

46 Phil. 750

[ G.R. No. 19079. January 15, 1923 ]

**PRIMITIVO GONZALEZ Y LAUREL, APPLICANT AND APPELLEE, VS. JOVITA LAUREL Y TAPIA, OPPONENT AND APPELLANT.**

**D E C I S I O N**

**ROMUALDEZ, J.:**

By an order dated December 16, 1921, the Court of First Instance of Batangas allowed the document, Exhibit A, to probate as the last will and testament of the deceased Maria Tapia, thus granting the petition of Primitivo L. Gonzalez and overruling the opposition presented by Jovita Laurel.

Jovita Laurel now appeals to this court from that ruling of the court below, alleging that that court erred:

“1. In holding that Exhibit A, the supposed will of the deceased Maria Tapia y Castillo, was executed with the solemnities prescribed by the law, notwithstanding that there was no proof of the dialect known by the said deceased and of the fact that it was the same in which said Exhibit A was written.

“2. In not holding that the signatures of Maria Tapia appearing in said Exhibit A had been obtained through deceit, surprise, fraud, and in an illegal and improper manner.

“3. In not finding that said Exhibit A was obtained through unlawful pressure, influence and machinations of the applicant, Primitivo L. Gonzalez, one of the legatees, in connivance with Attorney Modesto Castillo.

“4. In not finding that the deceased Maria Tapia was physically and mentally incapacitated at the time she is said to have executed Exhibit A.

“5. In declaring said Exhibit A valid and authentic and allowing it to probate as the will and testament of the deceased Maria Tapia y Castillo.”

Concerning the first error assigned, it appears that the deceased Maria Tapia was a resident of the Province of Batangas, a Tagalog region, where said deceased had had real properties for several years. It also appears that she requested Modesto Castillo to draw her will in Tagalog. From the record taken as a whole, a presumption arises that said Maria Tapia knew the Tagalog dialect, which presumption is now conclusive for not having been overthrown nor rebutted.

The three following errors have reference to the question whether or not the testatrix acted voluntarily and with full knowledge in executing and signing the will. The preponderance of evidence in this respect is that said document was executed and signed by Maria Tapia voluntarily and with full knowledge, without fraud, deceit, surprise, or undue influence or machinations of anybody, she being then mentally capacitated and free. Such is the fact established by the evidence, which we have carefully examined.

In connection with the evidence, our attention was called to an irreconcilable conflict between the transcript of an answer of the witness Primitivo L. Gonzalez, presented by the appellant as “Annex 1” to his motion filed in this court (fol. 16 of the *Rollo*), and the official transcript, in that while said answer is “*Yes, sir,*” according to the transcript of the appellant, it is “*Certainly, that is not true,*” according to the official transcript of the stenographic notes attached to the record. But it is to be noted that at the continuation of the hearing held on a subsequent date, in which said witness Primitivo L. Gonzalez was examined on this contradiction, he said in the course of the rebuttal evidence of the applicant: “*No, sir. I did not answer in that way. I did not take her hand to make her sign. I did not by any means answer that question to that effect. I very well remember that fact, because it affects much the probate of the will.*” (Fols. 56 and 57 of transcript and documentary evidence.)

It appearing from the record that the document Exhibit A is the will of the

deceased Maria Tapia, executed with all the formalities and solemnities required by the law, the trial court did not commit any error in admitting it to probate.

For the purposes of this decision, we deem it unnecessary to pass upon the question raised by the appellee as to whether or not this appeal was perfected within the time fixed by the law.

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

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

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