged witnesses who were admittedly known to her. The evidence which the petitioner now propose to present could have been discovered and presented during the hearing of the case, and there is no sufficient reason for concluding that had the petitioner exercised proper diligence she would not have been able to discover said evidence.[15]

In addition, We agree with the appellate court that since the alleged illness of the testatrix as well as the charges of undue influence exerted upon her had been brought to light during the trial, any new evidence on this point is merely corroborative and cumulative which is generally not a ground for new trial.[16] Accordingly, such evidence even if presented will not carry much probative weight which can alter the judgment.[17]

It is very patent that the motion for new trial was filed by petitioner only for the purpose of delaying the proceedings. In fact, petitioner's son in his manifestation admitted that he had to request a new law firm to do everything legally possible to meet the deadline for the filing of a motion for reconsideration and/or for new trial.[18] This would explain the haphazard preparation of the motion, thus failing to comply with the requirements of Rule 53, which was filed on the last day of the reglementary period of appeal so that the veracity of the ground relied upon is questionable. The appellate court correctly denied the motion for new trial.

The motion for new trial being pro-forma, it does not interrupt the running of the period for appeal.[19] Since petitioner's motion was filed on September 24, 1986, the fifteenth or last day of the period to appeal, the decision of the respondent court became final on the following day, September 25. And when the motion for reconsideration of petitioner was filed on October 30, 1986, it was obviously filed out of time.

Since the questioned decision has already become final and executory, it is no longer within the province of this Court to review it. This being so, the findings of the probate court as to the due execution of the will and the testamentary capacity of testatrix are now conclusive.[20]

At any rate, even assuming that We all still review this case on its merits, the petition will also have to fail.

During the hearing before the probate court, not only were three (3) close relatives of the testatrix presented but also two (2) expert witnesses who declared that the contested will and signature are in the handwriting of the testatrix. These testimonies more than satisfy the requirements of Art. 811 of the Civil Code[21] in conjunction with Section 11 of Rule 76, Revised Rules of Court[22] for the probate of holographic wills.

As regards the alleged antedating of the will, petitioner failed to present competent proof that the will was actually executed sometime in June 1980 when the testatrix was already seriously ill and dying of terminal lung cancer. She relied only on the supposed inconsistencies in the testimony of Asuncion Gemperle, niece and constant companion of testatrix, which upon careful examination did not prove such claim of antedating.

The factual findings of the probate court and the Court of Appeals that the will in question was executed according to the formalities required by law are conclusive on the Supreme Court when supported by evidence.[23] We have examined the records of this case and find no error in the conclusion arrived at by the respondent court that the contested will was duly executed in accordance with law.

Petitioner alleges that her exclusion from the alleged holographic will was without rhyme or reason, being the only surviving sister of the testatrix with whom she shares an intimate relationship, thus demonstrating the lack of testamentary capacity of testatrix.

In the case of *Pecson v. Coronel*,[24] it was held -

"The appellants emphasize the fact that family ties in this country are very strongly knit and that the exclusion of a relative from one's estate is an exceptional case. It is true that the ties of relationship in the Philippines are very strong, but we understand that cases of preterition of relatives from the inheritance are not rare. The liberty to dispose one's estate by will when there are no force heirs is rendered sacred by the Civil Code in force in the Philippines since 1889. x x x"

Article 842 of the Civil Code provides that one who has no compulsory heirs may dispose by will of all his estate

or any part of it in favor of any person having capacity to succeed.

It is within the right of the testatrix not to include her only sister who is not a compulsory heir in her will. Nevertheless, per testimony of Asuncion Gemperle, the latter had reserved two boxes of jewelry worth P850,000.00 for petitioner. Furthermore, petitioner's son Francis was instituted as an heir in the contested will.

Petitioner still insists that the fact that in her holographic testatrix failed to dispose of all of her estate is an indication of the unsoundness of her mind.

We cannot subscribe to this contention. Art. 841 of the Civil Code provides -

"A will shall be valid even though it should not contain an institution of an heir, or such institution should not comprise the entire estate, and even though the person so instituted should not accept the inheritance or should be incapacitated to succeed.

In such cases, the testamentary dispositions made in accordance with law shall be complied with and the remainder of the estate shall pass to the legal heirs."

Thus, the fact that in her holographic will, testatrix disposed of only eleven (11) of her real properties does invalidate the will. Nor is it an indication that the testatrix was of unsound mind. The portion of the estate undisposed of shall pass on to the heirs of the deceased in intestate succession.

