

OF WILLS AND SUCCESSION by Atty. Angelo M. Cabrera

PROBATE OF WILLS EXECUTED ABROAD

Probate is the act of presenting a last will and testament before a competent court for the purpose of having the same approved and allowed before any property can be transferred by way of inheritance. Article 838 of the Civil Code states that, "No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court."

The purpose of probate is to determine whether a person who possessed testamentary capacity executed his last will and testament in accordance with law.

One of the eventual effects of migration is the change in citizenship of a migrant through a process called naturalization. He begins to acquire his new status as a citizen of the host country the moment he takes his oath of citizenship.

What if he still owns pieces of property in the Philippines and bequeaths them through a last will and testament executed in his adopted country? Will the document be required to undergo probate both in his adopted country and the Philippines?

This question is addressed by the following case.

Ramona was a naturalized US Citizen who died single and childless. In her will which was executed in the State of California, she appointed her brother Simeon to be the executor of her will for she had properties in the Philippines and the US.

Ramona's other brother, Emilio, filed a petition for probate with the trial court in Bulacan and asked to be the special administrator of Ramona's estate upon the request of Simeon. The petition was opposed by Ramona's nephews, Mario and Benigno, claiming that Ramona's will cannot be allowed probate in the Philippines because it has yet to be probated in the US, which was the place of execution of the will.

Are Mario and Benigno correct?

NO.

The Supreme Court ruled that, "our laws do not prohibit the probate of wills executed by foreigners abroad although the same have not as yet been probated and allowed in the countries of their execution. A foreign will can be given legal effects in our jurisdiction. Article 816 of the Civil Code states that the will of an alien who is abroad produces effect in the Philippines if made in accordance with the formalities prescribed by the law of the place where he resides, or according to the formalities observed in his country."

Section 1, Rule 73 of the 1997 Rules of Civil Procedure provides that if the decedent is an inhabitant of a foreign country, the RTC of the province where he has an estate may take cognizance of the settlement of such estate. Rule 76 further states that the executor, devisee, or legatee named in the will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed.

Our rules require merely that the petition for the allowance of a will must show, so far as known to the petitioner: (a) the jurisdictional facts; (b) the names, ages, and residences of the heirs, legatees, and devisees of the testator or decedent; (c) the probable value and character of the property of the estate; (d) the name of the person for whom letters are prayed; and (e) if the will has not been delivered to the court, the name of the person having custody of it. Jurisdictional facts refer to the fact of death of the decedent, his residence at the time of his death in the province where the probate court is sitting, or if he is an inhabitant of a foreign country, the estate he left in such province.

Clearly, the rules do not require proof that the foreign will has already been allowed and probated in the country of its execution.

Besides, according to the Supreme Court, Mario and Benigno's stand is fraught with impracticality. If the instituted heirs do not have the means to go abroad for the probate of the will, it is as good as depriving them outright of their inheritance, since our law requires that no will shall pass either real or personal property unless the will has been proved and allowed by the proper court. (G.R. No. 169144, JANUARY 26, 2011)