

ANTONIO B. BALTAZAR, SEBASTIAN M. BALTAZAR, ANTONIO L. MANGALINDAN, ROSIE M. MATEO, NENITA A. PACHECO, VIRGILIO REGALA, JR., AND RAFAEL TITCO, PETITIONERS, VS. LORENZO LAXA, RES...

G.R. No. 174489. April 07, 2012

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

It is incumbent upon those who oppose the probate of a will to clearly establish that the decedent was not of sound and disposing mind at the time of the execution of said will. Otherwise, the state is duty-bound to give full effect to the wishes of the testator to distribute his estate in the manner provided in his will so long as it is legally tenable.[1]

Before us is a Petition for Review on Certiorari[2] of the June 15, 2006 Decision[3] of the Court of Appeals (CA) in CA-G.R. CV No. 80979 which reversed the September 30, 2003 Decision[4] of the Regional Trial Court (RTC), Branch 52, Guagua, Pampanga in Special Proceedings No. G-1186. The assailed CA Decision granted the petition for probate of the notarial will of Paciencia Regala (Paciencia), to wit:

WHEREFORE, premises considered, finding the appeal to be impressed with merit, the decision in SP. PROC. NO. G-1186 dated 30 September 2003, is hereby SET ASIDE and a new one entered GRANTING the petition for the probate of the will of PACIENCIA REGALA.

SO ORDERED.[5]

Also assailed herein is the August 31, 2006 CA Resolution[6] which denied the Motion for Reconsideration thereto.

Petitioners call us to reverse the CA's assailed Decision and instead affirm the Decision of the RTC which disallowed the notarial will of Paciencia.

Factual Antecedents

Paciencia was a 78 year old spinster when she made her last will and testament entitled "Tauli Nang Bilin o Testamento Miss Paciencia Regala"[7] (Will) in the Pampango dialect on September 13, 1981. The Will, executed in the house of retired Judge Ernestino G. Limpin (Judge Limpin), was read to Paciencia twice. After which, Paciencia expressed in the presence of the instrumental witnesses that the document is her last will and testament. She thereafter affixed her signature at the end of the said document on page 3[8] and then on the left margin of pages 1, 2 and 4 thereof.[9]

The witnesses to the Will were Dra. Maria Lioba A. Limpin (Dra. Limpin), Francisco Garcia (Francisco) and Faustino R. Mercado (Faustino). The three attested to the Will's due execution by affixing their signatures below its attestation clause[10] and on the left margin of pages 1, 2 and 4 thereof,[11] in the presence of Paciencia and of

one another and of Judge Limpin who acted as notary public.

Childless and without any brothers or sisters, Paciencia bequeathed all her properties to respondent Lorenzo R. Laxa (Lorenzo) and his wife Corazon F. Laxa and their children Luna Lorella Laxa and Katherine Ross Laxa, thus:

x x x x

Fourth - In consideration of their valuable services to me since then up to the present by the spouses LORENZO LAXA and CORAZON F. LAXA, I hereby BEQUEATH, CONVEY and GIVE all my properties enumerated in parcels 1 to 5 unto the spouses LORENZO R. LAXA and CORAZON F. LAXA and their children, LUNA LORELLA LAXA and KATHERINE LAXA, and the spouses Lorenzo R. Laxa and Corazon F. Laxa both of legal age, Filipinos, presently residing at Barrio Sta. Monica, [Sasmuan], Pampanga and their children, LUNA LORELLA and KATHERINE ROSS LAXA, who are still not of legal age and living with their parents who would decide to bequeath since they are the children of the spouses;

x x x x

[Sixth] - Should other properties of mine may be discovered aside from the properties mentioned in this last will and testament, I am also bequeathing and giving the same to the spouses Lorenzo R. Laxa and Corazon F. Laxa and their two children and I also command them to offer masses yearly for the repose of my soul and that of D[ña] Nicomeda Regala, Epifania Regala and their spouses and with respect to the fishpond situated at San Antonio, I likewise command to fulfill the wishes of D[ña] Nicomeda Regala in accordance with her testament as stated in my testament. x x x[12]

