Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES
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NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **March 11, 2015,** *which reads as follows:*

G.R. No. 129358 – FLORDELIZA STA. ROMANA, Petitioner, v. WILHELMINA C. TAPALLA, Respondent.

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the May 19, 1997 Decision[1] of the Court of Appeals in CA-G.R. CV No. 50405, entitled "*Wilhelmina C. Tapalla v. Flordeliza Sta. Romana,*" which affirmed the November 4, 1994 Decision[2] of the Regional Trial Court (RTC), Branch 32, Manila (Manila RTC), acting as a probate court, in Special Proceeding (Sp. Proc.) No. 94-68888, entitled "*In re: In the matter for the approval of the Holographic Last Will and Testament of the late Severino C. Sta. Romana a.k.a. J. Antonio Diaz and for Letters Testamentary and Administration, Wilhelmina C. Tapalla, petitioner.*"

The salient facts, as culled from the records of the case, are as follows:

On January 11, 1994, Wilhelmina C. Tapalla (Tapalla) filed a petition before the Manila RTC for the Allowance of the Holographic Last Will and Testament of Severino G. Sta. Romana (Sta. Romana), allegedly also known as "*J. Antonio Diaz,*" and the issuance of letters testamentary and administration in her favor, as the person nominated by Luz Rambano

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1 *Rollo*, pp. 46-61; penned by Associate Justice Salome A. Montoya with Associate Justices Eugenio S. Labitoria and Omar U. Amin, concurring.

2 CA *rollo*, pp. 38-56.

-over- (15 pages)

(Rambano), the alleged spouse of Sta. Romana, to act for the benefit of the heirs and legatees in the will.

This petition was opposed by the children of Sta. Romana, Flordeliza Sta. Romana (Flordeliza) and Roy Sta. Romana (Roy), who alleged that Tapalla had no legal personality to file the petition not only because she had no interest in Sta. Romana's estate, but more so because she could not acquire any authority from her principal, Rambano, as the latter was not legally married to Sta. Romana. The oppositors, Flordeliza and Roy, claimed that Sta. Romana, their father, was married to their mother, Salud Tan, who was still alive and residing in Cabanatuan at that time. They also accused Tapalla of forum shopping as Rambano had already filed two petitions involving the estate of Sta. Romana: one in a Manila Court of First Instance (Manila CFI) for the settlement of Sta. Romana's intestate estate; and another one in the RTC of Makati (Makati RTC) for the allowance of the same holographic will subject of Tapalla's petition in the Manila RTC. The oppositors averred that the holographic will was spurious and fake for having been executed after the death of Sta. Romana, and for having been signed in a different name, *i.e.*, J. Antonio Diaz. They also contended that if Sta. Romana had really wanted to write a will, he would have sought the help of his brother, who was a judge at that time. Moreover, the oppositors said, if there were really a holographic will, it should have been submitted to the RTC of Cabanatuan (Cabanatuan RTC), where intestate proceedings for the settlement of Sta. Romana's estate had already begun, and, which venue was proper, as Sta. Romana was a resident of Cabanatuan City. Finally, the oppositors argued that the Manila RTC did not acquire jurisdiction over the petition for being legally defective and because under Republic Act No. 7691, jurisdiction for the probate of Sta. Romana's estate, which Tapalla estimated to be at ₱100,000.00, should have been with the Metropolitan or Municipal Trial Court.

In her pleadings before the Manila RTC, Tapalla alleged that she was a person of good reputation and high morals and that she was nominated by the wife of Sta. Romana, Luz Rambano, and the other heirs and legatees to be the Executrix/Administratrix of Sta. Romana's estate. Tapalla alleged that Sta. Romana was a resident of Manila as he was living there before he fell ill, and that he died in Cabanatuan City, only because he was transferred to a hospital there, from a hospital in Manila, right before he died. She clarified that it was in 1975 when Rambano had filed with the Manila CFI a petition for the settlement of the intestate estate of Sta. Romana, as the will was not in Rambano's possession then; the Manila CFI appointed Rambano as Administratrix and Flordeliza as Co-Administratrix

before the petition was dismissed in 1985 for failure to prosecute for an unreasonable length of time. Tapalla added that in that petition, Flordeliza never raised as an issue the residence of her father. Tapalla said that Rambano, who was holding the biggest interest over the testate estate of Sta. Romana, nominated her to act for the benefit of the heirs and legatees in the will, thus, she had already spent a considerable amount of money in ascertaining, checking, and determining the assets left by Sta. Romana. She asseverated that the oppositors' allegations that their mother, Salud Tan, was the legal wife and not Rambano should have been supported by evidence. Tapalla also argued that the rule on forum shopping did not apply as neither she nor Rambano was a party to the proceedings in the Makati RTC.

