

**JULITA RELUCIO, PETITIONER, VS. HON. RAMON R. SAN JOSE, ETC.,
RESPONDENTS.***G.R. No. L-4783. May 26, 1952*

Ponente: PARAS, C.J.

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In special proceeding No. 70588 of the Court of First Instance of Manila, the herein petitioner, Julita Relucio, was appointed administratrix of the testate estate of Felipe Relucio, Sr., qualifying as such on August 24, 1925. Upon petition filed on June 27, 1950 by Lorenzo, Rolando and Leticia Relucio, to which the petitioner filed an opposition, the Court of First Instance of Manila issued an order on January 15, 1951, appointing Rolando Relucio as administrator in substitution of the petitioner. The latter, failing to obtain a reconsideration, filed a notice of appeal. Before the appeal could be perfected, Rolando Relucio moved for the immediate execution of the order appointing him as administrator. In the order of March 20, 1951, however, the court merely made reference to the letters of administration issued in favor of Rolando Relucio and did not pass on the motion for immediate execution. On April 3, 1951, Rolando Relucio filed a motion praying that the petitioner be declared in contempt of court for failing to deliver to him, after demand, all papers, documents, titles and properties of the estate under her administration. In the order dated April 10, 1951, the Court of First Instance of Manila denied this motion for contempt and appointed the Equitable Banking Corporation as special administrator pending the appeal of the petitioner from the order of January 15, 1951. The court ruled that the appeal suspended the appointment of Rolando Relucio as administrator; but in the same breath it justified the appointment of the special administrator by arguing that, if the petitioner were to remain as administratrix during the pendency of her appeal, "a removed administrator may easily nullify such removal by interposing an appeal." Upon denial of her motion for reconsideration, the petitioner instituted in this Court the present petition for certiorari.

From the very position taken by the respondent Judge of the Court of First Instance of Manila, it is plain that the motion for immediate execution of the order of January 15, 1951, was in effect denied, with the result that the petitioner must be deemed as having the right to continue as administratrix until her appeal is finally disposed of. It is noteworthy that the petitioner was named in the will of Felipe Relucio, Sr., (already duly probated) not only as administratrix but as executrix, and her substitution by Rolando Relucio in virtue of the appealed order of January 15, 1951 is not for any cause, but is based solely on the circumstance that Rolando Relucio is an heir. At any rate, as already noted, the respondent Judge had not seen fit to order, for any special reason, the immediate execution of the order of January 15, 1951.

The cases in which a special administrator may be appointed are specified in section 1 of Rule 81 of the Rules of Court which provides as follows: "When there is delay in granting letters testamentary or of administration occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the court may appoint a special administrator to collect and take charge of the estate of the deceased and executors or administrators thereupon appointed." A special administrator may also be appointed in a case covered by section 8 of Rule 87 which provides as follows: "If the executor or administrator has a claim against the estate he

represents, he shall give notice thereof, in writing, to the court, and the court shall appoint a special administrator who shall, in the adjustment of such claim, have the same power and be subject to the same liability as the general administrator or executor in the settlement of other claims. The court may order the executor or administrator to pay to the special administrator necessary funds to defend such claim."

There is no pretense that the case at bar is one falling under either section 1 of Rule 81 or section 8 of Rule 87. In any view of the case, there is a regular administrator. Pending her appeal from the order of January 15, 1951, the petitioner has the right to act as administratrix. If the respondent Judge had decreed the Immediate execution of the order of January 15, 1951, Rolando Relucio would then be the administrator pending petitioner's appeal. Consequently, the respondent Judge exceeded his jurisdiction in appointing the respondent Equitable Banking Corporation as special administrator.

Wherefore, the petition is hereby granted and the order of the respondent Judge of April 10, 1951, appointing the Equitable Banking Corporation as special Administrator is set aside, without costs. So ordered.

Feria, Pablo, Bengzon, Tuason, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

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