

**IN THE MATTER OF THE PROBATE OF THE LAST WILL AND
TESTAMENT OF THE DECEASED BRIGIDO ALVARADO, CESAR
ALVARADO, PETITIONER, VS. HON. RAMON G. GAVIOLA, JR.,
PRESIDING JUSTICE, HON....**

G.R. No. 74695. September 14, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Before us is an appeal from the Decision dated 11 April 1986[1] of the First Civil Cases Division of the then Intermediate Appellate Court, now Court of Appeals, which affirmed the Order dated 27 June 1983[2] of the Regional Trial Court of Sta. Cruz, Laguna, admitting to probate the last will and testament[3] with codicil[4] of the late Brigido Alvarado.

On 5 November 1977, the 79-year old Brigido Alvarado executed a notarial will entitled "Huling Habilin" wherein he disinherited an illegitimate son (petitioner) and expressly revoked a previously executed holographic will at the time awaiting probate before Branch of the Regional Trial Court of Sta. Cruz, Laguna.

As testified to by the three instrumental witnesses, the notary public and by private respondent who were present at the execution, the testator did not read the final draft of the will himself. Instead, private respondent, as the lawyer who drafted the eight-paged document, read the same aloud in the presence of the testator, the three instrumental witnesses and the notary public. The latter four followed the reading with their own respective copies previously furnished them.

Meanwhile, Brigido's holographic will was subsequently admitted to probate on 9 December 1977. On the 29th day of the same month, a codicil entitled "Kasulatan ng Pagbabago sa Ilang Pagpapasiya na Nasasaad sa Huling Habilin na May Petsa Nobiembre 5, 1977 ni Brigido Alvarado" was executed changing some dispositions in the notarial will to generate cash for the testator's eye operation. Brigido was then suffering from glaucoma. But the disinheritance and revocatory clauses were unchanged. As in the case of the notarial will, the testator did not personally read the final draft of the codicil. Instead, it was private respondent who read it aloud in his presence and in the presence of the three instrumental witnesses (same as those of the notarial will) and the notary public who followed the reading using their own copies.

A petition for the probate of the notarial will and codicil was filed upon the testator's death on 3 January 1979 by private respondent as executor with the Court of First Instance, now Regional Trial Court, of Siniloan, Laguna.[5] Petitioner, in turn, filed an Opposition on the following grounds: that the will sought to be probated was not executed and attested as required by law; that the testator was insane or otherwise mentally incapacitated to make a will at the time of its execution due to senility and old age; that the will was executed under duress, or influence of fear or threats; that it was procured by undue and improper pressure and influence on the part of the beneficiary who stands to get the lion's share of the testator's estate; and lastly, that the signature of the testator was procured by fraud or trick.

When the oppositor (petitioner) failed to substantiate the grounds relied upon in the Opposition, a Probate Order was issued on 27 June 1983 from which an appeal was made to respondent court. The main thrust of the appeal was that the deceased was blind within the meaning of the law at the time his "Huling Habilin" and the codicil attached thereto were executed; that since the reading required by Art. 808 of the Civil Code was admittedly not complied with, probate of the deceased's last will and codicil should have been denied.

On 11 April 1986, the Court of Appeals rendered the decision under review with the following findings: that Brigido Alvarado was not blind at the time his last will and codicil were executed; that assuming his blindness, the reading requirement of Art. 808 was substantially complied with when both documents were read aloud to the testator with each of the three instrumental witnesses and the notary public following the reading with their respective copies of the instruments. The appellate court then concluded that although Art. 808 was not followed to the letter, there was substantial compliance since its purpose of making known to the testator the contents of the drafted will was served.

The issues now before us can be stated thus: Was Brigido Alvarado blind for purposes of Art. 808 at the time his "Huling Habilin" and its codicil were executed? If so, was the double-reading requirement of said article complied with?

Regarding the first issue, there is no dispute on the following facts: Brigido Alvarado was not totally blind at the time the will and codicil were executed. However, his vision on both eyes was only of "counting fingers at three (3) feet" by reason of the glaucoma which he had been suffering from for several years and even prior to his first consultation with an eye specialist on 14 December 1977.

The point of dispute is whether the foregoing circumstances would qualify Brigido as a "blind" testator under Art. 808 which reads:

"Art. 808. If the testator is blind, the will shall be read to him twice; once, by one of the subscribing witnesses, and again, by the notary public before whom the will is acknowledged."

