102 Phil. 735

[G. R. No. L-11435. December 27, 1957]

HON. MATEO L. ALCASID, AS JUDGE OF THE COURT OF FIRST INSTANCE OF ALBAY, ANTONIO CONDA, AS REGULAR ADMINISTRATOR OF THE ESTATE OF JOSE V. SAMSON, JOSEFINA N. SAMSON, GLENDA SAMSON, MANUEL SAMSON AND FELIX SAMSON PETITIONERS, VS. AMADO V. SAMSON, JESUS V: SAMSON, PURIFICACION SAMSON MORALES; DOLORES SAMSON-ACAYAN AND PAZ SAMSON-YOROBE, RESPONDENTS.

D E C I S I O N

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

On October 18, 1954, herein respondents filed an application in the Court of First Instance of Albay for the issuance of letters of administration in favor of one of them, Jesus V. Samson, for the estate of the late Jose V. Samson. On the same date, Jesus V. Samson was appointed special administrator of the estate.

The application was opposed by petitioners Josefina N. Samson, the widow of Jose V. Samson and her three minor children Glenda N. Samson, Manuel N. Samson and Felix N. Samson. They asked for the granting of letters of administration in favor of Josefina N. Samson, in the place of Jesus V. Samson. After hearings that dragged for almost two years, Judge Alcasid, on March 12, 1956, issued an order appointing Antonio Conda, Municipal Treasurer of Libon, Albay, as regular administrator. In that order the special administrator Jesus V. Samson was instructed, at the same thing, that "twenty (20) days from the receipt of this order he shall turn over all properties and funds of the estate in his possession to the regular administrator as soon as the latter qualified." Antonio Conda put up the bond fixed by the court and, on March 19, 1956, letters of administration were issued in his favor. On April 3,1956, upon motion of the widow, the court issued an order requiring the special administrator to "deliver the properties and funds of the estate now in his possession to the regular administrator within three (3) days from receipt of this order" (Annex B).

It also appears that on March 27, 1956, respondents filed an appeal from the order of the court granting letters of administration in favor of Antonio Conda, and their record on appeal was approved on April 17, 1956. On April 20, 1956, they filed a motion seeking to set aside the approval of the bond posted by Antonio Conda as well as the letters of administration issued in his favor. This motion having been denied througn an order issued on May 9, 1956, respondents resorted to the appellate courts.

The Court of Appeals, upon certiorari applied for by the special administrator and the heirs siding with him, held that, on the authority of our decision in Cotia vs. Pecson,[1] 49 Off. Gaz., 4318, the order appointing Antonio Conda as regular administrator was stayed by the appeal taken against it, and thereafter, Conda should not have been allowed to qualify in the meantime, unless execution pending appeal should be ordered for special reasons pursuant to Rule 39, section[2] of the Rules of Court; and that "should the special administrator be found, after due process of law, unfit to continue", he "could be dismissed and another appointed to look after the interests of the estate until the appeal filed against Conda's appointment is finally disposed of. For these reasons, the Court of Appeals set aside the appointment of Conda and annulled his bond.

Against this decision, the interested parties applied to this Court for a review. We granted *certiorari*.

This Court has repeatedly decided that the appointment and removal of a special administrator are interlocutory proceedings incidental to the main case, and lie in the sound discretion of the court. (Roxas vs. Pecson,2 46 Off. Gaz. 2058; Junquera vs. Borromeo,[3] 52 Off. Gaz., 7611; De Gala vs. Gonzales, 53 Phil. 106; Garcia vs. Flores, 101 Phil., 781, 64 Off. Gaz., 4049).

Thus, in Roxas vs. Pecson, supra, this Court ruled:

> "It is well settled that the statutory provisions as to the prior or preferred right of certain persons to the appointment of administrator under section 1, Rule 81, as well as the statutory provisions as to causes for removal of an executor or administrator under section 653 of Act No. 190, now section 2, Rule 83, do not apply to the selection or removal of special administrator. (21 Am. Jur., 8SS; De Gala vs. Gonzales and Ona, 53 Phil., 104, 106). As the law does not say who shall be appointed as special administrator and the qualifications the appointee must have, the judge or court has discretion in the selection of the person to

> be appointed, discretion which must be sounds that is, not whimsical or contrary to reason, justice or equity."

It is well to mark that, in the present case, the special administrator was not actually removed by the court, but that he was superseded by the regular administrator by operation of law. Rule 81, section 3, of the Rules of Court specifically provides that—

> "When letters testamentary or of administration are granted on the estate of the deceased, the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator the goods, chattels, money and estate of the deceased in his hands."

