

LORENZO DE GUZMAN, PETITIONER, VS. HONORABLE FLORENDO AQUINO, AURORA, BELEN AND ERNESTO, ALL SURNAMED DE GUZMAN, DEFENDANTS.

G.R. No. L-29134. July 31, 1970

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

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

Lorenzo de Guzman petitions this Court for a writ of certiorari with injunction to set aside and review the action of respondent Judge Florendo Aquino of the Court of First Instance of Nueva Ecija, Branch I, at Cabanatuan City, reviving special proceedings No. 8896 of that Court, over petitioner's objections, denying his motion for reconsideration and ordering petitioner to submit his accounts as guardian.

For a proper understanding of the issues involved, it is necessary to state that on 12 September 1941 petitioner de Guzman was appointed judicial guardian of the persons and property of his three minor children, Aurora, Belen and Ernesto, all surnamed de Guzman, upon the filing of a P2,000.00 bond, which was duly complied with. In 1943, the guardian submitted partial accounts, which were approved. In 1947 he was authorized to mortgage to the Philippine National Bank some lands of the minors to secure a P2,000.00 loan without objection from the wards. In September of 1947, the court authorized the guardian anew to execute another mortgage, this time to the Rehabilitation Finance Corporation, to guarantee a loan for P5,000.00.

In February of 1955, the court issued an order in the following terms (Annex "N", petition):

"The interested parties not having taken any step in this case during the last EIGHT (8) years, and considering that this guardianship proceeding has been pending in this Court since September 1, 1941.

"WHEREFORE, let this case be considered closed and terminated for lack of prosecution.

"SO ORDERED."

On 26 July 1967, the children of petitioner, Aurora, Belen and Ernesto, applied through counsel to have the aforequoted 1955 order reconsidered and set aside, claiming that they had not been given notice thereof. They prayed the court that the guardian be ordered to deliver to them three (3) parcels of riceland described in the guardian's inventory, and that the latter be made to account for the crops of the said parcels. This petition was at first denied by Judge Serafin Cuevas of Branch 2, but subsequently, upon timely application, the denial was reconsidered and the petition granted on 9 October 1967 by respondent Judge Florendo Aquino of the court's Branch I (after Judge Cuevas was transferred to Manila). The guardian's opposition and motion to reconsider were overruled.

"O R D E R

This Court believes that in line with the decision of the Supreme Court in the case of *Junquera versus Vaño, et al.*, Vo. 72, page 293, Phil. Reports, the motion for reconsideration filed by the movant is hereby granted. Let this case be reinstated and once reinstated the guardian is hereby ordered to give proper accounting to the

Court which he should have done within one year after his appointment as such guardian. Or if any accounting was made after his appointment as guardian that all accounts supposed to be rendered with respect to the properties to the wards which were placed under his custody be accordingly made and filed before this Court.

SO ORDERED."

Unable to secure a recall of the order of Judge Aquino, petitioner resorted to this Court. He attacks the respondent's order in the following grounds:

"a) That respondent Judge Florendo Aquino has no jurisdiction over the aforesaid terminated Guardianship Case, after the same has been dismissed twelve (12) years ago;

"b) That if any obligation due against herein petitioner the same has already been barred;

"c) That said Judge Cuevas who has still the power to resolve the Motion for Reconsideration, dated August 5, 1967, once and for all;

"d) That the case of *Junquera vs. Vaño*, 72 Phil. 293 could not be applied in said case; and

"e) That there was no valid transfer of said case from Branch II (Judge Cuevas) to Branch I (respondent Judge)."

We find the petition to be without merit and that the objections to the order requiring the guardian to render accounts are untenable.

The decisive fact is that the wards were not given notice of the 1955 order of closure of the proceedings issued by Judge Montesa. Their sworn assertion to this effect (Annex "O", Petition) is nowhere denied, and is supported by the detail that at the foot of said order there appears the following notation (Petition, Annex "N"):

"COPY FURNISHED:

Attorney Lorenzo de Guzman

Mr. Estanislao Gotangco

3/7/55"

Estanislao Gotangco was the party upon whose petition the guardian was appointed. But he did not represent the wards, either as curator ad litem or as counsel. Notice to him, therefore, was not notice to the wards. Consequently, so far as the wards are concerned, the order of closure never became final and executory; hence, the matter remained pending and the said order could be still reconsidered and set aside by the court that issued it.

This case comes within the purview of the rule set by this Court in *Junquera vs. Vaño*, 72 Phil. 293, 302, to the effect that the Court can not, *motu proprio*, order the closure or termination of a minor's guardianship case, unless he should ask for it, nor without granting him a hearing, or receiving evidence of some kind to determine if such a step should be taken or not.

"Por otra parte, no puede concederse ni ordenarse por el Juzgado, *motu proprio*, el cierre o terminacion de un expediente de tutela de un menor, sino cuando lo pidiere el interesado, o sin antes oirle, o recibir pruebas de alguna clase para determinar si tal pso debe darse o no; y no consta por cierto en autos que el apelante o algun otro en su lugar lo haya hecho, antes de consumarse las referidas ventas. Solo se pidio y se ordeno el cierre del Expediente de Tutela del apalante, en las fechas ya mencionadas. El articulo 575 de la Ley No. 190 contiene sobre el particular la siguiente disposicion:

"The marriage of a minor ward terminates the guardianship of the person of such ward, but not of the estate;

the guardian of an insane or other person may be discharged by the court when it appears, upon the application of the ward or otherwise, that the guardianship is no longer necessary."

The doctrine of the *Junquera* case accords with Section 3 of Rule 98 of the original Rules of Court in force when Judge Montesa improvidently issued his order of closure:

"SEC. 3. Other termination of guardianship. - The marriage of a minor ward terminates the guardianship of the person of the ward; and the guardian of any person may be discharged by the court when it appears, upon the application of the ward or otherwise, that the guardianship is no longer necessary."

That it was respondent Judge Aquino who set aside the initial denial made by Judge Cuevas is not abuse of discretion nor does it constitute excess of jurisdiction, since the denial did not become final and executory; and moreover, Judge Cuevas had been transferred elsewhere, without assurance when he would return. Public policy demanded that the case he had acted on be not delayed indefinitely.

As to the claim that the action is already barred by prescription, suffice it to say that since the proceedings were never really closed, the statute of limitations could not apply. Anyway, the guardianship was an express trust, and no limitation could possibly run except from and after the repudiation thereof was driven home to the wards, as *cestuis que trustent*. No repudiation is here proved, since no adequate showing is made that the wards were ever notified by their father and guardian that he considered himself liberated from the trust imposed upon him by the Court. The fact that the guardian is the father of the wards all the more demands that the alleged repudiation of his trust be clearly proved, since it is unconscionable and contrary to morals that a parent should deprive his children of what lawfully belongs to them.

PREMISES CONSIDERED, the writs of certiorari and injunction applied for are denied, and the restraining order heretofore issued is dissolved. Costs against petitioner.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

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