The filial relationship of Lorenzo with Paciencia remains undisputed. Lorenzo is Paciencia's nephew whom she treated as her own son. Conversely, Lorenzo came to know and treated Paciencia as his own mother.[13] Paciencia lived with Lorenzo's family in Sasmuan, Pampanga and it was she who raised and cared for Lorenzo since his birth. Six days after the execution of the Will or on September 19, 1981, Paciencia left for the United States of America (USA). There, she resided with Lorenzo and his family until her death on January 4, 1996.

In the interim, the Will remained in the custody of Judge Limpin.

More than four years after the death of Paciencia or on April 27, 2000, Lorenzo filed a petition[14] with the RTC of Guagua, Pampanga for the probate of the Will of Paciencia and for the issuance of Letters of Administration in his favor, docketed as Special Proceedings No. G-1186.

There being no opposition to the petition after its due publication, the RTC issued an Order on June 13, 2000[15] allowing Lorenzo to present evidence on June 22, 2000. On said date, Dra. Limpin testified that she was one of the instrumental witnesses in the execution of the last will and testament of Paciencia on September 13, 1981.[16] The Will was executed in her father's (Judge Limpin) home office, in her presence and of two other witnesses, Francisco and Faustino.[17] Dra. Limpin positively identified the Will and her signatures on all its four pages.[18] She likewise positively identified the signature of her father appearing thereon.[19] Questioned by the prosecutor regarding Judge Limpin's present mental fitness, Dra. Limpin testified that her father had a stroke in 1991 and had to undergo brain surgery.[20] The judge can walk but can no longer talk and remember her name. Because of this, Dra. Limpin stated that her father can no longer testify in court.[21]

The following day or on June 23, 2000, petitioner Antonio Baltazar (Antonio) filed an opposition[22] to Lorenzo's petition. Antonio averred that the properties subject of Paciencia's Will belong to Nicomeda Regala Mangalindan, his predecessor-in-interest; hence, Paciencia had no right to bequeath them to Lorenzo.[23]

Barely a month after or on July 20, 2000, Antonio, now joined by petitioners Sebastian M. Baltazar, Virgilio

Regala, Jr., Nenita A. Pacheco, Felix B. Flores, Rafael Titco, Rosie M. Mateo (Rosie) and Antonio L. Mangalindan filed a Supplemental Opposition[24] contending that Paciencia's Will was null and void because ownership of the properties had not been transferred and/or titled to Paciencia before her death pursuant to Article 1049, paragraph 3 of the Civil Code.[25] Petitioners also opposed the issuance of Letters of Administration in Lorenzo's favor arguing that Lorenzo was disqualified to be appointed as such, he being a citizen and resident of the USA.[26] Petitioners prayed that Letters of Administration be instead issued in favor of Antonio.[27]

Later still on September 26, 2000, petitioners filed an Amended Opposition[28] asking the RTC to deny the probate of Paciencia's Will on the following grounds: the Will was not executed and attested to in accordance with the requirements of the law; that Paciencia was mentally incapable to make a Will at the time of its execution; that she was forced to execute the Will under duress or influence of fear or threats; that the execution of the Will had been procured by undue and improper pressure and influence by Lorenzo or by some other persons for his benefit; that the signature of Paciencia on the Will was forged; that assuming the signature to be genuine, it was obtained through fraud or trickery; and, that Paciencia did not intend the document to be her Will. Simultaneously, petitioners filed an Opposition and Recommendation[29] reiterating their opposition to the appointment of Lorenzo as administrator of the properties and requesting for the appointment of Antonio in his stead.

On January 29, 2001, the RTC issued an Order[30] denying the requests of both Lorenzo and Antonio to be appointed administrator since the former is a citizen and resident of the USA while the latter's claim as a co-owner of the properties subject of the Will has not yet been established.

