

## PROBATE

Probate is a judicial process by which a last will and testament is required to be presented to court for approval before its contents can be given effect.

The importance of having a will probated cannot be overemphasized as a last will involves a transmission of properties and/or rights of a deceased person to his heirs. It must therefore be firmly established that a last will was executed in the manner prescribed by law before any property or right could be passed on to the heirs. Absent any probate, there can be no property transmission by virtue of a written instrument, even if said instrument was executed in accordance with law.

What if a will is not probated but one of the heirs goes ahead with the sale of the inherited property on the basis of said written instrument? Would the sale be void.

YES.

This is explained in the following case:

Faustina died single and without children. She left a Holographic (handwritten) Will with her nephews and nieces as heirs. This will though was never probated.

One of the heirs designated in the Holographic Will was Benjamin, who died in 1960 leaving behind a wife and son, Domingo.

In 1975, Domingo sold the 9,000 square meter property bequeathed to his father (Benjamin) in the Holographic Will to Laureano.

When a controversy arose as to the validity of Laureano's title, the Supreme Court held that, at the time the deed of sale was executed, Faustina's will was not yet probated; the object of the contract, the 9,000 square meter property, still formed part of the inheritance of his father from the estate of Faustina; and Domingo had a mere inchoate hereditary right therein. (An inchoate right is based on mere expectancy; one that is contingent on an event).

Thus, the Supreme Court sustained the lower court's ruling that the sale was null and void.

(Note: Instead of having the will probated, the heirs of Faustina decided to give effect to the holographic will by entering into a Deed of Extrajudicial Succession with Partition on August 1, 1994, where the 9,000 square meter property was adjudicated to Domingo. The Supreme Court said that Domingo became the owner of the said property only on August 1, 1994 so he could not have validly sold the property before that date).

*(Based on G.R. No. 188417, September 24, 2012)*