Petitioner contends that although his father was not totally blind when the will and codicil were executed, he can be so considered within the scope of the term as it is used in Art. 808. To support his stand, petitioner presented before the trial court a medical certificate issued by Dr. Salvador R. Salceda, Director of the Institute of Ophthalmology (Philippine Eye Research institute),^[6] the contents of which were interpreted in layman's terms by Dr. Ruperto Roasa, whose expertise was admitted by private respondent.^[7] Dr. Roasa explained that although the testator could visualize fingers at three (3) feet, he could no longer read either printed or handwritten matters as of 14 December 1977, the day of his first consultation.^[8]

On the other hand, the Court of Appeals, contrary to the medical testimony, held that the testator could still read on the day the will and the codicil were executed but chose not to do so because of "poor eyesight."^[9] Since the testator was still capable of reading at that time, the court a quo concluded that Art. 808 need not be complied with.

We agree with petitioner in this respect.

Regardless of respondent's staunch contention that the testator was still capable of reading at the time his will and codicil were prepared, the fact remains and this was testified to by his witnesses, that Brigido did not do so because of his "poor,"^[10] "defective,"^[11] or "blurred"^[12] vision making it necessary for private respondent to do the actual reading for him.

The following pronouncement in *Garcia vs. Vasquez*^[13] provides an insight into the scope of the term "blindness" as used in Art. 808, to wit:

"The rationale behind the requirement of reading the will to the testator if he is blind or incapable of reading the will himself (as when he is illiterate), is to make the provisions thereof known to him, so that he may be able to object if they are not in accordance with his wishes x x x x"

Clear from the foregoing is that Art. 808 applies not only to blind testators but also to those who, for one reason or another, are "incapable of reading the(ir) will(s)." Since Brigido Alvarado was incapable of reading the final drafts of his will and codicil on the separate occasions of their execution due to his "poor," "defective," or "blurred" vision, there can be no other course for us but to conclude that Brigido Alvarado comes within the scope of the term "blind" as it is used in Art. 808. Unless the contents were read to him, he had no way of ascertaining whether or not the lawyer who drafted the will and codicil did so conformably with his instructions. Hence, to consider his will as validly executed and entitled to probate, it is essential that we ascertain whether Art. 808 had been complied with.

Article 808 requires that in case of testators like Brigido Alvarado, the will shall be read twice; once, by one of the instrumental witnesses and, again, by the notary public before whom the will was acknowledged. The purpose is to make known to the incapacitated testator the contents of the document before signing and to give him an opportunity to object if anything is contrary to his instructions.

That Art. 808 was not followed strictly is beyond cavil. Instead of the notary public and an instrumental witness, it was the lawyer (private respondent) who drafted the eight-paged will and the five-paged codicil who read the same aloud to the testator, and read them only once, not twice as Art. 808 requires.

Private respondent however insists that there was substantial compliance and that the single reading suffices for purposes of the law. On the other hand, petitioner maintains that the only valid compliance is a strict compliance or compliance to the letter and since it is admitted that neither the notary public nor an instrumental witness read the contents of the will and codicil to Brigido, probate of the latter's will and codicil should have been disallowed.

We sustain private respondent's stand and necessarily, the petition must be denied.

This Court has held in a number of occasions that substantial compliance is acceptable where the purpose of the law has been satisfied, the reason being that the solemnities surrounding the execution of wills are intended to protect the testator from all kinds of fraud and trickery but are never intended to be so rigid and inflexible as to destroy the testamentary privilege.[14]

In the case at bar, private respondent read the testator's will and codicil aloud in the presence of the testator, his three instrumental witnesses, and the notary public. Prior and subsequent thereto, the testator affirmed, upon being asked, that the contents read corresponded with his instructions. Only then did the signing and acknowledgement take place. There is no evidence, and petitioner does not so allege, that the contents of the will and codicil were not sufficiently made known and communicated to the testator. On the contrary, with respect to the "Huling Habilin," the day of the execution was not the first time that Brigido had affirmed the truth and authenticity of the contents of the draft. The uncontradicted testimony of Atty. Rino is that Brigido Alvarado already acknowledged that the will was drafted in accordance with his expressed wishes even prior to 5 November 1977 when Atty. Rino went to the testator's residence precisely for the purpose of securing his conformity to the draft.[15]