Meanwhile, proceedings on the petition for the probate of the Will continued. Dra. Limpin was recalled for cross-examination by the petitioners. She testified as to the age of her father at the time the latter notarized the Will of Paciencia; the living arrangements of Paciencia at the time of the execution of the Will; and the lack of photographs when the event took place. [31]

Aside from Dra. Limpin, Lorenzo and Monico Mercado (Monico) also took the witness stand. Monico, son of Faustino, testified on his father's condition. According to him his father can no longer talk and express himself due to brain damage. A medical certificate was presented to the court to support this allegation. [32]

For his part, Lorenzo testified that: from 1944 until his departure for the USA in April 1980, he lived in Sasman, Pampanga with his family and his aunt, Paciencia; in 1981 Paciencia went to the USA and lived with him and his family until her death in January 1996; the relationship between him and Paciencia was like that of a mother and child since Paciencia took care of him since birth and took him in as an adopted son; Paciencia was a spinster without children, and without brothers and sisters; at the time of Paciencia's death, she did not suffer from any mental disorder and was of sound mind, was not blind, deaf or mute; the Will was in the custody of Judge Limpin and was only given to him after Paciencia's death through Faustino; and he was already residing in the USA when the Will was executed.[33] Lorenzo positively identified the signature of Paciencia in three different documents and in the Will itself and stated that he was familiar with Paciencia's signature because he accompanied her in her transactions.[34] Further, Lorenzo belied and denied having used force, intimidation, violence, coercion or trickery upon Paciencia to execute the Will as he was not in the Philippines when the same was executed.[35] On cross-examination, Lorenzo clarified that Paciencia informed him about the Will shortly after her arrival in the USA but that he saw a copy of the Will only after her death.[36]

As to Francisco, he could no longer be presented in court as he already died on May 21, 2000.

For petitioners, Rosie testified that her mother and Paciencia were first cousins.[37] She claimed to have helped in the household chores in the house of Paciencia thereby allowing her to stay therein from morning until evening

and that during the period of her service in the said household, Lorenzo's wife and his children were staying in the same house.[38] She served in the said household from 1980 until Paciencia's departure for the USA on September 19, 1981.[39]

On September 13, 1981, Rosie claimed that she saw Faustino bring "something" for Paciencia to sign at the latter's house.[40] Rosie admitted, though, that she did not see what that "something" was as same was placed inside an envelope.[41] However, she remembered Paciencia instructing Faustino to first look for money before she signs them.[42] A few days after or on September 16, 1981, Paciencia went to the house of Antonio's mother and brought with her the said envelope.[43] Upon going home, however, the envelope was no longer with Paciencia.[44] Rosie further testified that Paciencia was referred to as "magulyan" or "forgetful" because she would sometimes leave her wallet in the kitchen then start looking for it moments later.[45] On cross examination, it was established that Rosie was neither a doctor nor a psychiatrist, that her conclusion that Paciencia was "magulyan" was based on her personal assessment,[46] and that it was Antonio who requested her to testify in court.[47]

In his direct examination, Antonio stated that Paciencia was his aunt.[48] He identified the Will and testified that he had seen the said document before because Paciencia brought the same to his mother's house and showed it to him along with another document on September 16, 1981.[49] Antonio alleged that when the documents were shown to him, the same were still unsigned.[50] According to him, Paciencia thought that the documents pertained to a lease of one of her rice lands,[51] and it was he who explained that the documents were actually a special power of attorney to lease and sell her fishpond and other properties upon her departure for the USA, and a Will which would transfer her properties to Lorenzo and his family upon her death.[52] Upon hearing this, Paciencia allegedly uttered the following words: "Why will I never [return], why will I sell all my properties?" Who is Lorenzo? Is he the only [son] of God? I have other relatives [who should] benefit from my properties. Why should I die already?"[53] Thereafter, Antonio advised Paciencia not to sign the documents if she does not want to, to which the latter purportedly replied, "I know nothing about those, throw them away or it is up to you. The more I will not sign them." [54] After which, Paciencia left the documents with Antonio. Antonio kept the unsigned documents

and eventually turned them over to Faustino on September 18, 1981.[55]

Ruling of the Regional Trial Court

On September 30, 2003, the RTC rendered its Decision[56] denying the petition thus:

WHEREFORE, this court hereby (a) denies the petition dated April 24, 2000; and (b) disallows the notarized will dated September 13, 1981 of Paciencia Regala.

