1 Phil. 689

[G.R. No. 857. February 10, 1903]

EULALIO HERNAEZ, PLAINTIFF AND APPELLANT, VS. ROSENDO HEBNAEZ; DEFENDANT AND APPELLEE.

D E C I S I O N

ARELLANO C.J.:

The subject of this action is the will executed by Dofia Juana Espinosa, widow of Don Pedro Hernaez, on December 5, 1894, in Bacolod, Island of Negros, before a notary public, and three witnesses, and with the aid of an interpreter, the testatrix not understanding Spanish. In this will the principal dispositions are those relative to the legacy of the third part of the hereditary estate of free disposal, which the testatrix leaves to her eldest son, Rosendo, to the betterment of the other third made in favor of this same son, and the distribution of the remaining third in six equal parts among her five children, Rosendo, Domingo, Magdalena, Mateo, and Eulalio Hernaez y Espinosa, and her two granddaughters, Peregrina and Victorina Parapa y Hernaez, in representation of their deceased mother, Clara Hernaez y Espinosa.

The plaintiff is one of the sons of the testatrix and the complaint has not been acquiesced in by Magdalena Hernaez y Espinosa nor Peregrina and Victorina Parapa y Hernaez, whose consent plaintiff sought to obtain.

The action brought is for the annulment of the will upon the ground: (1) of the incapacity of the testatrix; (2) the incapacity of the notary, attesting witnesses, and the interpreter; and (3) a substantial formal defect in the will. The incapacity of the testatrix according to the complaint is alleged to consist in this: That on the 5th of December, 1894, she was over 80 years of age and was so ill that three days before she had received the sacraments and extreme unction, and that two days afterwards she died; and that prior thereto she walked in a stooping attitude, and gave contradictory orders, as a result of her senile debility. The incapacity of the notary in that he did not understand the Visayan dialect, the language of

the testatrix. The incapacity of the attesting witnesses is supposed to consist in their not having a perfect knowledge of Spanish, and the incapacity of the interpreter in that he was an amanuensis of the notary and was the person who wrote out the will. The substantial formal defect of the will is supposed to consist in the fact that two physicians were not present to certify to the sanity of the testatrix at the time of its execution, and the absence of two interpreters to translate the will, because executed in a foreign language.

These are briefly, the grounds upon which the action for the annulment of the will rests, and these were the issues raised at the trial. The evidence introduced bears upon the issues above stated to which alone the decision of the court must be limited.

For the purpose of proving the mental incapacity of the testatrix the plaintiff introduced oral testimony and expert evidence; the oral testimony was for the purpose of proving the following facts: That the testatrix on the 5th day of December, 1894, was so ill that she could not speak; that by reason of her age she walked in a stooping position and gave contradictory orders. The priest who was with her during the last hours of her life was called to testify that on the 3d day of the same month and year he had administered the sacraments to her, and that the patient was at that time so seriously ill that he scarcely understood her when she spoke. The expert witnesses were called to testify upon the question propounded: "Could an octogenarian in the pathological condition peculiar to that age possess sufficient mental faculties to permit her to dispose of her property *causa mortis*?" The result of the oral evidence is that the testimony of the four witnesses called has proven one fact, which is, that the testatrix toward the end of her life walked in a stooping position. The first witness, Isidora de la Torre, affirmed that three days before her death she was very ill but answered questions which were addressed her, and only one witness, Ambrosia Sotsing, testified that four days before the death of the testatrix she had been to see the latter and that she could not speak then because she was suffering from fainting fits, this witness being the only one who testified that the testatrix had given contrary orders. These four witnesses are, respectively, 78, 75, 60, and 57 years of age. The priest, D. Nicolas Alba, stated that he had administered the sacraments to the testatrix before the execution of the will but was unable to remember the day; that he understood her then when she spoke and that the testatrix frequently confessed even when not feeling seriously ill, and that when sick she was accustomed to confess in her house (this point is confirmed by the witness Sotsing who testified that she had been to see the testatrix three times and that on all three of these occasions the communion had been administered to her); that when he confessed her some days before the execution of the will he had also administered the extreme unction on account of her advanced age; that at that time she was

in the enjoyment of her mental faculties but the Avitness could not state whether she preserved them up to the moment of her death, he not being present when this occurred. The expert evidence introduced by the testimony of Dr. Lope de la Rama gave the following result: That if the organs are intact the physiological functions are perfectly performed, and that consequently some men before reaching the age of decrepitude lose their mental faculties by the weakening of the brain, either as the result of illness or of abuses, while others preserve their understanding to a very advanced age. It is unnecessary to pass upon the oral evidence introduced by the defendant; the documentary evidence (record, p. 38) shows that the testatrix did not die two days after the execution of her will. The will was executed on the 5th and her death occurred on the 12th of December, 1894.