No question of abuse of discretion can therefore arise on account of the order of April 8, 1958, requiring Jesus V. Samson to turn over the administration to the regular administrator, such result being ordained by law. Upon the other hand, the conditions of the estate justified the appointment and qualification of a regular administrator, because the special administration had lasted nearly two years, and the prompt settlement of the estate had been unduly delayed. The Albay court said in its order of March 12:

> "* * *. It is also the sense of this Court that the appointment of any of their immediate relations would not end the bitter conflict that has so far raged as can be seen from the voluminous records of this case which have accumulated within a very short time, The appointment of a disinterested person as regular administrator would be conducive to a smooth and peaceful administration of the properties of the estate. At any rate, the appointment of Jesus V. Samson as special administrator was but done in a. state of emergency."

These reasons were supplemented by the order of May 9, 1956:

> "It is certainly against the. interests of justice and a frustration of the policy of those rules to extend unduly the time within which estates should be administered and to keep thereby the property from the possession and use of those who are entitled thereto. The view advanced by counsel for the special administrator that the appointment of a regular administrator cannot be

> effective until after the appeal interposed by the special administrator is finally determined by the appellate court is contrary to the spirit of policy of the Rules of Court above referred to and would unduly delay the prompt settlement of the estate of the deceased Jose V. Samson, specially considering that this special proceeding was commenced as far back as October 18, 1954, or more than one and one-half years ago, and that the notice of the creditors, as provided in section 1, Rule 87, cf the Rules of Court, cannot even be issued until after letters of administration have been granted by the Court to the regular administrator." (Decision, Ct. App., p, 4)

Even assuming1 that the rule in Cotia vs. Pecson, 49 Off. Gaz. 4313 (tho it actually dealt with the removal of a *regular* administrator) is applicable to the case at bar, in the sense that the appointment of a new administrator should be made effective pending appeal only if Rule 39, section 2 (execution pending appeal) is complied with, such compliance exists in the present case, for the order of April 3, 1956 (issued upon motion of herein petitioners) that required the special administrator to turn over the properties and funds of the estate to the regular administrator, was in effect a special order for the carrying out of the regular administration notwithstanding the appeal of respondents that was not perfected until April 12, 1956; while the special reasons for immediately carrying the order into effect are given in the order of March 12, as supplemented by that of May 9, 1956, heretofore quoted. We find these reasons sufficient (*cf.* De Borja vs. Encarnacion, 89 Phil., 239).

The fact that these reasons were not expressed in the very order of April 3, 1956, is not by itself fatal or constitutive of abuse of discretion; for while Rule 39, section 2, prescribes that execution pending appeal may issue for good reasons to be stated in a special order, this Court has decided that the element that gives validity to an order of immediate execution is the existence of good reasons, if they may be found distinctly somewhere in the record, altho not expressly stated in the order of execution itself (Lusk vs. Stevens, 54 Phil. 154; Guevarra vs. Court of First Instance of Laguna, 70 Phil. 48; People's Bank vs. San Jose, 96 Phil., 895, 51 Off. Gaz., [6] 2918; Moran, Comments on the Rules of Court [1957 ed.,] Vol. I, p. 540).

All told, the case boils down to this: The removal of the special administrator is at the court's sound discretion, and the orders of March 12 and May 9, 1956 show that there were good reasons to terminate the special administration. This being so, the heirs can

not seek to prolong the tenure of the removed special administrator by appealing Conda's appointment as regular administrator. It may be argued that during the appeal, the estate should be under special administration; but it does not appear that Amadeo Samson and his partisans have so asked the court nor have they proposed another administrator and therefore, their complaint against the court's action is unmeritorious.

A minor procedural point must be noted. In special proceedings, the judge whose order is under attack is merely a nominal party; wherefore, a judge in his official capacity should not be made to appear as a party seeking reversal of a decision that is unfavorable to the action taken by him. A decent regard for the judicial hierarchy bars a judge from suing against the adverse opinion of a higher court, and counsel should realize the fact and not include the Judge's name in ulterior proceedings.

We see no abuse of discretion in the orders of the Court of First Instance complained of. The decision of the Court of Appeals is reversed and the original petition for certiorari filed by the special administrator is ordered dismissed, and the writ denied, with costs against the respondents in this Court, Jesus V. Samson, et al. So ordered.

P*aras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Endencia* and *Felix, JJ.,* concur.

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[1] 93 Phil., 881

[2] 82 Phil., 407

[3] 99 Phil., 276

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