SO ORDERED.[57]

The trial court gave considerable weight to the testimony of Rosie and concluded that at the time Paciencia signed the Will, she was no longer possessed of sufficient reason or strength of mind to have testamentary capacity.[58]

Ruling of the Court of Appeals

On appeal, the CA reversed the RTC Decision and granted the probate of the Will of Paciencia. The appellate court did not agree with the RTC's conclusion that Paciencia was of unsound mind when she executed the Will. It ratiocinated that "the state of being 'magulyan' does not make a person mentally unsound so [as] to render [Paciencia] unfit for executing a Will." [59] Moreover, the oppositors in the probate proceedings were not able to overcome the presumption that every person is of sound mind. Further, no concrete circumstances or events were given to prove the allegation that Paciencia was tricked or forced into signing the Will.[60]

Petitioners moved for reconsideration[61] but the motion was denied by the CA in its Resolution[62] dated August 31, 2006.

Hence, this petition.

Issues

Petitioners come before this Court by way of Petition for Review on Certiorari ascribing upon the CA the following errors:

I.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT ALLOWED THE PROBATE OF PACIENCIA'S WILL DESPITE RESPONDENT'S UTTER FAILURE TO COMPLY WITH SECTION 11, RULE 76 OF THE RULES OF COURT;

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN MAKING CONCLUSIONS NOT IN ACCORDANCE WITH THE EVIDENCE ON RECORD;

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT PETITIONERS FAILED TO PROVE THAT PACIENCIA WAS NOT OF SOUND MIND AT THE TIME THE WILL WAS ALLEGEDLY EXECUTED[63]

The pivotal issue is whether the authenticity and due execution of the notarial Will was sufficiently established to warrant its allowance for probate.

Our Ruling

We deny the petition.

Faithful compliance with the formalities laid down by law is apparent from the face of the Will.

Courts are tasked to determine nothing more than the extrinsic validity of a

Will in probate proceedings.[64] This is expressly provided for in Rule 75, Section 1 of the Rules of Court, which states:

Rule 75

Production of Will. Allowance of Will Necessary.

Section 1. Allowance necessary. Conclusive as to execution. – No will shall pass either real or personal estate unless it is proved and allowed in the proper court. Subject to the right of appeal, such allowance of the will shall be conclusive as to its due execution.

Due execution of the will or its extrinsic validity pertains to whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law.[65] These formalities are enshrined in Articles 805 and 806 of the New Civil Code, to wit:

Art. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.

Art. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the Office of the Clerk of Court.

Here, a careful examination of the face of the Will shows faithful compliance with the formalities laid down by law. The signatures of the testatrix, Paciencia, her instrumental witnesses and the notary public, are all present and evident on the Will. Further, the attestation clause explicitly states the critical requirement that the testatrix and her instrumental witnesses signed the Will in the presence of one another and that the witnesses attested and subscribed to the Will in the presence of the testator and of one another. In fact, even the petitioners acceded that the signature of Paciencia in the Will may be authentic although they question her state of mind when she signed the same as well as the voluntary nature of said act.

The burden to prove that Paciencia was of unsound mind at the time of the execution of the will lies on the shoulders of the petitioners.

Petitioners, through their witness Rosie, claim that Paciencia was “magulyan” or forgetful so much so that it effectively stripped her of testamentary capacity. They likewise claimed in their Motion for Reconsideration[66] filed with the CA that Paciencia was not only “magulyan” but was actually suffering from paranoia.[67]

We are not convinced.

