IN THE MATTER OF THE INTESTATE ESTATE OF ANDRES G. DE JESUS AND BIBIANA ROXAS DE JESUS, SIMEON R. ROXAS & PEDRO ROXAS DE JESUS, PETITIONERS, VS. ANDRES R. DE JESUS, JR., RESPOND...

G.R. No. L-38338. January 28, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari to set aside the order of respondent Hon. Jose C. Colayco, Presiding Judge Court of First Instance of Manila, Branch XXI disallowing the probate of the holographic Will of the deceased Bibiana Roxas de Jesus.

The antecedent facts which led to the filing of this petition are undisputed.

After the death of spouses Andres G. de Jesus and Bibiana Roxas de Jesus, Special Proceeding No. 81503 entitled "In the Matter of the Intestate Estate of Andres G. de Jesus and Bibiana Roxas de Jesus" was filed by petitioner Simeon R. Roxas, the brother of the deceased Bibiana Roxas de Jesus.

On March 26, 1973, petitioner Simeon R. Roxas was appointed administrator. After Letters of Administration had been granted to the petitioner, he delivered to the lower court a document purporting to be the holographic Will of the deceased Bibiana Roxas de Jesus.

On May 26, 1973, respondent Judge Jose Colayco set the hearing of the probate of the holographic Will on July 21, 1973.

Petitioner Simeon R. Roxas testified that after his appointment as administrator, he found a notebook belonging to the deceased Bibiana R. de Jesus and that on pages 21, 22, 23 and 24 thereof, a letter-will addressed to her children and entirely written and signed in the handwriting of the deceased Bibiana R. de Jesus was found. The will is dated "FEB./61" and states: "This is my will which I want to be respected although it is not written by a lawyer. x x x”

The testimony of Simeon R. Roxas was corroborated by the testimonies of Pedro Roxas de Jesus and Manuel Roxas de Jesus who likewise testified that the letter dated "FEB. / 61" is the holographic Will of their deceased mother, Bibiana R. de Jesus. Both recognized the handwriting of their mother and positively identified her signature. They further testified that their deceased mother understood English, the language in which the holographic Will is writ-ten, and that the date "FEB. / 61" was the date when said Will was executed by their mother.

Respondent Luz R. Henson, another compulsory heir filed an "opposition to probate" assailing the purported holographic Will of Bibiana R. de Jesus because - (a) it was not executed in accordance with law, (b) it was executed through force, intimidation and/or under duress, undue influence and improper pressure, and (c) the

alleged tes-tatrix acted by mistake and/or did not intend, nor could have intended the said Will to be her last Will and testament at the time of its execution.

On August 24, 1973, respondent Judge Jose C. Colayco issued an order allowing the probate of the holographic Will which he found to have been duly executed in accordance with law.

Respondent Luz Roxas de Jesus filed a motion for reconsideration alleging inter alia that the alleged holographic Will of the deceased Bibiana R. de Jesus was not dated as required by Article 810 of the Civil Code. She contends that the law requires that the Will should contain the day, month, and year of its execution and that this should be strictly complied with.

On December 10, 1973, respondent Judge Colayco reconsidered his earlier order and disallowed the probate of the holographic Will on the ground that the word "dated" has generally been held to include the month, day, and year. The dispositive portion of the order reads:

> "WHEREFORE, the document purporting to be the holographic Will of Bibiana Roxas de Jesus, is hereby disallowed for not having been executed as required by the law. The order of August 24, 1973 is hereby set aside."

The only issue is whether or not the date "FEB. / 61" appearing on the holographic Will of the deceased Bibiana Roxas de Jesus is a valid compliance with the Article 810 of the Civil Code which reads:

> ART. 810. A person may execute a holographic will which must be entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of the Philippines, and need not be witnessed."

The petitioners contend that while Article 685 of the Spanish Civil Code and Article 688 of the Old Civil Code require the testator to state in his holographic Will the "year, month, and day of its execution", the present Civil Code omitted the phrase "Año, mes y dia" and simply requires that the holographic Will should be dated. The petitioners submit that the liberal construction of the holographic Will should prevail.