On March 8, 1994, the Manila RTC granted Tapalla's urgent *ex parte* motion for Special Raffle and for her appointment as Special Administratrix, which was filed on the grounds that some of Sta. Romana's deposits in banks outside the Philippines were in danger of being escheated for having been idle for over twenty years.

At the hearing for the allowance of the will, Alfeo Barinki, a supposed business associate of Sta. Romana, was presented to testify how he accompanied Sta. Romana to the hospital in Manila, how Sta. Romana wrote the will in front of him, and how Sta. Romana handed him the will after for safekeeping. Tarciana Rodriguez was also presented by Tapalla, as she had witnessed Sta. Romana write the will in his hospital room.

On November 4, 1994, the Manila RTC issued its Decision, admitting, approving, and allowing the holographic last will and testament of Severino G. Sta. Romana as his last will and testament. The Manila RTC found the discrepancy in the date to be a mere error, which did not affect the validity of the will. The Manila RTC also held that the fact that Sta. Romana signed in his alias, "*J. Antonio Diaz*," does not render the will invalid. The Manila RTC found Alfeo Barinki and Tarciana Rodriguez to be competent witnesses who saw and knew the handwriting and signature of Sta. Romana.

The *fallo* of the Manila RTC decision reads:

> WHEREFORE, this Court hereby ADMITS, APPROVES, and ALLOWS the HOLOGRAPHIC LAST WILL AND TESTAMENT of SEVERINO G. STA. ROMANA (Exhibits "C" and "C-1" to "C-5") as his LAST WILL AND TESTAMENT.[3]

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[3] Id. at 56.

On November 29, 1994, the oppositors filed a Notice of Appeal to the Court of Appeals.

The Court of Appeals, on May 19, 1997, affirmed the decision of the Manila RTC. The dispositive portion of the decision states:

> WHEREFORE, the appeal is hereby DISMISSED. The Decision of the Probate Court dated November 4, 1994 is hereby AFFIRMED.
>
> Costs against the oppositor-appellant.[4]

In the meantime, Rambano was found, declared, and instituted as an heir of and to the Testate Estate of Sta. Romana in an Order[5] dated May 16, 1997 of the Manila RTC.

Undaunted, Flordeliza is now before this Court *via* a petition for review on *certiorari*, raising the following issues:

> I.
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> THAT THE COURT OF APPEALS ERRED IN ADMITTING THE HOLOGRAPHIC WILL
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> II.
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> THAT THE COURT OF APPEALS ERRED IN UPHOLDING THE VENUE AND JURISDICTION OF THE LOWER COURT
>
> III.
>
> THAT THE COURT OF APPEALS GROSSLY ERRED WHEN IT UPHELD THE RIGHT OF RESPONDENT WILHELMINA TAPALLA TO FILE THE PETITION, AND HER APPOINTMENT AS ADMINISTRATRIX
>
> IV.
>
> THE COURT OF APPEALS ERRED IN FAILING TO INVALIDATE THE INSTITUTION OF HEIRS

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4 *Rollo*, p. 60.
5 Id. at 86-89.

V.

THAT THE COURT OF APPEALS ERRED IN FAILING TO CONSIDER THE VIOLATION ON THE RULE OF "FORUM SHOPPING"[6]

Flordeliza insists that the holographic will Tapalla presented to the Manila RTC for probate is spurious and fake for being dated after her father's death; and signed in a name other than her father's legal and true name. Further, she reasons that if there was really a holographic will, it should have been submitted to the Cabanatuan RTC, the proper venue, and where intestate proceedings have already started. Flordeliza also faults Tapalla of forum shopping because the holographic will subject of this case, has been submitted to other courts before for probate.