We agree with the position of the CA that the state of being forgetful does not necessarily make a person mentally unsound so as to render him unfit to execute a Will.[68] Forgetfulness is not equivalent to being of unsound mind. Besides, Article 799 of the New Civil Code states:

Art. 799. To be of sound mind, it is not necessary that the testator be in full possession of all his reasoning faculties, or that his mind be wholly unbroken, unimpaired, or unshattered by disease, injury or other cause.

It shall be sufficient if the testator was able at the time of making the will to know the nature of the estate to be disposed of, the proper objects of his bounty, and the character of the testamentary act.

In this case, apart from the testimony of Rosie pertaining to Paciencia’s forgetfulness, there is no substantial evidence, medical or otherwise, that would show that Paciencia was of unsound mind at the time of the execution of the Will. On the other hand, we find more worthy of credence Dra. Limpin’s testimony as to the soundness of mind of Paciencia when the latter went to Judge Limpin’s house and voluntarily executed the Will. “The testimony of subscribing witnesses to a Will concerning the testator’s mental condition is entitled to great weight where they are truthful and intelligent.”[69] More importantly, a testator is presumed to be of sound mind at the time of the execution of the Will and the burden to prove otherwise lies on the oppositor. Article 800 of the New Civil Code states:

Art. 800. The law presumes that every person is of sound mind, in the absence of proof to the contrary.

The burden of proof that the testator was not of sound mind at the time of making his dispositions is on the person who opposes the probate of the will; but if the testator, one month, or less, before making his will was publicly known to be insane, the person who maintains the validity of the will must prove that the testator made it during a lucid interval.

Here, there was no showing that Paciencia was publicly known to be insane one month or less before the making of the Will. Clearly, thus, the burden to prove that Paciencia was of unsound mind lies upon the shoulders of petitioners. However and as earlier mentioned, no substantial evidence was presented by them to prove the same, thereby warranting the CA's finding that petitioners failed to discharge such burden.

Furthermore, we are convinced that Paciencia was aware of the nature of her estate to be disposed of, the proper objects of her bounty and the character of the testamentary act. As aptly pointed out by the CA:

A scrutiny of the Will discloses that [Paciencia] was aware of the nature of the document she executed. She specially requested that the customs of her faith be observed upon her death. She was well aware of how she acquired the properties from her parents and the properties she is bequeathing to LORENZO, to his wife CORAZON and to his two (2) children. A third child was born after the execution of the will and was not included therein as devisee.[70]

Bare allegations of duress or influence of fear or threats, undue and improper influence and pressure, fraud and trickery cannot be used as basis to deny the probate of a will.

An essential element of the validity of the Will is the willingness of the testator or testatrix to execute the document that will distribute his/her earthly possessions upon his/her death. Petitioners claim that Paciencia was forced to execute the Will under duress or influence of fear or threats; that the execution of the Will had been procured by undue and improper pressure and influence by Lorenzo or by some other persons for his benefit; and that assuming Paciencia's signature to be genuine, it was obtained through fraud or trickery. These are grounded on the alleged conversation between Paciencia and Antonio on September 16, 1981 wherein the former purportedly repudiated the Will and left it unsigned.

We are not persuaded.

We take into consideration the un rebutted fact that Paciencia loved and treated Lorenzo as her own son and that love even extended to Lorenzo's wife and children. This kind of relationship is not unusual. It is in fact not unheard of in our culture for old maids or spinsters to care for and raise their nephews and nieces and treat them as their own children. Such is a prevalent and accepted cultural practice that has resulted in many family discords between those favored by the testamentary disposition of a testator and those who stand to benefit in case of intestacy.

