549 Phil. 908

FIRST DIVISION

[G.R. NO. 174144, April 17, 2007]

BELLA A. GUERRERO, PETITIONER, VS. RESURRECCION A. BIHIS, RESPONDENT.

D E C I S I O N

CORONA, J.:

The Scriptures tell the story of the brothers Jacob and Esau[1], siblings who fought bitterly over the inheritance of their father Isaac's estate. Jurisprudence is also replete with cases involving acrimonious conflicts between brothers and sisters over successional rights. This case is no exception.

On February 19, 1994, Felisa Tamio de Buenaventura, mother of petitioner Bella A. Guerrero and respondent Resurreccion A. Bihis, died at the Metropolitan Hospital in Tondo, Manila.

On May 24, 1994, petitioner filed a petition for the probate of the last will and testament of the decedent in Branch 95[2] of the Regional Trial Court of Quezon City where the case was docketed as Sp. Proc. No. Q-94-20661.

The petition alleged the following: petitioner was named as executrix in the decedent's will and she was legally qualified to act as such; the decedent was a citizen of the Philippines at the time of her death; at the time of the execution of the will, the testatrix was 79 years old, of sound and disposing mind, not acting under duress, fraud or undue influence and was capacitated to dispose of her estate by will.

Respondent opposed her elder sister's petition on the following grounds: the will was not executed and attested as required by law; its attestation clause and acknowledgment did not comply with the requirements of the law; the signature of the testatrix was procured by fraud and petitioner and her children procured the will through undue and improper pressure and influence.

In an order dated November 9, 1994, the trial court appointed petitioner as special administratrix of the decedent's estate. Respondent opposed petitioner's appointment but subsequently withdrew her opposition. Petitioner took her oath as temporary special administratrix and letters of special administration were issued to her.

On January 17, 2000, after petitioner presented her evidence, respondent filed a demurrer thereto alleging that petitioner's evidence failed to establish that the decedent's will complied with Articles 804 and 805 of the Civil Code.

In a resolution dated July 6, 2001, the trial court denied the probate of the will

ruling that Article 806 of the Civil Code was not complied with because the will was "acknowledged" by the testatrix and the witnesses at the testatrix's, residence at No. 40 Kanlaon Street, Quezon City before Atty. Macario O. Directo who was a commissioned notary public for and in Caloocan City. The dispositive portion of the resolution read:

> WHEREFORE, in view of the foregoing, the Court finds, and so declares that it cannot admit the last will and testament of the late Felisa Tamio de Buenaventura to probate for the reasons hereinabove discussed and also in accordance with Article 839 [of the Civil Code] which provides that if the formalities required by law have not been complied with, the will shall be disallowed. In view thereof, the Court shall henceforth proceed with intestate succession in regard to the estate of the deceased Felisa Tamio de Buenaventura in accordance with Article 960 of the [Civil Code], to wit: "Art. 960. Legal or intestate succession takes place: (1) If a person dies without a will, or with a void will, or one which has subsequently lost its validity, xxx."
>
> SO ORDERED.[3]

Petitioner elevated the case to the Court of Appeals but the appellate court dismissed the appeal and affirmed the resolution of the trial court.[4]

Thus, this petition.[5]

Petitioner admits that the will was acknowledged by the testatrix and the witnesses at the testatrix's residence in Quezon City before Atty. Directo and that, at that time, Atty. Directo was a commissioned notary public for and in Caloocan City. She, however, asserts that the fact that the notary public was acting outside his territorial jurisdiction did not affect the validity of the notarial will.

Did the will "acknowledged" by the testatrix and the instrumental witnesses before a notary public acting outside the place of his commission satisfy the requirement under Article 806 of the Civil Code? It did not.

Article 806 of the Civil Code provides:

> ART. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court.

One of the formalities required by law in connection with the execution of a notarial will is that it must be acknowledged before a notary public by the testator and the witnesses.[6] This formal requirement is one of the indispensable requisites for the validity of a will.[7] In other words, a notarial will that is not acknowledged before a notary public by the testator and the instrumental witnesses is void and cannot be accepted for probate.

An acknowledgment is the act of one who has executed a deed in going before some competent officer and declaring it to be his act or deed.[8] In the case of a notarial will, that competent officer is the notary public.

The acknowledgment of a notarial will coerces the testator and the instrumental witnesses to declare before an officer of the law, the notary public, that they executed and subscribed to the will as their own free act or deed.[9] Such declaration is under oath and under pain of perjury, thus paving the way for the criminal prosecution of persons who participate in the execution of spurious wills, or those executed without the free consent of the testator.[10] It also provides a further degree of assurance that the testator is of a certain mindset in making the testamentary dispositions to the persons instituted as heirs or designated as devisees or legatees in the will.[11]

Acknowledgment can only be made before a competent officer, that is, a lawyer duly commissioned as a notary public.

In this connection, the relevant provisions of the Notarial Law provide:

> SECTION 237. *Form of commission for notary public.* -The appointment of a notary public shall be in writing, signed by the judge, and substantially in the following form:
>
> GOVERNMENT OF THE
> REPUBLIC OF THE PHILIPPINES
> PROVINCE OF _____
>
> This is to certify that _____, of the municipality of _____ in said province, was on the ___ day of _____, anno Domini nineteen hundred and _____, appointed by me a notary public, **within and for the said province,** for the term ending on the first day of January, anno Domini nineteen hundred and _____.
>
> _____
> Judge of the Court of
> irst Instance[12] of said
> Province
>
> xxx xxx xxx
>
> SECTION 240. Territorial jurisdiction. - The jurisdiction of a notary public in a province shall be co-extensive with the province. The jurisdiction of a notary public in the City of Manila shall be co-extensive with said city. **No notary shall possess authority to do any notarial act beyond the limits of his jurisdiction.** (emphases supplied)

A notary public's commission is the grant of authority in his favor to perform notarial acts.[13] It is issued "within and for" a particular territorial jurisdiction and the notary public's authority is co-extensive with it. In other words, a notary public is authorized to perform notarial acts, including the taking of acknowledgments, within that territorial jurisdiction only. *Outside the place of his commission, he is bereft of power to perform any notarial act; he is not a notary public.* Any notarial act outside the limits of his jurisdiction has no force and effect. As this Court categorically pronounced in Tecson v. Tecson:[14]