

TRINIDAD NEYRA, PLAINTIFF AND APPELLANT, VS. ENCARNACION NEYRA, DEFENDANT AND APPELLEE.

CA-G.R. No. 8075. March 25, 1946

Ponente: DE JOYA, J.

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DE JOYA, J.:

On October 25, 1939, Trinidad Neyra filed a complaint against her sister, Encarnacion Neyra, in the Court of First Instance of the City of Manila, for the recovery of one-half (1/2) of the property mentioned and described therein, which had been left by their deceased father, Severo Neyra, and which had been previously divided equally between the two extrajudicially, demanding at the same time one-half (1/2) of the rents collected on the said property by the defendant Encarnacion Neyra.

The defendant filed an answer admitting that the property mentioned and described therein was community property, and at the same time set up counterclaims amounting to over P1,000, for money spent, during the last illness of their father, and for money loaned to the plaintiff.

After the trial of the case, the court found that the plaintiff was really entitled to one-half (1/2) of the said property, adjudicating the same to her, but at the same time ordered said plaintiff to pay to the defendant the sum of P727.77, plus interests, by virtue of said counter claims.

Plaintiff Trinidad Neyra appealed from the said decision, to the Court of Appeals for Manila, alleging several errors, attacking the execution and validity of said agreement; and on November 10, 1942, said appeal was dismissed, pursuant to an agreement or compromise entered into by the parties, as shown by the corresponding document, dated November 3, 1942, which was filed in the case the following day, November 4, 1942.

In the meanwhile, Encarnacion Neyra, who had been sickly for about two years, unexpectedly died, on November 4, 1942, at the age of 48, allegedly from heart attack, as a consequence of Addison's disease from which, it was claimed, she had been suffering for sometime.

In view of the decision of the Court of Appeals, dated November 10, 1942, dismissing the appeal, by virtue of said agreement or compromise, Atty. Lucio Javillonar, claiming to represent Encarnacion Neyra, who had died since November 4, 1942, and other relatives of hers, filed a petition, dated November 23, 1942, asking for the reconsideration of said decision of the Court of Appeals, dismissing the appeal, claiming that the alleged compromise or agreement, dated November 3, 1942, could not have been understood by Encarnacion Neyra, as she was already then at the threshold of death, and that as a matter of fact she died the following day; and that if it had been signed at all by said Encarnacion Neyra, her thumb mark appearing on said document must have been affixed thereto by Trinidad Neyra's attorney, against Encarnacion's will; and that the court had no more jurisdiction over the case, when the alleged agreement was filed on November 4, 1942, at the instance of Trinidad Neyra, as Encarnacion was already dead at the time.

The principal question to be decided, in connection with said petition for reconsideration, is whether or not said

compromise or agreement had been legally executed and signed by Encarnacion Neyra, on November 3, 1942. Trinidad Neyra maintains the affirmative.

The voluminous evidence, testimonial and documentary, adduced by the parties, in this case, has fully established the following facts:

That Severo Neyra died intestate in the City of Manila, on May 6, 1938, leaving certain properties and two children, by his first marriage, named Encarnacion Neyra and Trinidad Neyra, and other children by his second marriage; that after the death of Severo Neyra, the two sisters, Encarnacion Neyra and Trinidad Neyra, had serious misunderstandings, in connection with the proper-ties left by their deceased father, and so serious were their dissensions that, after March 31, 1939, they had two litigations in the Court of First Instance of Manila, concerning said properties. In the first case, filed on March 31, 1939, Trinidad Neyra and others demanded from Encarnacion Neyra and others the annulment of the sale of the property located at No. 366 Raon Street, Manila, which was finally decided in favor of the defendants, in the court of first instance, and in the Court of Appeals, on December 21, 1943 (G. R. No. 8162) ; and the second is the instant case.