Tapalla, on the other hand, contends that this petition should be dismissed as Flordeliza raised only questions of fact. Moreover, Tapalla claims that Flordeliza's arguments are a mere rehash of what she has already posited before the Court of Appeals, with no new substantial matters.[7]

The Court's Ruling

Venue and Jurisdiction of the Manila RTC

Flordeliza argues that the petition for probate should have been filed in Cabanatuan City, which was Sta. Romana's residence, where the intestate proceedings for his estate had already begun; and that according to Republic Act No. 7691, entitled "*An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending For The Purpose Batas Pambansa Blg. 129, Otherwise Known As The 'Judiciary Reorganization Act Of 1980,'*" particularly Section 1 thereof, the RTC is vested with jurisdiction over probate matters in Metro Manila, wherein the gross value exceeds Two Hundred Thousand Pesos (₱200,000.00).[8]

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6 Id. at 26-40.

7 Id. at 118-120.

8 Republic Act No. 7691, Section 1, amending Section 19(4) of Batas Pambansa Blg 129, to wit:

> **Section 1.** Section 19 of Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980," is hereby amended to read as follows:
>
> "Sec. 19. *Jurisdiction in civil cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction.
>
> x x x x

The Manila RTC and the Court of Appeals are one in finding that Sta. Romana was a resident of Manila at the time of his death as most of his businesses were there. Such factual finding, absent a showing that it is totally devoid of support or is glaringly erroneous, will not be analyzed, weighed, or disturbed by this Court.[9]

With regard to whether or not the Cabanatuan RTC has preference over the settlement of Sta. Romana's estate having taken first cognizance over it, it is a settled rule that for the settlement of the estate of a deceased person, testate proceedings take precedence over intestate proceedings, even if at that stage, an administrator had already been appointed. This, however, is without prejudice to the continuance of the proceeding as an intestacy, should the alleged last will be rejected or disapproved. Simply put, proceedings for the probate of a will enjoy priority over intestate proceedings.[10] Given the foregoing, the Cabanatuan RTC should hold its intestate proceedings in abeyance to give way to the probate proceedings in the Manila RTC.

As to the jurisdictional amounts[11] indicated in Republic Act No. 7691, suffice it to say that the law, which was approved on March 25, 1994, only took effect on April 15, 1994,[12] or after the Manila RTC had already taken cognizance of Tapalla's petition for probate of Sta. Romana's will. Moreover, Tapalla had already been appointed as Special Administratrix in March 1994 when the law took effect in April 1994. Thus, the jurisdiction over the probate of the subject holographic will remains with the Manila RTC.

Tapalla's Appointment as Administratrix

The fact that Tapalla is not an heir to the estate of Sta. Romana should not prevent her from being qualified as one.

"(4) In all matters of probate, both testate and intestate, where the gross value of the estate exceeds One hundred thousand pesos (₱100,000.00) or, in probate matters in Metro Manila, where such gross value exceeds Two Hundred thousand pesos (₱200,000.00)[.]

9 *Nittscher v. Dr. Nittscher*, 563 Phil. 254, 260 (2007).

10 *Uriarte v. The Court of First Instance of Negros Occidental (12th Judicial District)*, 144 Phil. 205, 213 (1970).

11 (4) In all matters of probate, both testate and intestate, where the gross value of the estate exceeds One hundred thousand pesos (₱100,000.00) or, in probate matters in Metro Manila, where such gross value exceeds Two Hundred thousand pesos (₱200,000.00)[.]

12 After publication in the March 30, 1994 issues of the Philippine Journal and Malaya (Office of the Court Administrator Circular No. 21-99).

The appointment of a special administrator lies entirely in the sound discretion of the court.[13] Sections 1 and 2, Rule 80 of the Rules of Court, dictates:

> SECTION 1. *Appointment of special administrator.*—When there is delay in granting letters testamentary or of administration by any cause including an appeal from the allowance or disallowance of a will, the court may appoint a special administrator to take possession and charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators appointed.
>
> SEC. 2. *Powers and duties of special administrator.*—Such special administrator shall take possession and charge of the goods, chattels, rights, credits, and estate of the deceased and preserve the same for the executor or administrator afterwards appointed, and for that purpose may commence and maintain suits as administrator. He may sell only such perishable and other property as the court orders sold. A special administrator shall not be liable to pay any debts of the deceased unless so ordered by the court.

