6 Phil. 254

[G.R. No. 2696. May 05, 1906]

SIXTO TIMBOL Y MANALO, PLAINTIFF AND APPELLEE, VS. JANUARIA MANALO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

On the 17th of May, 1898, and at about 10 o'clock a. m., Adolfo Garcia Feijoo, a resident attorney and notary public of the town of San Fernando, Province of Pampanga, by request of the party interested was called to the house of Sixto Timbol, in the barrio of Santo Rosario of the town of Angeles, Pampanga, for the purpose of taking the acknowledgment of Cesarea Manalo y Manalo, a resident of Angeles, and the mother of the plaintiff, Sixto Timbol, to her last will and testament which contained an inventory of the property belonging to the testatrix and wherein she named the said Sixto Timbol as one of her heirs. Timbol was also appointed as executor of the said will, without bond, and given full power to do all things necessary in connection with the execution of its provisions, the testatrix declaring that any prior or subsequent will executed by her which did not comply with the legal requirements should be considered null and void. The will in question was attested by the witnesses Eugenio Ayuyao, Ignaeio Sugay, and Pablo Torres. Sugay interpreted the will into Pampango and Torres signed the will at the request of the testatrix who could not write.

A copy of the aforesaid will bearing the seal and signature of the notary public of the Province of Pampanga was presented to the Court of First Instance of said province for probate. Counsel for januaria, Alejandra, Lino Lacson, and Sinforoso Manalo objected, to its being admitted to probate. The witnesses to the said will were duly examined; the evidence was taken in the presence of the appellants and the court rendered its decision April 4, 1905, declaring that the will in question had been duly executed in accordance with the law which was in force in these Islands prior to the enactment of the Code of Civil Procedure and admitted the same to probate as the last will and testament of the deceased, Cesarea

Manalo y Manalo and issued letters of administration to Sixto Timbol, executor under the will. The contestants were ordered to pay the costs. One of them, Lino Lacson, appealed from the said judgment to this court.

This case relates, as is seen, to the probate of a certain will executed by Cesarea Manalo y Manalo, now deceased, on the 17th of May, 1898, before a notary public for the Province of Pampanga during the Spanish regime in these Islands in the presence of three attesting witnesses, the original of which said will should have been in the protocol of the said notary public from whom the aforesaid executor, Sixto Timbol, obtained the copy bearing his signature and official seal and which copy follows page 52 of the record of the Supreme Court, in this case.

According to the assignment of errors attached to the special proceedings in the matter of the probate of the will herein referred to, two questions are raised by this appeal, to wit: Whether the said will inserted in pages 2 to 7 of the record, was executed in accordance with the provisions of the Civil Code, and whether, under the provisions of the Code of Civil Procedure, the will alleged to have been left by the deceased Cesarea Manalo y. Manalo can be admitted to probate.

The will referred to was executed three years before the new Code of Civil Procedure went into effect. There is nothing in the said code which makes it retroactive and, therefore, in order to determine whether the will is valid we must inquire whether the same was executed in accordance with the law in force at the time of its execution, and in order to enforce its provisions it is necessary to comply with the provisions of section 617 of the Code of Civil Procedure, since the new law requires that a will must be admitted to probate before the estate can be administered and settled.

The will in question, as will be noted, is a nuncupative or open will and seems to have been executed in accordance with the provisions of articles 694, 695, and 699 of the Civil Code—that is, in the presence of a notary public duly authorized by law such as Adolfo Garcia Feijoo, who was then a notary public of that province, and in the presence of three competent witnesses, residents of the same place, who saw the testatrix, witnessed the execution of the will, and understood everything she said to the notary public in regard to her last will. The will further contains the place, year, month, day, and hour of its execution and it is recited therein that after being drawn up it was read to the testatrix in the presence of the witnesses, by one of whom it was interpreted to her; that one of the witnesses signed for the testatrix because she was unable to sign her name; that the will

was executed at one time, without interruption; that the notary was acquainted with the testatrix; that she had legal capacity to execute the same, she being in the full enjoyment of her mental faculties, and that all the other solemnities required by law in the execution of wills were complied with.

It was also proved that the notary in question went to the house of the testatrix in the barrio of Rosario, town of Angeles, Pampanga, at about 10 o'clock in the morning of the 17th of May, 1898, at the request of Eleuterio Paras by order of the testatrix; that the witnessesy Eugenio Ayuyao, Pablo Torres, and Ignacio Sugay, also called at the request of the testratrix, arrived shortly afterwards; that half an hour after dinner they began to draw up the will and finished its execution at half past 3 in the afternoon ; that according to the witnesses the testatrix stated to the notary what her last will was through the witness Eugenio Ayuyao, who acted as interpreter, and that after the will was completed it was read in the presence of all and it was signed by all the witnesses, one of whom signed for the testatrix, the will being thereafter signed by all who were present as well as by the notary, who signed in the presence of the others, all of whom then left the house of the testatrix.

