

ASUNCION NABLE JOSE ET AL., PLAINTIFFS AND APPELLANTS, VS. MARIA IGNACIA USON ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 8927. March 10, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

The question involved in this appeal arises from the interpretation of the first and second clauses of a codicil to the will of Filomena Uson. They read as follows:

"First. I declare that all the property which belongs to me as conjugal property, referred to in my said testament, shall be the property of my aforesaid husband, Don Rafael Sison; in case all or part of said property exists at my husband's death, it is my will that at his death my sisters and nieces hereinafter named succeed him as heirs.

"Second. I declare to be my sisters in lawful wedlock the persons named Dona Antonia Uson, now deceased, who has left two daughters called Maria Rosario, widow, and Maria Paz, unmarried; Maria Romualda Uson, widow of Estanislao Lengson; Ignacia Uson, married to Don Vicente Puzon; Eufemia Uson, now deceased, who is survived by three daughters called Maria Salud, Maria Amparo, and Maria Asuncion; and Maria Pilar Uson; Maria Manaoag Uson, unmarried, issue had by our deceased father Don Daniel Uson with one Leonarda Fernandez, alias Andao de Lingayen, so that they may have and enjoy it in equal parts as good sisters and relatives."

The court below found that the children of the deceased sisters should take only that portion which their respective mothers would have taken if they had been alive at the time the will was made; that the property should be divided into six equal parts corresponding to the number of sisters; that each living sister should take one-sixth, and the children of each deceased sister should also take one-sixth, each one-sixth to be divided among said children equally.

This appeal is taken from the judgment entered upon that finding, appellants asserting that under a proper construction of the paragraphs of the codicil above-quoted the property should be divided equally between the living sisters and the children of the deceased sisters, share and share alike, a niece taking the same share that a sister receives.

We are of the opinion that the appellants' contention is well founded. We see no words or phrases in the clauses quoted which lead necessarily to the construction placed upon those paragraphs by the learned court below. On the other hand, we find expressions which seem to indicate with fair clearness that it was the intention of the testatrix to divide her property equally between her sisters and nieces. The court below based its construction upon the theory that the other construction would be "an admission that the testatrix desired to favor her deceased sister Eufemia Uson, who left three children, more than her other deceased sister Antonia Uson, who left two children, and moreover both would be more favored than any of the other four surviving sisters, one of whom was married at the time of the execution of the said codicil-and without doubt had children."

As we look at the codicil we observe, first, that the testatrix, in the first paragraph thereof, declares that after her husband's death she desires that "my sisters and nieces, as hereinafter named, shall succeed him as heirs."

We note, in the second place, that the testatrix, in the second paragraph of the codicil, names and identifies each one of her heirs then living, or each one of the persons whom she desires shall succeed her husband in the property. Among those mentioned specifically are the nieces as well as the sisters. The nieces are referred to in no way different from the sisters. Each one stands out in the second paragraph of the codicil as clearly as the other and under exactly the same conditions.

In the third place, we note, with interest, the last clause of the second paragraph of the codicil which, it seems, to us, taken together with the last clause of the first paragraph of the codicil, is decisive of the intention of the testatrix. In the last clause she says that she names all of the persons whom she desires to take under her will by name "so that they may take and enjoy the property in equal parts as good sisters and relatives."

We have then in the first paragraph a declaration as to who the testatrix desires shall become the owners of her property on the death of her husband. Among them we find the names of the nieces as well as of the sisters. We have also the final declaration of the testatrix that she desires that the sisters and nieces shall take and enjoy the property in equal parts. That being so, it appears to us that the testatrix's intention is fairly clear, so clear in fact that it is unnecessary to bring in extraneous arguments to reach a conclusion as to what she intended.

The judgment appealed from is hereby modified by declaring that, of the property passing under the codicil herein-above referred to, the living sisters and the children of the deceased sisters shall take per capita and in equal parts, and as so modified the judgment is affirmed. No costs in this instance.

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

Trent, J., dissents.

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