For purposes of the specific and limited powers of a special administrator, the selection of whom is left to the sound discretion of the court, the need to first pass upon and resolve the issue of fitness or unfitness as would be proper in the case of a regular administrator, does not obtain.[14]

As this Court held in *Heirs of Belinda Dahlia A. Castillo v. Lacuata-Gabriel*[15]:

> [T]he appointment of a special administrator lies in the sound discretion of the probate court. A special administrator is a representative of a decedent appointed by the probate court to care for and preserve his estate until an executor or general administrator is appointed. When appointed, a special administrator is regarded not as a representative of the agent of the parties suggesting the appointment, but as the administrator in charge of the estate, and, in fact, as an officer of the court. As such officer, he is subject to the supervision and control of the probate court and is expected to work for the best interests of the entire estate, especially its smooth administration and earliest settlement. The principal object of appointment of temporary administrator is to preserve the estate until it can pass into hands of person fully authorized to administer it for the benefit of creditors and heirs. In many instances, the appointment of administrators for the estates of decedents frequently

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13 *De Gala v. Gonzales*, 53 Phil. 104, 106 (1929).
14 *Rivera v. Santos*, 124 Phil. 1557, 1561 (1966).
15 511 Phil. 371, 380-382 (2005).

become involved in protracted litigations, thereby exposing such estates to great waste and losses unless an authorized agent to collect the debts and preserve the assets in the interim is appointed. The occasion for such an appointment, likewise, arises where, for some cause, such as a pendency of a suit concerning the proof of the will, regular administration is delayed.

Section 1, Rule 80 of the Revised Rules of Court provides:

> Section 1. *Appointment of Special Administrator.* – When there is delay in granting letters testamentary or of administration by any cause including an appeal from the allowance or disallowance of a will, the court may appoint a special administrator to take possession and charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators appointed.

The new Rules have broadened the basis for the appointment of an administrator, and such appointment is allowed when there is delay in granting letters testamentary or administration by any cause, *e.g.*, parties cannot agree among themselves. Nevertheless, the discretion to appoint a special administrator or not lies in the probate court.

And likewise in *Ocampo v. Ocampo,*[16] this Court reiterated that:

> While the RTC considered that respondents were the nearest of kin to their deceased parents in their appointment as joint special administrators, this is not a mandatory requirement for the appointment. It has long been settled that the selection or removal of special administrators is not governed by the rules regarding the selection or removal of regular administrators. The probate court may appoint or remove special administrators based on grounds other than those enumerated in the Rules at its discretion, such that the need to first pass upon and resolve the issues of fitness or unfitness and the application of the order of preference under Section 6 of Rule 78, as would be proper in the case of a regular administrator, do not obtain. As long as the discretion is exercised without grave abuse, and is based on reason, equity, justice, and legal principles, interference by higher courts is unwarranted. x x x.

But *Manungas v. Loreto and Parreño*[17] cautions that:

> While the trial court has the discretion to appoint anyone as a special administrator of the estate, such discretion must be exercised with reason, guided by the directives of equity, justice and legal

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16 637 Phil. 545, 556-557 (2010).
17 G.R. No. 193161, August 22, 2011, 655 SCRA 734, 746.

> principles. It may, therefore, not be remiss to reiterate that the role of a special administrator is to preserve the estate until a regular administrator is appointed x x x.
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> x x x x
>
> Given this duty on the part of the special administrator, it would, therefore, be prudent and reasonable to appoint someone interested in preserving the estate for its eventual distribution to the heirs. Such choice would ensure that such person would not expose the estate to losses that would effectively diminish his or her share. While the court may use its discretion and depart from such reasoning, still, there is no logical reason to appoint a person who is a debtor of the estate and otherwise a stranger to the deceased. To do so would be tantamount to grave abuse of discretion.

Herein, Tapalla, in representation of Rambano, was the one who submitted Sta. Romana's will for allowance, and the Manila RTC deemed it urgent to appoint her as Special Adminsitratrix to avoid escheat proceedings against some of Sta. Romana's foreign bank deposits.

But note, however, that on September 6, 1995, while the case was on appeal to the Court of Appeals, Tapalla's appointment as Rambano's representative had been supposedly revoked by the latter.[18] If this fact is true, it would be erroneous for this Court to affirm the appointment of Tapalla as Special Administratrix given that from that moment, she was not just a stranger to the deceased, but now to the parties as well.