That Encarnacion Neyra, who had remained single, and who had no longer any ascendants, executed a will on September 14, 1939, marked Exhibit 16, disposing of her properties in favor of the "Congregation de Religiosas de la Virgen Maria" and her other relatives, named Teodora Neyra, Pilar de Guzman and Maria Jacobo Vda. de Blanco, making no provision whatsoever in said will, in faivor of her only sister of the whole blood, Trinidad Neyra, who had become her bitter enemy; that when the said will was brought to the attention of the authorities of said Congregation, after due deliberation and consideration, said religious organization declined the bounty offered by Encarnacion Neyra, and said decision of the Congregation was duly communicated to her; that in order to overcome the difficulties encountered by said religious organization in not accepting the generosity of Encarnacion Neyra, the latter decided to make a new will, and for that purpose, about one week before her death, sent for Atty. Ricardo Sikat. and gave him instructions for the preparation of a new will; that Atty. Sikat, instead of preparing a new will, merely prepared a draft of a codicil, amending said will, dated September 14, 1939, again naming said religious organization, among others, as beneficiary, and said draft of a codicil was also forwarded to the authorities of said religious organization, for their consideration and acceptance; but it was also rejected.

In the meanwhile, Encarnacion Neyra had become seriously ill, suffering from Addison's disease, and on October 31, 1942, she sent for her religious adviser and confessor, Mons. Vicente Fernandez of the Quiapo Church to make confession, after which she requested that holy mass be celebrated in her house at No. 366 Raon Street. City of Manila, so that she might take holy communion: that Mons. Fernandez caused the necessary arrangements to be made, and, as a matter of fact, on November 1, 1942. holy mass was solemnized in hdf house by Father Teodoro Garcia, also of the Quiapo Church, on which occasion, Encarnacion Neyra, who remained in bed, took holy communion; that after the mass, Father Garcia talked to Encarnacion Neyra and advised reconciliation between the two sisters, Encarnacion and Trinidad Neyra. Encarnacion accepted said advise and, at about noon of the same day (November 1, 1942), sent Eustaquio Mendoza to fetch her sister Trinidad, who came at about 2.30 that same afternoon; that the two sisters greeted each other in a most affectionate manner, and became reconciled and the two had a long and cordial conversation, in the course of which they also talked about the properties left by then1 father and their litigations which had reached the Court of Appeals for the City of Manila, the instant case being the second, and they agreed to have the latter dismissed, on the condition that the property involved therein should be given exclusively to Trinidad Neyra, that the latter should waive her share in the rents of said property collected by Encarnacion, and that Trinidad had no more indebtedness to Encarnacion. They also agreed to send for Atty. Alejandro M. Panis, to prepare the necessary document embodying the said agreement, but Attorney Panis could come only in the afternoon of the following day, November 2, 1942, when Encarnacion

gave him instructions for the preparation of the document embodying their agreement, and other instructions for the preparation of her last will and testament; that Attorney Panis prepared said document of compromise as well as the new will and testament, naming Trinidad Neyra and Eustaquio Mendoza beneficiaries therein, pursuant to Encarnacion's express instructions, and the two documents were prepared, in duplicate, and were ready for signature, since the morning of November 3, 1942; that in the afternoon of that day, November 3, 1942, Attorney Panis read said document of compromise and last will and testament to Encarnacion Neyra, slowly and in a loud voice, in the presence of Father Teodoro Garcia, Dr. Moises B. Abad, Dr. Eladio Aldecoa, Trinidad Neyra, and others, after which he asked her if their terms were in accordance with her wishes, or if she wanted any change made in said documents; that Encarnacion Neyra did not suggest any change, and asked for the pad and the two documents, and, with the help of a son of Trinidad, placed her thumb mark at the foot of each one of the two documents, in duplicate, on her bed in the sala, in the presence of the attesting witnesses, Dr. Moises B. Abad, Dr. Eladio R. Aldecoa and Atty. Alejandro M. Panis, after which said witnesses signed at the foot of the will, in the presence of Encarnacion Neyra, and of each other. The agreement was also signed by Trinidad Neyra, as party, and by Dr. M. B. Abad and Eustaquio Mendoza, a protege, as witnesses.

Father Teodoro Garcia was also present at the signing of the two documents, at the request of Encarnacion Neyra.

The foregoing facts have been established by the witnesses presented by Trinidad Neyra, who are all trustworthy men, and who had absolutely no interest in the final out-come of this case. Two of them are ministers of the Gospel, while three of the attesting witnesses are professional men of irreproachable character, who had known and seen and actually talked to the testatrix.

