

EMILIO ADVINCULA, PETITIONER VS. HONORABLE JUDGE JOSE TEODORO, SR., JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, AND ENRIQUE A. LACSON, RESPONDENTS.

G.R. No. L-9282. May 31, 1956

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Petitioner Emilio Advincula seeks a writ of certiorari, to annul certain orders of the Court of First Instance of Negros Occidental.

Said petitioner was, on November 22, 1954, appointed, special administrator of the estate of his deceased wife, Josef a Lacson Advincula, in special proceeding No. 3245 of said court. In due course, he was, on February 12, 1955, appointed regular administrator of said estate. After Advincula had qualified as such, the brothers of the deceased, who left no issue, submitted to the court, for allowance, a document purporting to be her last will and testament. Petitioner opposed the probate thereof upon the ground that it did not bear the signature of the deceased; that the signature thereon, if hers, was secured through fraud and duress; and that, the instrument had not been executed with the requisite formalities. On May 4, 1955, respondent Enrique Lacson, one of the brothers of the deceased, filed a motion praying that he be appointed administrator of said estate, in lieu of petitioner herein, for the reason that said respondent is the executor named in the aforementioned alleged will. On or about May 16, 1955, Attys. Jose Y. Torres and Antonio Lozada, as counsel for Advincula, filed an opposition to said motion. When the latter was called for hearing on May 18, 1955, Atty. Lozada was served, in open court, copy of an amended motion, of respondent Lacson, for change of administrator, dated May 14, 1955. It was alleged therein, in addition to the ground set forth in the first motion:

"5. That the present administrator is incompetent, incapable and unsuitable to the discharge of the trust, he being foreign to the estate, and without changing or removing him as such would be disastrous to the estate and to the heirs named in the will of the decedent."

Atty. Lozada asked a postponement of the hearing upon the ground that Advincula's main counsel, Atty. Torres, was in Manila, but his request was denied. Then, after hearing the argument of opposing counsel, the court, presided over by respondent, Honorable Jose Teodoro, Sr., Judge, issued, on the same date (May 18, 1955), an order the pertinent parts of which read:

"The Court, after hearing the oral arguments of both parties, finds the motion for postponement not well-taken and hereby denies the same; and finding the motion dated May 4, 1955 as amended by the amended motion dated May 14, 1955, well-founded and the opposition thereto dated May 16, 1955 not well-founded, said motion is hereby granted.

"Wherefore, in the interest of justice and for the preservation of the property for the heirs, the appointment of Emilio Advincula as administrator is hereby revoked and in his stead, the oppositor, Enrique A. Lacson, is hereby appointed administrator of this intestate estate, and same may qualify by filing a bond in the sum of

P5,000 and taking and subscribing the corresponding oath of Office. Once said Enrique A, Lacson has qualified, let letters of administration issue in his favor.

"The former administrator, Emilio Advincula, is hereby ordered to submit within ten (10) days from receipt hereof, his final account covering the entire period of his administration and should it appear that any deficiency has been, incurred by him during his incumbency, his bond shall answer for said deficiency."

Thereupon, Lacson gave the requisite bond, letters of administration was issued to him, and he tried to take possession of the estate of the deceased, A reconsideration of said order of May 18, 1955, having been denied by another order, dated May 30, 1955, petitioner instituted the present action for certiorari, against Lacson and Judge Teodoro, to annul his aforesaid orders of May 18 and 30, 1955, upon the ground that the same were issued with grave abuse of discretion. Upon the filing of a bond by Advincula, we issued, as prayed for in his petition, a writ of preliminary injunction restraining respondent Lacson and his agents from interfering, molesting and harassing the petitioner in the administration of the estate of the deceased, during the pendency of this case.

The writ of certiorari prayed for is in order. Lacson's appointment, in lieu of Advincula, as administrator of the estate of Josefa Lacson Advincula, is predicated upon the fact that the former is named executor in the alleged will of said deceased. The provision therein to this effect cannot be enforced, however, until after said document has been allowed to probate, for section 4 of Rule 79 of the Rules of Court provides:

"When a will has been proved and allowed, the court shall issue letters testamentary thereon to the person named as executor therein, if he is competent, accepts the trusts, and gives bond as required by these rules."
(Italics supplied.)

Besides, the discovery of a document purporting to be the last will and testament of a deceased, after the appointment of an administrator of the estate of the latter, upon the assumption that he or she had died intestate, does not ipso facto nullify the letters of administration already issued or even authorize the revocation thereof, until the alleged will has been "proved and allowed by the court." Rule 83, section 1, of the Rules of Court, is plain and explicit on this point.

"If after letters of administration have been granted on the estate of a decedent as if he had died intestate, his will is proved and allowed by the court, the letters of administration shall be revoked and all powers thereunder cease, and the administrator shall forthwith surrender the letters to the court, and render his account within such time as the court directs. Proceedings for the issuance of letters testamentary or of administration under the will shall be as herein before provided." (Italics supplied.)

The amended motion for change of administrator endeavored to justify the removal of Advincula "by alleging that he is "incompetent, incapable and unsuitable to the discharge of the trust, he being foreign to the estate" of the deceased. By holding, in its order of May 18, 1955, that said motion is "well-founded"—with nothing, absolutely nothing else, to indicate the basis of this conclusion— respondent Judge has impliedly adopted the line of argument followed in the above quoted allegation of the amended motion to change administrator. Said argument is, however, devoid of merit.

It is untenable from the viewpoint of logic and experience, because a stranger to deceased may be competent, capable and fit to administer her estate, in much the same as a member of her immediate family could be incompetent, incapable and unfit to do so. At any rate, Advincula is not a stranger, either to her or to her estate, he being her surviving spouse and, as such, one of her forced heirs (Arts. 887, 888, 892, 893, 894, 897 to 900, and 995 to 1001, Civil Code of the Philippines), whether she died testate or intestate. What is more, he is prima facie entitled to one-half of all property subject to the authority of the administrator of said estate, apart from his share of the other half thereof, as heir of the deceased, for "all property of the marriage is presumed to belong to the

conjugal partnership"—of which he is its administrator (Article 165, Civil Code of the Philippines) "unless it be proved that it pertains exclusively to the husband or to the wife" (See Articles 160 and 185, Civil Code of the Philippines). Lastly, Advincula has not been found guilty of any specific act or omission constituting one of the legal grounds, enumerated in Rule 83, section 2, of the Rules of Court, for the removal of an executor or administrator. Hence, it is clear that respondent Judge exceeded his jurisdiction in removing Advincula and appointing Lacson as administrator of the estate of the deceased Josefa Lacson Advincula.

Wherefore, the aforementioned orders of respondent Judge, dated May 8 and 30, 1955, are reversed, and the writ of preliminary injunction issued in this case hereby made permanent, with costs against respondent Enrique A. Lacson. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Arbghelo, Labrador, Reyes, J. B. L., and Endencia, JJ., concur.

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