

**IN RE ESTATE OF MARIA CRISTINA G. CALDERON. BASILISA
SALTERAS, POTENCIANA DE LA CRUZ, IN THEIR OWN BEHALF, AND
BENIGNO CALDERON, AS THE NATURAL GUARDIAN OF THE MINORS
MARIA AND ...**

G.R. No. 7856. December 26, 1913

Ponente: TORRES, J.

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TORRES, J.:

The appeals in this case were made by the attorneys for Basilisa Salteras, Potenciana de la Cruz and Benigno Calderon, the latter as the natural guardian of the minors Maria and Josefa Calderon, and also by counsel for Mauro Sulat, Encarnacion Gutierrez Calderon, Benigno Calderon, and Calixto Salteras, from the order of December 6, 1911, which directed that the administrator be authorized to make a conveyance of the property, classed as urban, consisting of a house and lot situated on Calle Anloague, Binondo, and designated, under the old numeration, as No. 29, and under the new, as No. 173, to Petronila Eugenio, in accordance with the petition of Ramon Fabie, who is made a party by the order.

The questions involved in these proceedings are those as to how and in what manner the provisions made by the testator, the deceased Miguel Fabie, in clause 12 of his will, should be complied with, and as to who are the legatees that should receive pro rata the legacy specified in the said clause, a literal copy of which is as follows:

"Clause. 12. I declare it to be my will that my property on Calle Anloague, No. 173, mentioned under the letters C and H in the third clause of this my testament, in order that as a legacy of mine to my wife, under the condition that, with its net revenue, she shall care for, educate and assist, during her widowhood, the children of our servants and the two children of D. Lucas y Eugenio who are also in this house in the character of proteges, named Filomena and Joaquin, minors and orphans by loss of their mother; and I authorize and charge my wife to provide in her will that she may make after my death, that her testamentary executors shall deliver this aforesaid property on Calle Anloague, as an inheritance from her, to the person or persons who may have assisted and cared for her during her widowhood until her death. If the persons who may have served her should be from different families, I charge her testamentary executors, in order to avoid disagreements among such persons, publicly or privately to sell the said property on Calle Anloague immediately after her death and to divide in equal shares the net proceeds derived thereby. If through involuntary negligence my wife and legatee should be unable to make a will after my death, or if for any other cause she should not fulfill the charge I impose upon her in this twelfth clause, it is my will that it be complied with and fulfilled by my brother, Ramon Fabie, or, in his default, by his heirs, his sons named Serafin and Jose and surnamed Fabie."

Article 675 of the Civil Code prescribes as follows with regard to the interpretation of wills:

"Every testamentary provision shall be understood in the literal meaning of its words, unless it clearly appears that the will of the testator was different. In case of doubt, that which appears most in accordance with the intention of the testator, according to the tenor of the same will, shall be observed.

"A testator cannot prohibit the contest of his will in the cases in which there exists nullity specified by law."

A uniform rule has been set down by the supreme court of Spain, with respect to the construction and application of the said article of the Civil Code, also in force in that kingdom, in several of its decisions, among them that of May 24, 1882, where it says: That the will of the testator is the first and principal law in the matter of testaments, and when it is clearly and precisely expressed the decision of the questions argued at trial, relative to its execution and fulfillment, must be in accord with it as construed from the plain and literal meaning of the testator's words, except when it may certainly appear that his intention was different from that literally expressed. This same rule was reaffirmed in the decisions of May 8, 1901, October 8, 1902, and January 14, 1903.

In the preinserted clause of the said will of the deceased Fabie it appears explicitly ordered by the testator that, after the death of his wife Maria Cristina Calderon, the legatee of the usufruct of the property situated at No. 173 Calle Anloague, now Juan Luna, the said property should be delivered to the person or persons who may have served and cared for his aforementioned wife during her widowhood until her death; and it is also provided therein by the testator that, in case the said legatee of the revenues of the property referred to should not in her will direct the delivery of such property to the legatee or legatees indicated, as in fact she did not do, then the testator's will, relative to the delivery of the said property to the person or persons who may have served and cared for his widow until her death, should be fulfilled by his brother Ramon Fabie, or, in the event of his failure or default, by this brother's sons, Serafin and Jose, surnamed Fabie.

The testator's will, as recorded in the above clause 12, is so clear and definite that, in order duly to comply therewith, it needs but be determined who are the persons that must be considered as the legatees on account of their having served and cared for the testator's widow until her death.

From a due examination of the evidence, taken at trial on the petition of the appellants, who appeared and claimed a share in the aforementioned estate and legacy,, it is concluded that those entitled thereto are Encarnacion Gutierrez Calderon, Filomena Calderon, Potenciana de la Cruz, Basilisa Salteras, Candida Reyes, Benita Garcia, Maria and Josefa Calderon, and Petronila Eugenio, and so the trial judge also held in his order of September 23, 1911, except with respect to the little girls Maria and Josef a Calderon, whom he considered to be too young to have been able to serve the widow Maria Cristina Calderon as domestics; but the record shows that these children, as the widow's proteges, lived in her house until her death and, sometimes the one and sometimes the other, used to accompany her, even when she went to church, and that, although they were minors, they could have rendered the widow assistance and services sufficient and proportionate to their respective ages; and we are of the opinion that, from the testator's intention as expressed in his will, it is undeniable that the assistance and services rendered to the widow, required as a condition for meriting the legacy in question, were sufficient to the needs and conveniences of the testator's widow in respect to the many chores in the house, and enough to fill the requirements of a woman sickly and infirm in her already advanced age. The company of obliging and obedient little girls is usually more agreeable and useful to elderly and sick persons than that of adults.

With the report of the testator's brother, Ramon Fabie, the testator's will is not legally fulfilled, and it is not just that the other persons, besides Petronila Eugenio, who rendered services to and assisted the widow Maria Cristina Calderon should be deprived of the proportionate share of the legacy to which they are entitled.

Petronila Eugenio was already in the house serving the wife of the testator while the latter was still living, and had he seen that Petronila alone could serve and attend her during the widowhood of his wife and that the latter would not need other servants, he would have bequeathed the whole of the said house to Petronila; and if the deceased Miguel Fabie provided in his will that the property should be delivered to the person or persons who should render useful services to and assist his widow until her death, it was because he knew and was aware that there were other servants in the house, and evidently imposed this condition in order that those who were servants there might continue as such until his wife's death. Since some of them did do so, as proven by the record, the law must

be fulfilled in accordance with the tenor of the last will of the testator.

For the foregoing reasons we reverse the order of December 6, 1911, and declare that Petronila Eugenio, Filomena Calderon, Encarnacion Gutierrez Calderon, Potenciana de la Cruz, Basilisa Salteras, Candida Reyes, Benita Garcia, Maria Calderon, and Josef a Calderon are entitled to receive pro rata the sale value of the property situated at No. 173, formerly No. 29, Calle Anloague, now Juan Luna. No special finding is made as to costs.

Johnson, Carson, Moreland, and Trent, JJ., concur.

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