Article 1221 of the Civil Code provides:

> "Should the original instrument, the protocol, and the original record have disappeared, the following shall constitute evidence:
>
> "1. First copies made by the public official who authenticated them.
>
> "2. Subsequent copies issued by virtue of a judicial mandate, after citing the persons interested.
>
> "3. Those which, without a judicial mandate, may have been taken in the presence of the persons interested and with their consent.
>
> "In the absence of the said copies, any other copies, thirty or more years old, shall be evidence, provided they have been taken from the original by the official who authenticated them or by any other in charge of their custody.
>
> "Copies less than thirty years old, or which may be authenticated by a public official, in which the circumstances mentioned in the preceding paragraph do not concur, shall serve only as a basis of written evidence. * * *"

The value of a copy of an instrument as evidence depends upon whether the original instrument has been lost or not, whatever the cause of the loss might have been. It will be sufficient to show either by a statement or a certificate to that effect from the official who had the custody of the protocol or by any other accepted means of proof that the original was lost.

In the case at bar, it was proved that the protocols and archives of the notary public of Pampanga were lost. We must, therefore, give legal force to the copy of the said will presented by the executor which, although not as old as that contemplated in paragraph 5 of article 122i of the Civil Code, appears to be, however, an authenticated copy of its original, certified to by the same notary before whom the will was executed, the said copy bearing the notary's official seal. It has not been shown that the copy in question is inexact or not authentic, and, as written evidence, corroborated as it is by the uniform testimony of the attesting witnesses who testified as to the correctness and authenticity of the said copy and of the notary's signature, it furnishes the most complete proof of the fact that Cesarea Manalo executed the will in the terms set forth in the said copy, those who opposed the probate of the will having failed to show that the testatrix was unable to execute the same or that the copy submitted to the court as aforesaid was not authentic.

As to the objections urged by the appellant in this court in regard to the said will, it will be noted that the notary certifies therein that all the formalities required for the execution of an open will ,were complied with.

As a matter of fact, it appears at the bottom of the will that, the testatrix being unable to sign, the witness, Pablo Torres, signed the same for her and in her name. Assuming that the testatrix could not understand or speak the Spanish language, and that in expressing her last will to the notary she had to do so in the Pampanga dialect through the witness, Ayuyao, who acted as interpreter and that the statements made by the notary in the Spanish language were interpreted to her in the Pampanga dialect, and it being ah undisputed fact that the three attesting witnesses to the will were "Pampangas" and residents of that place who were naturally acquainted with their own dialect there is no doubt that the intervention of an interpreter was not necessary; since the three witnesses in question understood the dialect and must have known what the testatrix wished stated in the will, the contents of which were subsequently ratified in their presence they were able to judge then whether the provisions of the will were correct or not. (Art. 681 of the Civil Code.) The hour at which the execution of the will was commenced is of. little or no importance. It is immaterial that it was commenced at 10 or half past 10 o'clock in the morning since it has been proved that it

was completed at half past 3 in the afternoon—that is to say, that the will was executed, including the preparatory work, between 10 o'clock in the morning and half past 3 in the afternoon of the 17th of May, 1898.

It appears from the testimony of the witnesses for both parties that Cesarea Manalo died some time after the execution of her will and there is nothing in the record to the contrary.

There being no legal ground upon which to disallow the said will, it becomes necessary to affirm the judgment of the trial court allowing the same to probate.

Section 617 of the Code of Civil Procedure provides:

> "A will executed by a Spaniard, or a resident of the Philippine Islands, before the date on which this act shall come into force shall be valid and allowed, if duly executed in accordance with the laws before that date prevailing in the Philippine Islands relating to the execution of wills, whether such will be an open will or a sealed will, or one termed a verbal will under that law, but such will must be established and the estate administered in accordance with the provisions of this code."

It having been conclusively shown that the will in question was duly executed in accordance with the provisions of the Civil Code, and it not appearing that the same has been revoked in any manner authorized by article 737 *et seq*. of the Civil Code, or by the provisions of section 623 of the Code of Civil Procedure, it should be admitted to probate in accordance with the provision's of the latter code.

Aside from the fact that the due execution of the will in question was proved fully and satisfactorily, the copy thereof herein presented is the best evidence of its existence. The law does not require a certified copy. The copy in question contains a literal recital of the original which was lost. It bears every evidence of authenticity and legitimacy. Its execution has been further confirmed by the testimony of the three attesting witnesses who were present at the time the will was being drawn and who signed the same. (Sees. 321 and 324 of the Code of Civil Procedure.)

For the foregoing reasons we are of the opinion that the judgment of the trial court, dated April 4, 1905, should be and is hereby affirmed, with costs against the appellants. After the expiration of twenty days let final judgment be entered accordingly and the case be

remanded to the trial court for proper action. So ordered.

Arellano, C. J., Mapa, Carson, and *Willard, JJ.,* concur.

Date created: April 30, 2014