

FEDERICO AZAOLA, PETITIONER AND APPELLANT, VS. CESARIO SINGSON, OPPOSITOR AND APPELLEE.

G.R. No. 14003. August 05, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This appeal, taken on points of law from a decision rendered on 15 January 1958 by the Court of First Instance of Quezon City in its Special Proceedings No. Q-2640, involves the determination of the quantity of evidence required for the probate of a holographic will.

The established facts are thus summarized in the decision appealed from (Rec. App. pp. 22-24):

"Briefly speaking, the following facts were established by the petitioner; that on September 9, 1957, Fortunata S. Vda. de Yance died at 13 Luskot, Quezon City, known to be the last residence of said testatrix; that Francisco Azaola, petitioner herein for probate of the holographic will, submitted the said holographic will (Exh. C) whereby Maria Milagros Azaola was made the sole heir as against the nephew of the deceased Cesario Singson; that witness Francisco Azaola testified that he saw the holographic will (Exh. C) one month, more or less, before the death of the testatrix, as the same was handed to him and his wife; that the witness testified also that he recognized all the signatures appearing in the holographic will (Exh. C) as the handwriting of the testatrix and to reinforce said statement, witness presented the mortgage (Exh. E), the special power of attorney (Exh. F), and the general power of attorney (Exh. F-1), besides the deeds of sale (Exhs. G and G-1) including an affidavit (Exh. G-2), and that there were further exhibited in court two residence certificates (Exhs. H and H-1) to show the signatures of the testatrix, for comparison purposes; that said witness, Azaola, testified that the penmanship appearing in the aforesaid documentary evidence is in the handwriting of the testatrix as well as the signatures appearing therein are the signatures of the testatrix; that said witness, in answer to a question of his counsel admitted that the holographic will was handed to him by the testatrix, "apparently it must have been written by her" (t.s.n., p. 11). However, on page 16 on the same transcript of the stenographic notes, when the same witness was asked by counsel if he was familiar with the penmanship and handwriting of the deceased Fortunata Vda. de Yance, he answered positively in the affirmative and when he was asked again whether the penmanship referred to in the previous answer as appearing in the holographic will (Exh. C) was hers (testatrix), he answered, "I would definitely say it is hers"; that it was also established in the proceedings that the assessed value of the property of the deceased in Luskot, Quezon City, is in the amount of P7,000.00."

The opposition to the probate was on the ground that (1) the execution of the will was procured by undue and improper pressure and influence on the part of the petitioner and his wife, and (2) that the testatrix did not seriously intend the instrument to be her last will, and that the same was actually written either on the 5th or 6th day of August 1957 and not on November 20, 1956 as appears on the will.

The probate was denied on the ground that under Article 811 of the Civil Code, the proponent must present three witnesses who could declare that the will and the signature are in the writing of the testatrix, the probate being contested; and because the lone witness presented by the proponent "did not prove sufficiently that the body of the

will was written in the handwriting of the testatrix."

The proponent appealed, urging: first, that he was not bound to produce more than one witness because the will's authenticity was not questioned; and second, that Article 811 does not mandatorily require the production of three witnesses to identify the handwriting and signature of a holographic will, even if its authenticity should be denied by the adverse party.

Article 811 of the Civil Code of the Philippines is to the following effect:

"Art. 811. In the probate of a holographic will, it shall be necessary that at least one witness who knows the handwriting and signature of the testator explicitly declare that the will and the signature are in the handwriting of the testator. If the will is contested, at least three of such witnesses shall be required.

In the absence of any competent witness referred to in the preceding paragraph, and if the court deems it necessary, expert testimony may be resorted to. (691a)"

We agree with the appellant that since the authenticity of the will was not contested, he was not required to produce more than one witness; but even if the genuineness of the holographic will were contested, we are of the opinion that Article 811 of our present Civil Code can not be interpreted as to require the compulsory presentation of three witnesses to identify the handwriting of the testator, under penalty of having the probate denied. Since no witness may have been present at the execution of a holographic will, none being required by law (Art. 810, new Civil Code), it becomes obvious that the existence of witnesses possessing the requisite qualifications is a matter beyond the control of the proponent. For it is not merely a question of finding and producing any three witnesses; they must be witnesses "who know the handwriting and signature of the testator" and who can declare (truthfully, of course, even if the law does not so express) "that the will and the signature are in the handwriting of the testator". There may be no available witness acquainted with the testator's hand; or even if so familiarized, the witnesses may be unwilling to give a positive opinion. Compliance with the rule of paragraph 1 of Article 811 may thus become an impossibility. That is evidently the reason why the second paragraph of Article 811 prescribes that—

"in the absence of any competent witness referred to in the preceding paragraph, and if the court deems it necessary, expert testimony may be resorted to."