It is sufficient to state that neither from the facts elicited by the interrogatories nor the documents presented with the complaint can the conclusion be reached that the testatrix was deprived of her mental faculties. The fact that an old woman gives contradictory orders, that she walks in a stooping position, that she has fainting fits, that she received the sacraments some days before making her will, are circumstances which even if fully demonstrated by proof could not lead the court to establish a conclusion contrary to the mental soundness of a person who is to be presumed to be in the full enjoyment of the mental faculties until the contrary is conclusively proven. The notary in compliance with the requirements of article 695 of the Civil Code certifies that in his judgment the testatrix had the necessary legal capacity and the use of the necessary mental faculties for the purposes of the execution of the will. "The Code might have adopted either one of two systems [with respect to the mental capacity of the testator—that of establishing as a general rule the presumption of soundness of the mental faculties until the contrary be proven, or that of presuming mental weakness in the absence of proof that the act was performed while the mental faculties were in their normal condition. Under the first presumption a will made should be declared valid in all cases, in the absence of evidence to the contrary. Under the second it would have to be considered as void upon the presumption that it was executed by a person demented, unless the contrary is shown. The Code has adopted the first system as being the most rational, by accepting the principle that mental soundness is always to be presumed with respect to a person who has not been previously incapacitated until the contrary is demonstrated and proven by the proper person and the correctness of this choice is beyond doubt; in the meantime the intervention of the notary and the witnesses constitutes a true guaranty of the capacity of the testator, by reason of their knowledge of the matter. (Manresa, Commentaries, vol. 5, p.344.)

It has at no time been regarded as a ground for the annulment of a public instrument

executed before a notary public by a native of these Islands, ignorant of Spanish, that the notary was not acquainted with the dialect of the party executing the same. If this officer, upon whom the law imposes the obligation of drawing the instrument in the official language, that is, Castilian, does not know the dialect he can avail himself of an interpreter in accordance with the provisions of the law itself; hence the fact that the notary who legalized the will in question did not know the Visayan dialect spoken by the testatrix is by no means an argument in favor of the nullity of this public instrument, nor has it been for the nullity of any one of the long series of instruments executed before Spanish notaries, and even Filipino notaries, unacquainted with the dialect or dialects of the locality in which they performed their duties or the special dialect of the party. With respect to the attesting witnesses it has been fully proven by the manner in which they testified at the trial, "without the necessity of an interpreter," as to those called as witnesses and by conclusive evidence as to the deceased attesting witness whose signature and competency have been completely established, that they knew the dialect of the testatrix in accordance with section 5, article 681, of the Civil Code, and also understood Spanish. As alleged, but not proven, their knowledge of the latter language may not have been perfect, but this does not make them incompetent, nor is it a ground for annulment. Finally, the prohibition of article 681, section 8, is not applicable to the interpreter, of whose services the notary availed himself for the execution, drafting, and legalization of the will, for the simple reason that it does not refer to the interpreter but the witnesses, and there is nothing to authorize the extensive interpretation attempted to be made of its precepts.

The presence of two physicians, as required in the case covered by article 665, was not necessary. "This precept refers clearly and expressly to the conditions which, must be complied with in order that a demented person may make a will by availing himself of a lucid interval, and is entirely distinct from the cases governed by article 685 when the testator has not been declared demented." (Judgment of June 10, 1897.)

Had anyone observed any incapacity in the testatrix some time before it would have been easy to have taken the proper steps to obtain a declaration of this status of incapacity in accordance with the provisions of the Civil Code, and then, after a legal declaration of this condition, she could not have executed a will unless two physicians had certified that at the time of her examination she was in the enjoyment of a lucid interval; but there was no necessity of waiting for a lucid interval when the constant condition was that of lucidity.

Nor was it necessary that two interpreters be present as required by article 684 of the Civil Code. This is a requisite for the execution of a will in a foreign language, and neither by the

letter nor by the purpose of this article could it be required with regard to the will in question. Not by the letter, because neither the testatrix nor the notary expressed themselves in a foreign language. Neither the Castilian spoken by the notary nor the Visayan spoken by the testatrix are foreign languages. Nor is the case within the purpose of the law. "The prior laws had not provided for the execution of a will by a foreigner in his own language. Such a case could not arise under the old law because the right to make a will being one inherent in citizenship they systematically denied to the foreigner the exercise of that right. The execution of a will being at the present time based upon natural right, the foreigner is entitled equally with the citizen to make a will. Although it is true that foreigners, under international law, can make a will before the consuls of their nation, it is none the less true that they do not always make their wills in a town in which an accredited consul resides. For all these reasons it was necessary to provide by law for a special form for the will of the foreigner who might be ignorant of the Spanish language and yet have occasion to make a will. The form which the law has adopted satisfies the most exigent spirit, for the presence of two interpreters, the fact that the will is recorded in a public instrument in both languages, and that it is signed by all wjio take part in the act are the most efficacious guarantees against fraud and bad faith." (Falcon, 3 Civil Code, p. 94.) Text writers discuss the application of article 684 to a will executed in one of the local idioms of Spain, considering them to be on the same footing as a foreign language in a place in which Castilian is the tongue spoken or understood; but we have no occasion to enter into this discussion, the legal sense and constant practice observed in these Islands being sufficient.

Upon these grounds we hold that judgment must be for the defendant, declaring the will executed by Dona Juana Espinosa on the 5th of. December, 1894, to be valid and efficacious, without special imposition of costs.

So ordered.

Torres, Cooper, Willard, and *Ladd, JJ.,* concur.

Mapa, J., disqualified.

Date created: April 14, 2014