Institution of Heirs

With respect to the Order of the Manila RTC instituting Rambano as an heir of Sta. Romana, point must be made of the fact that it was issued only three days prior to the promulgation of the assailed decision of the Court of Appeals. As such, it was not an issue raised in the petition to be resolved by the appellate court. Hence, no reversible error was committed by the latter when it did not tackle the propriety of the subject Order.

Date and Signature in Subject Holographic Will

Flordeliza insists that the subject holographic will is fake and spurious as it was dated a month after his father's death and signed in a name other than his legal name.

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18 *Rollo*, p. 79.

Neither the erroneous date nor the alias name used is enough to invalidate the subject holographic will. Under Article 810 of the Civil Code, *viz*:

> 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.

As this Court held:

> 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.[19]

In this case, both the trial and appellate courts were satisfied that the erroneous date on the subject holographic will was a mere error by the testator as testified to by Alfeo Barinki and Tarciana Rodriguez. The two witnesses assert that they saw Sta. Romana write the subject holographic will on September 21, 1974. Moreover, both courts agreed that the day, *i.e.*, Saturday, as indicated in the subject holographic will, coincided with the date September 21, 1974, and not October 21, 1974.

Per *In the Matter of the Intestate Estate of Andres G. de Jesus and Bibiana Roxas de Jesus, Simeon R. Roxas & Pedro Roxas de Jesus v. De Jesus, Jr.*,[20] this Court allowed the probate of the letter-holographic will of Bibiana Roxas de Jesus even though it was dated only as "FEB./61." The Court therein ratiocinated that -

> This will not be the first time that this Court departs from a strict and literal application of the statutory requirements regarding the due

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[19] *In the Matter of the Intestate Estate of Andres G. de Jesus and Bibiana Roxas de Jesus, Simeon R. Roxas & Pedro Roxas de Jesus v. De Jesus, Jr.*, G.R. No. L-38338, January 28, 1985, 134 SCRA 245, 250-251.

[20] Id. at 249-250.

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 modem tendency with respect to the formalities in the execution of wills. (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:

> x x x x
>
> 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,

> x x x x
>
> x x x More than anything else, the facts and circumstances of record are to be considered 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 imperfection of language, or other non-essential defect. x x x. (Leynez v. Leynez, 68 Phil. 745).

As to the name "*J. Antonio Diaz*" supposedly signed by Sta. Romana in said will, the law only requires that such is to be done by the hand of the testator himself and nothing more. This Court agrees with the Court of Appeals when it explained succinctly that -

> It is accepted that the testator may do anything on his will as long as his intentions are made clear. In this case, Severino Sta. Romana signed "J. Antonio Diaz", one of his several aliases and business names. It appears that many of his associates knew him as J. Antonio Diaz, and therefore, there was a perfectly legitimate explanation why he signed his will as such. Notably, his will contained instructions about his business ventures, therefore, in order to be understood and to eliminate confusion, he used his business name. Having done so did not affect the validity of the will.[21]

But the above notwithstanding, and the fact that while Flordeliza questions the subject signature for not having been her father's legal name, *i.e.*, Severino Sta. Romana, she does not dispute that her father would at times use the alias "*J. Antonio Diaz.*" This Court is of the opinion that the testimonies of Alfeo Barinki and Tarciana Rodriguez to the effect that they both saw Sta. Romana writing the subject will and that Sta. Romana would at times, especially in his business dealings, use the alias "*J. Antonio Diaz,*" are insufficient to definitively establish that Sta. Romana and "*J. Antonio Diaz*" are, indeed, one and the same person. Especially so that they are both interested in the estate of the late Sta. Romana, both being legatees in the herein contested holographic will. Additional proof, both documentary and testimonial, must be presented in court to establish the allegation that Sta. Romana used and signed in documents the alias "*J. Antonio Diaz.*"

Since a signature may be defined as an identifying mark or feature,[22] Sta. Romana's act of placing his signature, by his hand, in the subject holographic will, albeit in the form of "*J. Antonio Diaz,*" is enough to serve the purpose of authenticating such will, but only if it is proven that he habitually used such signature to authenticate and mark other documents.