Neither is undue influence present just because blood relatives, other than compulsory heirs have been omitted, for while blood ties are strong in the Philippines, it is the testator's right to disregard non-compulsory heirs.[25] The fact that some heirs are more favored than others is proof of neither fraud nor undue influence.[26] Diversity of apportionment is the usual reason for making a testament, otherwise, the decedent might as well die intestate.[27]

The contention of the petitioner that the will was obtained by undue influence or improper pressure exerted by the beneficiaries of the will cannot be sustained on mere conjecture or suspicion, as it is not enough that there was opportunity to exercise undue influence or a possibility that it may have been exercised.[28] The exercise of improper pressure and undue influence must be supported by substantial evidence that it was actually exercised.[29]

Finally, We quote with approval the observation of the respondent court -

"There is likewise no question as to the due execution of the subject Will. To Our minds, the most authentic proof that deceased had testamentary capacity at the time of the execution of the Will, is the Will itself which according to a report of one of the two expert witnesses (Exhibits X to X-3) reveals the existence of significant handwriting characteristics such as:

'1. Spontaneity, freedom, and speed of writing.

x x x x x x x x

'3. good line quality.

'4. presence of natural variation. x x x.' (Exhibit X).

The characteristics of spontaneity, freedom and good line quality could not be achieved by the testatrix if it was true that she was indeed of unsound mind and/or under undue influence or improper pressure when she executed the Will."

IN VIEW OF THE FOREGOING CONSIDERATIONS, the petition is DENIED for lack of merit with costs against petitioner. The decision of respondent court dated August 29, 1986 affirming in toto the decision of the Regional Trial Court of Manila dated March 21, 1985 is hereby declared to be immediately executory.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Griño-Aquino, JJ., concur.

[1] Penned by Associate Justice Segundino G. Chua concurred in by Associate Justices Jose A.R. Melo and Nathanael P. de Pano, Jr.

[2] Penned by Judge Ricarte M. Togonon.

[3] Pages 146-147, Record on Appeal.

[4] Pages 7-10, Record on Appeal.

[5] Page 12, Supra.

[6] Page 15, Supra.

[7] Pages 19-21, Supra.

[8] Page 110, Rollo.

[9] Page 84, Supra.

[10] Page 92, Supra.

[11] Page 96, Rollo.

[12] Page 102, Rollo.

[13] Page 91, Rollo.

[14] Estrella v. Zamora, 5 Phil. 415; Coombs v. Santos, 24 Phil. 446; Cortes v. Co Bun Kim, 90 Phil. 167; Vaswani v. Tarachand Bros., 110 Phil. 521.

[15] Toribio v. Decasa, 55 Phil. 461. See also Samson v. CA, 141 SCRA 194.

[16] U.S. v. Luzon, 4 Phil. 343; Mortera de Eceiza v. West of Scotland Insurance office, 36 Phil. 994; Jose v. CA, 70 SCRA 252.

[17] Aldeguer v. Hoskyn, 2 Phil. 500, Garcia v. Doncillo, 53 Phil. 682.

[18] Pages 325-328, Rollo.

[19] Valdez v. Jugo, 74 Phil. 49; "Y" Shipping Corp. v. Erispe, 20 SCRA 1; Lonaria v. De Guzman, 21 SCRA 349.

[20] Art. 838, Civil Code.

[21] Art. 811. In the probate of a holographic will, it shall be necessary that at least one witness who knows the handwriting and signature of the testator explicitly declare that the will and the signature are in the handwriting of the testator. If the will is contested, at least three of such witnesses shall be required.

[22] Sec. 11, Rule 76.” x x x

If a holographic will is contested, the same shall be allowed if at least three (3) witnesses who know the handwriting of the testator explicitly declare that the will and the signature are in the handwriting of the testator; in the absence of any competent witnesses, and if the court deem it necessary, expert testimony may be resorted to.”

[23] Alsua - Betts v. CA, 92 SCRA 332.

[24] 45 Phil. 216.

[25] Pecson v. Coronel, supra.

[26] Icasiano v. Icasiano, 11 SCRA 427 citing In re Butalid, 10 Phil. 27, Bugnao v. Ubag, 14 Phil. 163, Pecson v. Coronel, supra.

[27] Icasiano v. Icasiano, supra.

[28] Ozaeta v. Cuartero, L-5597, 31 May 1956, 99 Phil. 1041.

[29] Ibid; Teotico v. Del Val, 13 SCRA 406.

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