Moreover, it was not only Atty. Rino who read the documents on 5 November and 29 December 1977. The notary public and the three instrumental witnesses likewise read the will and codicil, albeit silently. Afterwards, Atty. Nonia de la Pena (the notary public) and Dr. Crescente O. Evidente (one of the three instrumental witnesses and the testator's physician) asked the testator whether the contents of the documents were of his own free will. Brigido answered in the affirmative.[16] With four persons following the reading word for word with their own copies, it can be safely concluded that the testator was reasonably assured that what was read to him (those which

he affirmed were in accordance with his instructions), were the terms actually appearing on the typewritten documents. This is especially true when we consider the fact that the three instrumental witnesses were persons known to the testator, one being his physician (Dr. Evidente) and another (Potenciano C. Ranieses) being known to him since childhood.

The spirit behind the law was served though the letter was not. Although there should be strict compliance with the substantial requirements of the law in order to insure the authenticity of the will, the formal imperfections should be brushed aside when they do not affect its purpose and which, when taken into account, may only defeat the testator's will.[17]

As a final word to convince petitioner of the propriety of the trial court's Probate Order and its affirmance by the Court of Appeals, we quote the following pronouncement in *Abangan v. Abangan*,[18] to wit:

"The object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid the substitution of wills and testaments and to guaranty their truth and authenticity. Therefore the laws on the subject should be interpreted in such a way as to attain these primordial ends. But, on the other hand, also one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will. So when an interpretation already given assures such ends, any other interpretation whatsoever, that adds nothing but demands more requisites entirely unnecessary, useless and frustrative of the testator's will, must be disregarded" (underscoring supplied).

Brigido Alvarado had expressed his last wishes in clear and unmistakable terms in his "Huling Habilin" and the codicil attached thereto. We are unwilling to cast these aside for the mere reason that a legal requirement intended for his protection was not followed strictly when such compliance had been rendered unnecessary by the fact that the purpose of the law, i.e., to make known to the incapacitated testator the contents of the draft of his will, had already been accomplished. To reiterate, substantial compliance suffices where the purpose has been served.

WHEREFORE, the petition is DENIED and the assailed Decision of respondent Court of Appeals dated 11 April 1986 is AFFIRMED. Considering the length of time that this case has remained pending, this decision is immediately executory. Costs against petitioner.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, Davide, Jr., and Quiason, JJ., concur.

[1] Rollo, pp. 29-37.

[2] Penned by Judge Maximiano C. Asuncion Original Records, pp. 214 - 224.

[3] Exhibit "D", Folder of Exhibits, pp. 65-72.

[4] Exhibit "E", Id., pp. 73-77.

[5] Subsequently transferred to the Regional Trial Court, Br. 26, Sta. Cruz, Laguna.

[6] Folder of Exhibits, p. 78.

[7] TSN, 3 August 1982, p. 6.

[8] Id., pp. 7-8.

[9] Rollo, p. 36.

[10] TSN, 18 June 1981, p. 3; 20 August 1981, p. 4; 16 September 1981, p. 5; 1 October 1981, p. 4.

[11] TSN, 18 June 1981, p. 3; 1 October 1981, p. 9.

[12] TSN, 20 August 1981, p. 4; 5 November 1981, pp. 15-16; 14 January 1982, p. 16.

[13] No. L-26884, 30 April 1970, 32 SCRA 490, 502-503.

[14] Icasiano v. Icasiano, No. L-18979, 30 June 1964, 11 SCRA 422, 429-430; Abangan v. Abangan, 40 Phil. 476, 479 (1919); Rey v. Cartagena, 56 Phil. 282, 284-285 (1931); Rodriguez v. Yap, 68 Phil. 126, 128 (1939); Leynez v. Leynez, 68 Phil. 745, 750 (1939); Roxas v. De Jesus, Jr., No. L-38338, 28 January 1985, 134 SCRA 245, 249.

[15] TSN, 18 June 1981, p. 4.

[16] TSN, 16 September 1981, pp. 4-5; 14 January 1982, pp. 6, 12.

[17] Rodriguez v. Yap, 68 Phil. 126, 128 (1939).

[18] 40 Phil. 477, 479 (1919).

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