Authenticity of the Will

This Court disagrees with both the trial and appellate courts' holding that the rule on the number of witnesses to attest to the authenticity or genuineness of Sta. Romana's holographic will had been satisfied as the

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21 *Rollo*, p. 59.

22 Webster's Third New International Dictionary (1993).

rule on the number of witnesses differs depending on whether the holographic will is contested or not.

The Civil Code provides:

> 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 deem it necessary, expert testimony may be resorted to. (Emphasis supplied.)

Rule 76 of the Rules of Court separated in two sections the rules on uncontested and contested wills, to wit:

> Sec. 5. *Proof at hearing. What sufficient in absence of contest.* - At the hearing compliance with the provisions of the last two preceding sections must be shown before the introduction of testimony in support of the will. All such testimony shall be taken under oath and reduced to writing. If no person appears to contest the allowance of the will, the court may grant allowance thereof on the testimony of one of the subscribing witnesses only, if such witness testify that the will was executed as is required by law.
>
> In the case 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. In the absence of any such competent witness, and if the court deem it necessary, expert testimony may be resorted to.
>
> x x x x
>
> Sec. 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 witness, and if the court deem it necessary, expert testimony may be resorted to.** (Emphasis supplied.)

It cannot be denied that Flordeliza has, time and again, contested the genuineness of Sta. Romana's holographic will. As such, this Court's interpretation of the above provision in *Codoy v. Calugay*[23] applies:

> We are convinced, based on the language used, that Article 811 of the Civil Code is mandatory. The word "shall" connotes a mandatory order. We have ruled that "shall" in a statute commonly denotes an imperative obligation and is inconsistent with the idea of discretion and that the presumption is that the word "shall," when used in a statute is mandatory.
>
> Laws are enacted to achieve a goal intended and to guide against an evil or mischief that aims to prevent. In the case at bar, the goal to achieve is to give effect to the wishes of the deceased and the evil to be prevented is the possibility that unscrupulous individuals who for their benefit will employ means to defeat the wishes of the testator.

The Court is aware that in interpreting the laws on the solemnities surrounding the execution of wills, it 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, but only to close the door against bad faith and fraud, to avoid substitution of wills and testaments, and to guaranty their truth and authenticity.[24]

However, the possibility of a false document being adjudged as the will of a testator cannot be eliminated, which is why if the holographic will is contested, the law requires three witnesses to declare that the will was in the handwriting of the deceased.[25]

The fact that the will was presented for probate years after Sta. Romana's death, has not escaped this Court's notice; especially the fact that Rambano's first attempt at settling Sta. Romana's estate, in 1975, involved intestate proceedings, despite Barinki's testimony that he gave the will to her soon after receiving it. Also, it will be noted that the two

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[23] 371 Phil. 260, 270 (1999).

[24] Id. at 278-279, citing *Ajero v. Court of Appeals*, G.R. No. 106720, September 15, 1994, 236 SCRA 489, 495.

[25] Id. at 279.

witnesses presented by Tapalla are both legatees in the subject holographic will; thus, it would be to their advantage if the subject will is admitted to probate. Both courts *a quo* admitted the subject will to probate on the mere testimonies of Barinki and Rodriguez, without admitting evidence as to the authenticity of Sta. Romana's signature, and if he even indeed used the alias J. Antonio Diaz.

As in *Codoy*, this Court believes that the paramount consideration in this petition is to determine the true intent of the deceased. Given the foregoing premises, there is a need to remand this case to the court of origin for reception of more evidence on Sta. Romana's handwriting, and his use of the alias "*J. Antonio Diaz*," including the propriety of the appointment of Tapalla as Special Administratrix in view of the alleged revocation of latter's representation of her principal, Rambano.

WHEREFORE, the Decision appealed from is **SET ASIDE**. The records are ordered **REMANDED** to the court of origin to allow the reception of additional evidence in support of the allowance or opposition of the holographic will of the deceased Severino G. Sta. Romana. No costs.

SO ORDERED.

Very truly yours,

LIBRADA C. BUENA
Deputy Division Clerk of Court

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Manila
(C.A. G.R. CV No. 50405)

The Presiding Judge
Regional Trial Court, Br. 32
1000 Manila
(Spl. Proceeding No. 94-68888)

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