Petitioner Teodora Neyra, half sister of Encarnacion, and her young daughter Ceferina de la Cruz, and Presentacion Blanco, daughter of petitioner Maria Jacobo Vda. de Blanco, substantially corroborated the testimony of the witnesses presented by Trinidad Neyra, with reference to the signing of documents, in the bedroom of Encarnacion Neyra, in the afternoon of November 3, 1942.

Teodora Neyra, Presentacion Blanco and Ceferina de la Cruz testified, however, that when the thumb mark of Encarnacion Neyra was affixed to the agreement in question, dated November 3, 1942, she was sleeping on her bed in the sala; and that the attesting witnesses were not present, as they were in the caida.

But Ceferina de la Cruz also stated that the attesting witnesses signed the documents thumb marked by Encarnacion Neyra, in the sola near her bed, thus contradicting herself and Teodora Neyra and Presentacion Blanco.

Strange to say, Teodora Neyra, Presentacion Blanco and Ceferina de la Cruz also testified that Encarnacion Neyra's thumb mark was affixed to the will, only in the morning of November 4, 1942, by Trinidad Neyra and one Udefonso del Barrio, when Encarnacion was already dead.

The testimony of Dr. Dionisio Parulan, alleged medical expert, as to the nature and effects of Addison's disease, is absolutely unreliable. He had never seen or talked to the testatrix Encarnacion Neyra.

According to medical authorities, persons suffering from Addison's disease often live as long as ten (10) years, while others die after a few weeks only, and that as the disease progresses, asthenia sets in, and from 80 per cent to 90 per cent of the patients develop tuberculosis, and complications of the heart also appear. (Cecil, Textbook of Medicine, 3d ed., 1935, pp. 1250-1253; McCrae, Osier's Modern Medicine, 3d ed., Vol. V, pp. 272-279.)

And it has been conclusively shown that Encarnacion Neyra died on November 4, 1942, due to a heart attack, at the age of 48, after an illness of about two (2) years.

In connection with mental capacity, in several cases, this court has considered the testimony of witnesses, who had known and talked to the testators, more trustworthy than the testimony of alleged medical experts.

Insomnia, in spite of the testimony of two doctors, who testified for the opponents to the probate of a will, to the effect that it tended to destroy mental capacity, was held not to affect the full possession of the mental faculties deemed necessary and sufficient for its execution. (*Caguioa vs. Calderon*, 20 Phil., 400.) The testatrix was held to have been *compos mentis*, in spite of the physician's testimony to the contrary, to the effect that she was very weak, being in the third or last stage of tuberculosis. (*Yap Tua vs. Yap Ca Kuan and Yap Ca Liu*, 27 Phil., 579.)

The testimony of the attending physician that the deceased was suffering from diabetes and had been in a comatose condition for several days, prior to his death, was held not sufficient to establish testamentary incapacity, in view of the positive statement of several credible witnesses that he was conscious and able to understand what was said to him and to communicate his desires. (*Samson vs. Corrales Tan Quintin*, 44 Phil., 573.) Where the mind of the testator is in perfectly sound condition, neither old age, nor ill health, nor the fact that somebody had to guide his hand in order that he might sign, is sufficient to invalidate his will. (*Amata and Almojuela vs. Tablizo*, 48 Phil., 485.)

Where it appears that a few hours and also a few days after the execution of the will, the testator intelligently and intelligibly conversed with other persons, although lying down and unable to move or stand up unassisted, but could still effect the sale of property belonging to him, these circumstances show that the testator was in a perfectly sound mental condition at the time of the execution of the will. (*Amata and Almojuela vs. Tablizo*, 48 Phil., 485.)

Presentacion Blanco, in the course of her cross-examination, frankly admitted that, in the morning and also at about 6 o'clock in the afternoon of November 3, 1942, Encarnacion Neyra talked to her and that they understood each other clearly, thus showing that the testatrix was really of sound mind, at the time of signing and execution of the agreement and will in question.

It may, therefore, be reasonably concluded that the mental faculties of persons suffering from Addison's disease, like the testatrix in this case, remain unimpaired, partly due to the fact that, on account of the sleep they enjoy, they necessarily receive the benefit of physical and mental rest. And that like patients suffering from tuberculosis, insomnia or diabetes, they preserve their mental faculties until the moments of their death.

