

[G.R. No. L-6736. May 04, 1954]

ISABEL GABRIEL ETC., ET AL., PETITIONERS, VS. HON. DEMETRIO B. ENCARNACION, ET AL., ETC., RESPONDENTS.

D E C I S I O N

BAUTISTA ANGELO, J.:

This is a petition for certiorari seeking to set aside an order issued by respondent Judge Francisco Area on April 29, 1953, granting the motion of co-administratrix Petrita Pascual and her co-heirs for the sale of all the real properties of the intestate estate of Eligio Naval as well as the order issued by respondent Judge Demetrio B. Encarnacion on May 27, 1953, sustaining the above order and denying the motion for reconsideration of petitioners.

The petitioners herein are Isabel Gabriel, widow of the deceased Eligio Naval, and Rudyardo Santiago, a co-administrator of the estate in Special Proceedings No. R-677 of the Court of First Instance of Rizal, Pasig branch. Petrita Pascual, one of the respondents, is a co-administratrix of the estate in the same proceedings.

On November 28, 1952, Petrita Pascual, as co-administratrix, and her co-heirs filed a motion with the court praying that all the real properties of the intestate be sold for cash at public bidding on the date and hour to be fixed by the court and their proceeds be deposited in a banking institution to be designated by the court. Copy of this motion was served on counsel for the widow, Isabel Gabriel, and the co-administrator of the estate, Rudyardo Santiago, and the motion was set for hearing on December 5, 1952, but the motion was not heard on the date set in view of the absence of the judge presiding the court.

For this reason, the widow, Isabel Gabriel, and co-administrator, Rudyardo Santiago, requested that the intestate case be transferred to the court holding sessions at Caloocan which was then presided over by Judge Villamor and this request was granted on February 4, 1953.

On April 6, 1953, co-administratrix Petrita Pascual and her co-heirs filed with the court at Caloocan a motion dated April 1, 1953, inviting the attention of the court to the pendency, among others, of their "Motion for Sale of Real Estate" dated November 28, 1952 and praying that all the pending motions and incidents of the estate be referred to the branch of the court holding sessions at Pasig, Rizal. To this motion, petitioners herein filed a written opposition alleging among other reasons that the judges holding sessions at the Pasig branch were all vacation judges and could not therefore take full cognizance of the case with a view to its early settlement. Said motion dated April 1, 1953 was set for hearing on April 20, 1953.

On said date, April 20, 1953, counsel for petitioners as well as of respondents appeared and expressed their arguments in favor and against the motion. After the hearing, the court, then presided over by Judge Area, issued an order dated April 29, 1953 granting the motion to sell the real properties of the estate and setting the date of the sale on May 30, 1953.

On May 19, 1953, petitioners filed a motion praying that the order of the court dated April 29, 1953 be set aside on the ground that that motion was not before the court for consideration during the hearing that took place on April 20, 1953, but the motion filed by respondents wherein they prayed that the intestate case be referred to the branch of the court holding sessions at Pasig and therefore said order was null and void because it was issued in violation of the rules of court. In the meantime petitioners also requested that the date of the sale be postponed until their motion for reconsideration had been acted upon.

This petition was granted and the sale was reset for June 17, 1953, but the motion for reconsideration was denied. Hence, this petition for certiorari.

The question to be determined hinges on the validity of the order issued by Judge Francisco Area dated April 29, 1953, which grants the motion to sell the real properties of the estate dated November 28, 1952, as well as the order issued by Judge Demetrio Encarnacion denying the motion for the reconsideration of said order.

Under the rules, when it appears that the sale of the whole or part of the real or personal estate will be beneficial to the heirs, devisees, legatees, and other interested persons, the court may, upon application of the executor or administrator and on written notice to the persons interested in the estate to be sold, authorize the sale, although not necessary to pay the debts, legacies or expenses of administration (Section 4, Rule 90). This is the purpose of the motion under consideration. But the rule likewise provides that, when the court decides to authorize the sale, because it appears beneficial to the heirs, the same shall be made subject to certain regulations. Pertinent portions of these regulations are: (a) that the administrator shall file a written petition setting forth facts showing that the sale is necessary, and (6) the court shall fix a time and place for hearing such petition, and cause notice thereof to be given to the persons interested. And it has been held that these regulations are mandatory because failure to comply with them will have the effect of rendering the order authorizing the sale void as well as the sale made in pursuance thereof. (*Ortaliz vs. Registrar of Deeds of Occidental Negros*, 55 Phil., 33; *Hashim vs. Bautista Vda. de Nolasco*, 56 Phil., 788; *Estate of Gamboa vs. Floranza*, 12 Phil., 191.)

The question that now arises is: Were there regulations followed in the present case?

The answer must of necessity be in the, negative for the simple reason that the motion filed by respondents for the sale of the real properties of the estate has not been set for hearing by the court as required by the regulations. It should be noted that said motion was primarily set for hearing by counsel on December 5, 1952, upon giving due notice to the opposite counsel, but that the motion was not actually heard because there was no judge who could act and take cognizance thereof. Aside from that instance, the motion was never set

for hearing again for which reason counsel for petitioners was surprised when he received copy of the order of the court granting the motion for the sale of the property. It is true, as counsel for respondents has explained, said motion was incidentally discussed at the hearing which took place on April 20, 1953 in connection with his motion for the transfer of the case to the Pasig branch of the court wherein counsel of (both parties had occasion to discuss the merits relative to the sale of the properties of the estate, but such was not the purpose of the hearing, and counsel for petitioners went to the court not precisely to argue that matter but merely the question relative to the transfer of the case. Counsel even went to the extent of informing the court that it would be necessary for him to present evidence relative to the merits of the projected sale.

At any rate, it is clear that the authority to sell was granted in violation of the rule, and there being objection thereto, no other course is left than to abide by it considering the importance and far-reaching effects of the sale on the parties affected. No prejudice will be caused if the motion to sell is set again for hearing and the interested parties are given another chance to be heard.

We have not failed to note that the estate has been pending for nearly seventeen years without hope of an early settlement due perhaps, as alleged, to the desire of some heirs to continue reaping its benefit to the prejudice of the other heirs. We have also noticed that there are two administrators who were appointed to take care of the conflicting interests. There are also charges of falsification of accounts and of fictitious claims being foisted upon the estate. Hence, the desire to sell the properties in order to avoid waste and misuse. But in our opinion, the remedy is not precisely the one proposed but to put an end to the administration. Some heirs may not agree to get rid of the properties for sentimental reasons, and so there is need to devise a way leading to the partition of the estate. We are inquisitive of the reason why so far no project of partition has been prepared and submitted to the court notwithstanding the long time the estate has been pending administration, and if such step is taken, we believe a way may be found whereby the properties may be distributed among the

heirs without need of selling them as now proposed by the respondents. If an attempt is made in this direction we may find the key to the solution of the controversy.

Wherefore, the order of respondent Judges dated April 29, 1953 and May 27, 1953 are hereby set aside, and it is ordered that a new date be set for the hearing of the "Motion for sale of Real Estate" dated November 28, 1952 as required by the rules, without costs.

Paras, C. J., Pablo, Bengzon, Montemayor, Jugo, Labrador, Concepcion, and Diokno, JJ., concur.

Date created: October 08, 2014