As can be seen, the law foresees the possibility that no qualified witness may be found (or what amounts to the same, thing, that no competent witness may be willing to testify to the authenticity of the will), and provides for resort to expert evidence to supply the deficiency.

It may be true that the rule of this article (requiring that three witnesses be presented if the will is contested and only one if no contest is had) was derived from the rule established for ordinary testaments (cf. *Cabang vs. Delfinado*, 45 Phil., 291; *Tolentino vs. Francisco*, 57 Phil., 742). But it can not be ignored that the requirement can be considered mandatory only in the case of ordinary testaments, precisely because the presence of at least three witnesses at the execution of ordinary wills is made by law essential to their validity (Art. 805). Where the will is holographic, no witness need be present (Art. 10), and the rule requiring production of three witnesses must be deemed merely permissive if absurd results are to be avoided.

Again, under Article 811, the resort to expert evidence is conditioned by the words "if the Court deem it necessary", which reveal that what the law deems essential is that the Court should be convinced of the will's authenticity. Where the prescribed number of witnesses is produced and the court is convinced by their testimony that the will is genuine, it may consider it unnecessary to call for expert evidence. On the other hand, if no competent witness is available, or none of those produced is convincing, the Court may still, and in fact it should,

resort to handwriting experts. The duty of the court, in fine, is to exhaust all available lines of inquiry, for the state is as much interested as the proponent that the true intention of the testator be carried into effect.

Commenting on analogous provisions of Article 691 of the Spanish Civil Code of 1889, the noted Commentator, Mucius Scaevola (Vol. 12, 2nd Ed., p. 421), sagely remarks:

"La manera como esta concebida la redaccion del ultimo apartado de dicho precepto induce la conclusion de que siempre o por lo menos, en la mayor parte de los casos, el Juez debe acudir al criterio pericial para que le ilustre acerca de la autenticidad del testamento olografo, aunque ya esten insertas en los autos del expediente las declaraciones testificales. La prudencia con que el Juez debe de proceder en resoluciones de transcendencia asi lo exige, y la indole delicada y peligrosa del testamento olografo, lo hace necesario para mayor garantia de todos los intereses comprometidos en aquel.

En efecto, el cotejo pericial de letras puede ser una confirmacion facultativa del dicho profano de los testigos y un modo de desvanecer las ultimas dudas que pudieran ocurrir al Juez acerca de la autenticidad que trata de averiguar y declarar. Para eso se ha escrito la frase del citado ultimo apartado, (siempre que el Juez lo estime conveniente), haya habido o no testigos y dudaran o no estos respecto de los extremos por que son preguntados.

El arbitrio judicial en este caso debe de formarse con independendencia de los sucesos y de su significacion, para responder debidamente de las resoluciones que haya de dictar."

And because the law leaves it to the trial court to decide if experts are still needed, no unfavourable inference can be drawn from a party's failure to offer expert evidence, until and unless the court expresses dissatisfaction with the testimony of the lay witnesses.

Our conclusion is that the rule of the first paragraph of Article 811 of the Civil Code is merely directory and is not mandatory.

Considering, however, that this is the first occasion in which this Court has been called upon to construe the import of said article, the interest of justice would be better served, in our opinion, by giving the parties ample opportunity to adduce additional evidence, including expert witnesses, should the Court deem them necessary.

In view of the foregoing, the decision appealed from is set aside, and the records ordered remanded to the Court of origin, with instructions to hold a new trial in conformity with this opinion. But evidence already on record shall not be retaken. No costs.

Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.
Paras, C.J., Montemayor, and Endencia, JJ., took no part.

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