46 Phil. 71

**[ G.R. No. 17627. June 08, 1922 ]**

**IN RE WILL OF MARCELO JOCSON, DECEASED. RAFAEL JOCSON ET AL., PETITIONERS AND APPELLEES, VS. ROSAURO JOCSON ET AL., OPPONENTS AND APPELLANTS.**

**VILLAMOR, J.:**

On June 10, 1920, Rafael Jocson, Cirilo Manlaque, and Filomena Goza presented a petition in the court below for the probate of the document Exhibit A, as the last will and testament of the deceased Marcelo Jocson. This petition was opposed by Rosauro, Asuncion, and Dominga Jocson, alleging that: (*a*) The supposed will was not the last will of the deceased, and the signatures appearing thereon, and which are said to be of the testator, are not authentic; (*b*) the testator, that is, the deceased, was not of sound mind and was seriously ill at the time of its execution; and (*c*) the supposed will was not executed in accordance with the law.

After trial the lower court rendered decision finding, among other things, as follows:

> "For all of the foregoing reasons the court finds that some hours before, during and one hour after, the execution of his will, Marcelo Jocson was of sound mind; that he dictated his will in Visaya, his own dialect; that he signed his will in the presence of three witnesses at the bottom, and on each of the left margins of the three sheets in which it was written; that said three witnesses signed the will in the presence of the testator and of each other, all of which requirements make the document Exhibit A a valid will, in accordance with the provision of section 618 of the Code of Civil Procedure, as amended by Act No. 2645.
>
> "By virtue thereof, it is adjudged and decreed that the document Exhibit A is the last will and testament of the deceased Marcelo Jocson, and it is ordered that the same be admitted to probate, and Rafael Jocson is hereby appointed administrator of the estate left by said deceased, upon the filing of a bond in the

> sum of fifteen thousand pesos (P15,000).”

The appellants allege that the trial court erred in holding that Exhibit A is the last will and testament of the deceased Marcelo Jocson, and in ordering and decreeing the probate thereof as his last will.

All the arguments advanced by the appellants tend to show that the testator Marcelo Jocson, at the time of executing the will, did not have the mental capacity necessary therefor; that said will was not signed by the witnesses in the presence of the testator; that the witnesses did not sign the will in the presence of each other, and that the attestation of the supposed will does not state that the witnesses signed in the presence of the testator.

All of these points raised by the appellants were discussed at length by the trial court upon the evidence introduced by the parties. After an examination of said evidence, we are of the opinion, and so hold, that the findings made by the trial court upon the aforesaid points are supported by the preponderance of evidence.

We have noticed certain conflicts between the declarations of the witnesses on some details prior to, and simultaneous with, the execution of the will, but to our mind such discrepancies are not sufficient to raise any doubt as to the veracity of their testimony. In the case of Bugnao *vs.* Ubag (14 Phil., 163), it was held:

> “While a number of contradictions in the testimony of alleged subscribing witnesses to a will as to the circumstances under which it was executed, or a single contradiction as to a particular incident to which the attention of such witnesses must have been directed, may in certain cases justify the conclusion that the alleged witnesses were not present, together, at the time when the alleged will was executed, a mere lapse of memory on the part of one of these witnesses as to the precise details of an unimportant incident, to which his attention was not directed, does not necessarily put in doubt the truth and veracity of the testimony in support of the execution of the will.”

As to the mental capacity of the testator at the time of executing his will, the finding of the trial court that the testator was of sound mind at the time of dictating and signing his will is supported by the evidence. This court, in the case of Bagtas *vs.* Paguio (22 Phil., 227), held:

> "To constitute a sound mind and disposing memory it is not necessary that the mind shall be wholly unbroken, unimpaired, and unshattered by disease or otherwise, or that the testator be in full possession of all his reasoning faculties. Failure of memory is not sufficient unless it be total or extends to his immediate family or property."

And in Bugnao *vs.* Ubag, *supra*, it was declared:

> "Proof of the existence of all the elements in the following definition of testamentary capacity, which has frequently been adopted in the United States, held sufficient to establish the existence of such capacity in the absence of proof of very exceptional circumstances: 'Testamentary capacity is the capacity to comprehend the nature of the transaction in which the testator is engaged at the time, to recollect the property to be disposed of and the persons who would naturally be supposed to have claims upon the testator, and to comprehend the manner in which the instrument will distribute his property among the objects of his bounty.' "

Whether or not the witnesses signed the will in the presence of the testator and whether or not they signed in the presence of each other, are questions of fact that must be decided in accordance with the evidence. The trial judge, who tried this case and saw and heard the witnesses while testifying, held that these solemnities were complied with at the execution of the will in question and we find no reason for altering his conclusions.

The objection to the attestation of Exhibit A is groundless if the terms thereof are considered, which, translated from the Visayan dialect, in which the will was written, into English, says:

> "We, witnesses, do hereby state that the document written on each side of the three sheets of paper was executed, acknowledged, signed, and published by the testator above-named, Marcelo Jocson, who declared that it was his last will and testament in our presence and, at his request and all of us being present, we signed our names on the three sheets of paper as witnesses to this will in the presence of each other." (Translation of Exhibit A, page 18, documentary evidence.)

The judgment appealed from is affirmed with the costs against the appellants. So ordered.

*Araullo, C. J., Malcolm, Avancena, Ostrand,* and *Romualdez, JJ.,* concur.

*Judgment affirmed.*

---

Date created: November 25, 2014