

**TESTATE ESTATE OF GLICERIA A. DEL ROSARIO, DECEASED,
CONSUELO S. GONZALES VDA. DE PRECILLA,
PETITIONER-ADMINISTRATRIX, VS. SEVERINA NARCISO, ROSA
NARCISO, JOSEFA NARCISO, VICENT...**

G.R. No. L-27200. July 09, 1973

Ponente: BARREDO, J.

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BARREDO, J.:

Motion for reconsideration, this time of the oppositors-appellants, of the resolution of August 18, 1972, setting aside the decision of April 30, 1972 and ordering the remand of this case to the trial court for the reception of further evidence on the question of whether or not the deceased Doña Glicería del Rosario was able to actually read the proposed will, Exhibit D.

Main ground of movants is that there is no need for the remand ordered in the August 18, 1972 resolution because, after all, there is enough proof in the record, independent of the testimony of Dr. Tamesis regarding the alleged in-ability of the deceased to read the will in question, of such incapacity. We have carefully read the motion, but We cannot find therein sufficient support of movants' contention. The evidence alluded to by movants consist merely of the appearance and contents of the purported testament before Us and the testimonies regarding the active participation of Alfonso Precilla, who together with his wife, Consuelo, the proponent in this case, and their children are the most favored beneficiaries there-under, in the preparation thereof, to the extent that he might have prepared it himself. At best, therefore, on the particular issue of fact which has become somehow pivotal as to whether or not the deceased did read the impugned instrument before she signed the same, movants' supposed evidence are purely inferential or circumstantial, not by any means inevitably indicative of the conclusion they purport to prove, for even if it were assumed that Alfonso Precilla did prepare said will and arrange for its execution, these circumstances do not preclude that the same contains the genuine and free desire of the testatrix and that she read and understood the same. As a matter of fact, there is positive evidence presented by the proponent through the statutorily required three attesting witnesses, that she read and signed the will in their presence. These witnesses were believed by His Honor, the trial judge who saw and heard them testify. What is more, that the signa-ture thereon is that of Doña Glicería is not in the least disputed, and nothing has been said against the positive finding in the very decision which movants are relying upon that "The records --- fully establish the fact that the testatrix, Glicería A. del Rosario, during her lifetime executed two wills: one on June 9, 1956 --- and another, dated 29 December 1960, consisting of one page and written in Tagalog, witnessed by Messrs. Vicente Rosales, Francisco Decena, and Francisco Lopez and acknowledged before notary public Remigio M. Trinidad." In other words, everything in the record considered, except the direct evidence as to the eyesight of the testatrix on December 29, 1960, it is not quite accurate to say that the inescapable conclusion to be derived as to the due execution of the will in ques-tion is favorable to movants. Quite on the contrary, it appears to be more reasonable to say that if no further evidence were to be received clarifying or making more definite the technical evidence relative to the testimony of Dr. Tamesis, the direct and positive declaration of the three

attesting witnesses, not being belied by anything substantial indicating the probability of its falsity, should be accorded due consideration. The purpose, therefore, of the remand is not to give the proponent opportunity to complete her evidence, as movants seem to insinuate, but rather to give oppositors all the chances to concretize, if they can, their technical evidence by which alone the weight of the testimonies of the attesting witnesses may perhaps be successfully overthrown.

Incidentally, it may be mentioned that even if oppositors succeed to prove their factual point, the Court would still have to resolve the legal point as to how to apply Article 808 to the facts as they may turn out to be.

WHEREFORE, the subject motion for reconsideration of oppositors-appellants is denied for lack of merit.

Zaldivar, Fernando, Makasiar, Antonio, and Esguerra, JJ., concur.

Makalintal, (Actg. C.J.,) maintains his concurrence with the dissenting opinion of J. J.B.L. Reyes dated Aug. 18, 1972.

Ruiz Castro, J., took no part.

Teehankee, J., concurring opinion of Aug. 18, 1972.

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