44 Phil. 573

[G.R. No. 19142. March 05, 1923]

IN THE MATTER OF THE ESTATE OF MARIANO CORRALES TAN, DECEASED. FLAVIANA SAMSON, PETITIONER AND APPELLEE, VS. VICENTE CORRALES TAN QUINTIN, OPPOSITOR AND APPELLANT.

D E C I S I O N

OSTRAND, J.:

This is an appeal from an order of the Court of First Instance of Manila admitting to probate a document alleged to be the last will and testament of the deceased Mariano Corrales Tan. There is no direct evidence as to the interest of the oppositor-appellant in the estate in question, though it may, perhaps, be inferred from the testimony of his wife Maximina Ong that he is the son of the deceased.

In his answer to the petition for probate he alleges, in substance, that the will is incomplete and fraudulent and does not express the true intent of the testator; that the testator acted under duress and under undue influence, and that at the time of the execution of the will he was not of sound and disposing mind.

We do not think the opponent has succeeded in proving any of his allegations. There is no evidence whatever showing that the testator acted under duress or undue influence and the only question of fact which we need consider is whether the testator was of sound and disposing mind when the document in question was executed.

Upon this point the testimony of Dr. Tee Han Kee, the attending physician, as a witness for the opposition, is to the effect that the deceased was suffering from diabetes and had been in a comatose condition for several days prior to his death. He died about eight or nine o’clock in the evening of December 26, 1921,

and the will is alleged to have been executed in the forenoon of the same day. Counsel for the appellant, in his well-prepared brief, argues ably and vigorously that *coma* implies complete unconsciousness, and that the testator, therefore, could not at that time have been in possession of his mental faculties and have executed a will. There are, however, varying degrees of *coma* and in its lighter forms the patient may be aroused and have lucid intervals. Such seems to have been the case here. Doctor Tee Han Kee, the opponent's principal witness, who visited the deceased in the evening of December 25th, says he then *seemed* to be in a state of *coma* and that in the forenoon of December 26th, when the doctor again visited him, he was in "the same state of *coma*." Maximina Ong, the wife of the opponent, the only other witness for the opposition, states that on December 26th the deceased could not talk and did not recognize anyone. But all the witnesses presented by the petitioner, five in number, testify that the deceased was conscious, could hear and understand what was said to him and was able to indicate his desires. Four of these witnesses state that he could speak distinctly; the fifth, Velhagen, says that the deceased only moved his head in answer to questions.

That the deceased was in an exceedingly feeble condition at the time the will was executed is evident, but if the witnesses presented in support of the petition told the truth there can be no doubt that he was of sound mind and capable of making his will. And we see no reason to discredit any of these witnesses; the discrepancies found between their respective versions of what took place at the execution of the document are comparatively unimportant and so far from weakening their testimony rather lend strength to it by indicating the absence of any conspiracy among them.

As against their testimony we have only the testimony of Maximina Ong and Dr. Tee Han Kee. The former is not a disinterested witness. As to the testimony of the latter it is sufficient to say that mere professional speculation cannot prevail over the positive statements of five apparently credible witnesses whose testimony does not in itself seem unreasonable.

There is no direct evidence in the record showing that the publication of the time and place of the hearing of the petition for probate has been made as provided for in section 630 of the Code of Civil Procedure and the appellant argues that the court below erred in admitting the will to probate without proof

of such publication. This question not having been raised in the court below will not be considered here.

Section 630 of the Code of Civil Procedure, speaking of hearings for the probate of wills, also provides that "At the hearing all testimony shall be taken under oath, reduced to writing and signed by the witnesses" and the appellant maintains that the transcript of the testimony of the witness Dr. N. M. Saleeby, not having been signed by the witness, the testimony should have been excluded.

There is no merit in this contention. When, as in this case, the testimony is taken by the stenographer of the court and certified to by him, the provision quoted can only be regarded as directory and a failure to observe the provision will not render the testimony inadmissible. (Reese *vs*. Nolan, 99 Ala., 203.)

The order appealed from is affirmed, with the costs against the appellant. So ordered.

Araullo, C.J., Street, Malcolm, Avanceña, Villamor, Johns, and *Romualdez, JJ.,* concur.

Date created: October 04, 2018