In this case, evidence shows the acknowledged fact that Paciencia's relationship with Lorenzo and his family is different from her relationship with petitioners. The very fact that she cared for and raised Lorenzo and lived with him both here and abroad, even if the latter was already married and already has children, highlights the special bond between them. This unquestioned relationship between Paciencia and the devisees tends to support the authenticity of the said document as against petitioners' allegations of duress, influence of fear or threats, undue and improper influence, pressure, fraud, and trickery which, aside from being factual in nature, are not supported by concrete, substantial and credible evidence on record. It is worth stressing that bare arguments, no matter how forceful, if not based on concrete and substantial evidence cannot suffice to move the Court to uphold said allegations.[71] Furthermore, "a purported will is not [to be] denied legalization on dubious grounds. Otherwise,

the very institution of testamentary succession will be shaken to its foundation, for even if a will has been duly executed in fact, whether x x x it will be probated would have to depend largely on the attitude of those interested in [the estate of the deceased].”[72]

Court should be convinced by the evidence presented before it that the Will was duly executed.

Petitioners dispute the authenticity of Paciencia’s Will on the ground that Section 11 of Rule 76 of the Rules of Court was not complied with. It provides:

RULE 76 Allowance or Disallowance of Will

Section 11. Subscribing witnesses produced or accounted for where will contested. – If the will is contested, all the subscribing witnesses, and the notary in the case of wills executed under the Civil Code of the Philippines, if present in the Philippines and not insane, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If all or some of such witnesses are present in the Philippines but outside the province where the will has been filed, their deposition must be taken. If any or all of them testify against the due execution of the will, or do not remember having attested to it, or are otherwise of doubtful credibility, the will may nevertheless, be allowed if the court is satisfied from the testimony of other witnesses and from all the evidence presented that the will was executed and attested in the manner required by law.

If a holographic will is contested, the same shall be allowed if at least three (3) witnesses who know the handwriting of the testator explicitly declare that the will and the signature are in the handwriting of the testator; in the absence of any competent witnesses, and if the court deem it necessary, expert testimony may be resorted to. (Emphasis supplied.)

They insist that all subscribing witnesses and the notary public should have been presented in court since all but one witness, Francisco, are still living.

We cannot agree with petitioners.

We note that the inability of Faustino and Judge Limpin to appear and testify before the court was satisfactorily explained during the probate proceedings. As testified to by his son, Faustino had a heart attack, was already bedridden and could no longer talk and express himself due to brain damage. To prove this, said witness presented the corresponding medical certificate. For her part, Dra. Limpin testified that her father, Judge Limpin, suffered a stroke in 1991 and had to undergo brain surgery. At that time, Judge Limpin could no longer talk and could not even remember his daughter’s name so that Dra. Limpin stated that given such condition, her father could no longer testify. It is well to note that at that point, despite ample opportunity, petitioners neither interposed any objections to the testimonies of said witnesses nor challenged the same on cross examination. We thus hold that for all intents and purposes, Lorenzo was able to satisfactorily account for the incapacity and failure of the said subscribing witness and of the notary public to testify in court. Because of this the probate of Paciencia’s Will may be allowed on the basis of Dra. Limpin’s testimony proving her sanity and the due execution of the Will, as well as on the proof of her handwriting. It is an established rule that “[a] testament may not be disallowed just because the attesting witnesses declare against its due execution; neither does it have to be necessarily allowed just because all the attesting witnesses declare in favor of its legalization; what is decisive is that the court is convinced by evidence before it, not necessarily from the attesting witnesses, although they must testify, that the will was or was not duly executed in the manner required by law.”[73]

Moreover, it bears stressing that “[i]rrespective x x x of the posture of any of the parties as regards the

authenticity and due execution of the will x x x in question, it is the mandate of the law that it is the evidence before the court and/or [evidence that] ought to be before it that is controlling.”[74] “The very existence of [the Will] is in itself prima facie proof that the supposed [testatrix] has willed that [her] estate be distributed in the manner therein provided, and it is incumbent upon the state that, if legally tenable, such desire be given full effect independent of the attitude of the parties affected thereby.”[75] This, coupled with Lorenzo’s established relationship with Paciencia, the evidence and the testimonies of disinterested witnesses, as opposed to the total lack of evidence presented by petitioners apart from their self-serving testimonies, constrain us to tilt the balance in favor of the authenticity of the Will and its allowance for probate.