Judging by the authorities above cited, the logical conclusion is that Encarnacion Neyra was of sound mind and possessed the necessary testamentary and mental capacity, at the time of the execution of the agreement and will, dated November 3, 1942.

The contention that the attesting witnesses were not present, at the time Encarnacion Neyra thumbmarked the agreement and will in question, on her bed, in the sala of the house, as they were allegedly in the *caida*, is untenable. It has been fully shown that said witnesses were present, at the time of the signing and execution of the agreement and will in question, in the sala, where the testatrix was lying on her bed. The true test is not whether they actually saw each other, at the time of the signing of the documents, but whether they might have seen each other sign, had they chosen to do so; and the attesting witnesses actually saw it all in this case. (*Jaboneta vs. Gustilo*, 5 Phil., 541.) And the thumbmark placed by the testatrix on the agreement and will in question is equivalent to her signature. (*Yap Tua vs. Yap Ca Kuan and Yap Ca Liu*, 27 Phil., 579.)

Teodora Neyra and her principal witnesses are all interested parties, as they are children of legatees named in the will, dated September 14, 1939, but eliminated from the will, dated November 3, 1942.

Furthermore, the testimony of Teodora Neyra and her witnesses, to the effect that there could have been no

re-conciliation between the two sisters, and that the thumb-mark of Encarnacion Neyra was affixed to the document embodying the agreement, while she was sleeping, on November 3, 1942, in their presence; and that her thumbmark was affixed to the will in question, when she was already dead, in the morning of November 4, 1942, within their view, is absolutely devoid of any semblance of truth. Said testimony is contrary to common sense. It violates all sense of proportion. Teodora Neyra and her witnesses could not have told the truth; they have testified to deliberate falsehoods; and they are, therefore, absolutely unworthy of belief. And to the evidence of the petitioners is completely applicable the legal aphorism—*falsus in uno, falsus in omnibus*. (Gonzalez vs. Mauricio, 53 Phil., 7T.6 735.)

To show the alleged improbability of reconciliation, and the execution of the two documents, dated November 3, 1942, petitioners have erroneously placed great emphasis on the fact that, up to October 31, 1942, the two sisters Encarnacion and Trinidad Neyra were bitter enemies. They were banking evidently on the common belief that the hatred of relatives is the most violent. Terrible indeed are the feuds of relatives and difficult the reconciliation; and yet not impossible. They had forgotten that Encarnacion Neyra was a religious woman instructed in the ancient virtues of Christian faith, and hope and charity, and that to forgive is a divine attribute. They had also forgotten that there could be no more sublime love than that embalmed in tears, as in the case of a reconciliation.

It was most natural that there should have been reconciliation between the two sisters, Encarnacion and Trinidad Neyra, as the latter is the nearest relative of the former, her only sister of the whole blood. The approach of imminent death must have evoked in her the tenderest recollections of family life. And believing perhaps that her little triumphs had not always brought her happiness, and that she had not always been just to her sister, who had been demanding insistently what was her due, Encarnacion finally decided upon reconciliation, as she did not want to go to her eternal rest, with hatred in her heart or wrath upon her head. It was, therefore, most logical that Encarnacion should make Trinidad the beneficiary of her generosity, under her last will and testament, and end all her troubles with her, by executing said agreement, and thus depart in perfect peace from the scenes of her earthly labors.

It having been shown that the said compromise or agreement had been legally signed and executed by Encarnacion Neyra on November 3, 1942, in the presence of credible and trustworthy witnesses, and that she was *compos mentis* and possessed the necessary testamentary and mental capacity at the time; the petition for reconsideration filed by Atty. Lucio Javillonar, on November 23, 1942, on behalf of a client, Encarnacion Neyra, who had been dead since November 4, 1942, and some of her relatives, who have appeared, in accordance with the provisions of section 17 of Rule 3 of the Rules of Court, is hereby denied; and the decision, of the Court of Appeals for Manila, dated November 10, 1942, dismissing the appeal, is hereby re-affirmed, without costs. So ordered.

Ozaeta, Perfecto, Hilado, and Bengzon, JJ., concur.

Petition denied; decision of Court of Appeals of November 10, 1942, re-affirmed.

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