Respondent Luz Henson on the other hand submits that the purported holographic Will is void for non-compliance with Article 810 of the New Civil Code in that the date must contain the year, month, and day of its execution. The respondent contends that Article 810 of the Civil Code was patterned after Section 1277 of the California Code and Section 1588 of the Louisiana Code whose Supreme Courts had consistently ruled that the required date includes the year, month, and day, and that if any of these is wanting, the holographic Will is invalid. The respondent further contends that the petitioner cannot plead liberal cons-truction of Article 810 of the Civil Code because statutes prescribing the formalities to be observed in the execution of holographic Wills are strictly construed.

We agree with the petitioner.

This will not be the first time that this Court departs from a strict and literal application of the statutory requirements regarding the due execution of Wills. We should not overlook the liberal trend of the Civil Code in the manner of execution of Wills, the purpose of which, in case of doubt is to prevent intestacy -

> "The underlying and fundamental objectives permeating the provisions of the law on wills in this Project consists in the liberalization of the manner of their execution with the end in view of giving the testator more freedom in expressing his last wishes, but with sufficient safeguards and restrictions to prevent the commission of fraud and the exercise of undue and improper pressure and influence upon the testator.
>
> "This objective is in accord with the modern tendency with respect to the formalities in the execution of wills."

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(Report of the Code Commission, p. 103)

In Justice Capistrano's concurring opinion in Heirs of Raymundo Castro v. Bustos (27 SCRA 327) he emphasized that:

> xxx xxx xxx.
> "x x x The law has a tender regard for the will of the testator expressed in his last will and testament on the ground that any disposition made by the testator is better than that which the law can make. For this reason, intestate succession is nothing more than a disposition based upon the presumed will of the decedent."

Thus, the prevailing policy is to require satisfaction of the legal requirements in order to guard against fraud and bad faith but without undue or unnecessary curtailment of testamentary privilege (Icasiano v. Icasiano, 11 SCRA 422). If a Will has been executed in substantial compliance with the formalities of the law, and the possibility of bad faith and fraud in the exercise thereof is obviated, said Will should be admitted to probate (Rey v. Cartagena, 56 Phil. 282). Thus,

> xxx xxx xxx
> "x x x More than anything else, the facts and circumstances of record are to be con-sidered in the application of any given rule. If the surrounding circumstances point to a regular execution of the will, and the instrument appears to have been executed substantially in accordance with the requirements of the law, the inclination should, in the absence of any suggestion of bad faith, forgery or fraud, lean towards its admission to probate, although the document may suffer from some imper-fection of language, or other non-essential defect. x x x" (Leynez v. Leynez, 68 Phil. 745).

If the testator, in executing his Will, attempts to comply with all the requisites, although compliance is not literal, it is sufficient if the objective or purpose sought to be accomplished by such requisite is actually attained by the form followed by the testator.

The purpose of the solemnities surrounding the execution of Wills has been expounded by this Court in Abangan v. Abangan, 40 Phil. 476) where we ruled that:

> "The object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guaranty their truth and authenticity. x x x"

In particular, a complete date is required to provide against such contingencies as that of two competing Wills executed on the same day, or of a testator becoming insane on the day on which a Will was executed (Velasco v. Lopez, 1 Phil. 720). There is no such contingency in this case.

We have carefully reviewed the records of this case and found no evidence of bad faith and fraud in its execution nor was there any substitution of Wills and Testaments. There is no question that the holographic Will of the deceased Bibiana Roxas de Jesus was entirely written, dated, and signed by the testatrix herself and in a language known to her. There is also no question as to its genuineness and due execution. All the children of the testatrix agree on the genuineness of the holographic Will of their mother and that she had the testamentary capacity at the time of the execution of said Will. The objection inter-posed by the oppositor-respondent Luz Henson is that the holographic Will is fatally defective because the date "FEB. / 61" appearing on the holographic Will is not sufficient compliance with Article 810 of the Civil Code. This objection is too technical to be entertained.

As a general rule, the "date" in a holographic Will should include the day, month, and year of its execution. However, when as in the case at bar, there is no appearance of fraud, bad faith, undue influence and pressure and the authenticity of the Will is established and the only issue is whether or not the date "FEB. / 61" appearing on the holographic Will is a valid compliance with Article 810 of the Civil Code, probate of the holographic Will

should be allowed under the principle of substantial compliance.

WHEREFORE, the instant petition is GRANTED. The Order appealed from is REVERSED and SET ASIDE and the order allowing the probate of the holographic Will of the deceased Bibiana Roxas de Jesus is reinstated.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, and De la Fuente, JJ., concur.

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