WHEREFORE, the petition is DENIED. The Decision dated June 15, 2006 and the Resolution dated August 31, 2006 of the Court of Appeals in CA-G.R. CV No. 80979 are AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] Gonzales Vda. de Precilla v. Narciso, 150-B Phil. 437, 473 (1972).

[2] Rollo, pp. 9-31.

[3] CA rollo, pp. 177-192; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Hakim S. Abdulwahid and Vicente Q. Roxas.

[4] Records, pp. 220-246; penned by Judge Jonel S. Mercado.

[5] CA rollo, p. 192.

[6] Id. at 212.

[7] Exhibit “G”, Folder of Exhibits, pp. 36-39.

[8] Exhibit “G-11,” id. at 38.

[9] Exhibits “G-9,” “G-10,” and “G-11,” id. at 36, 37 and 39.

[10] Exhibit “G-6,” id at 38.

[11] Exhibits “G-4,” “G-5,” and “G-7,” id. at 36, 37 and 39.

[12] English Translation of the Last Will and Testament of Miss Paciencia Regala, Exhibits “H-1” and “H-2,” id. at 41-42.

[13] TSN dated April 18, 2001, pp. 2-6.

[14] Records, pp. 1-3.

[15] Id. at 13-14.

[16] TSN dated June 22, 2000, p. 2.

[17] Id. at 5.

[18] Id. at 2-4.

[19] Id. at 3.

[20] Id. at 2.

[21] Id. at 6.

[22] Motion with Leave of Court to Admit Instant Opposition to Petition of Lorenzo Laxa; records, pp. 17-18.

[23] Id. at 17.

[24] Id. at 25-28.

[25] Article 1049. Acceptance may be express or tacit.

x x x x

Acts of mere preservation or provisional administration do not imply an acceptance of the inheritance if, through such acts, the title or capacity of an heir has not been assumed.

[26] Records, p. 26.

[27] Id. at 27.

[28] Id. at 42-43.

[29] Id. at 44-45.

[30] Id. at 52.

[31] TSN dated January 18, 2001, pp. 2-4.

[32] Id. at 5-6.

[33] TSN dated April 18, 2001, pp. 1- 28.

[34] Id. at 9-15.

[35] Id. at 16-17.

[36] Id. at 24-25.

[37] TSN dated November 27, 2002, p. 4.

[38] Id. at 5.

[39] TSN dated December 4, 2002, p. 8

[40] Id. pp. 2-3.

[41] Id. at 4.

[42] Id.

[43] Id. at 7.

[44] Id. at 8.

[45] Id. at 9.

[46] Id. at 10.

[47] Id. at 11.

[48] TSN dated January 7, 2003, p. 3.

[49] Id. at 6-8.

[50] Id. at 12.

[51] Id. at 11.

[52] Id. at 16.

[53] Id. at 17.

[54] Id.

[55] Id at 18-19.

[56] Records, pp. 220-246.

[57] Id. at 246.

[58] Id. at 245-246.

[59] CA rollo, p. 185.

[60] Id. at 188.

[61] Id. at 193-199.

[62] Id. at 212.

[63] Rollo, p. 18.

[64] Pastor, Jr. v. Court of Appeals, 207 Phil. 758, 766. (1983).

[65] Id.

[66] CA rollo, pp. 193-199.

[67] Id. at 194-195.

[68] Torres and Lopez de Bueno v. Lopez, 48 Phil. 772, 810 (1926); Sancho v. Abella, 58 Phil.728, 732-733 (1933).

[69] Id. at 811.

[70] CA rollo, pp. 185-186.

[71] Gonzales Vda. de Precilla v. Narciso, supra note 1 at 445.

[72] Id. at 474.

[73] Id. at 452.

[74] Id. at 453.

[75] Id. at 473.

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