

ROMAN OZAETA, ROSA GONZALES VDA. DE PALANCA, JUSTO G. PALANCA, LEONARDA PALANCA DE ARANAS, SEVERINA G. PALANCA, CARLOS PALANCA, JR., ANTONIO G. PALANCA, MACARIO G. PALANCA, MILA...

G. R. No. L-5436. June 30, 1953

Ponente: LABRADOR, J.

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LABRADOR, J.:

The question posed by the petition filed in this case is: Does a probate court commit an abuse of discretion if, pending an appeal against its order or judgment admitting a will to probate and appointing as judicial administrator the person named therein as executor, it appoints as special administrator any person other than the executor named in the will?

The facts giving rise to the question may be briefly summarized as follows: Carlos Palanca died on September 2, 1950; leaving a will executed by him on May 19, 1945. In the will petitioner Roman Ozaeta, former associate justice of this Court, was named executor if General Manuel A. Roxas fails to qualify. Upon Palanca's death, and General Roxas having died previously, petitioner presented a petition for the probate of the will, at the same time praying that he be appointed special administrator. Some of the heirs of the decedent opposed this petition, and the court on October 6, 1950, appointed the Philippine Trust Company, a nonapplicant and a stranger to the proceedings, special administrator. On April 20, 1951, the Philippine Trust Company presented a petition to resign as special administrator on the ground of incompatibility of interest, as it had granted a loan to heir Angel Palanca, who had pledged to it shares of the Far Eastern University allegedly belonging to the estate of the deceased. There upon petitioner reiterated his previous petition, but the court appointed Sebastian Palanca, one of the heirs, to take the place of the Philippine Trust Company. The order is dated June 30, 1951. But on October 23rd, the court rendered an order admitting the will to probate and appointing petitioner as administrator. The order reads thus:

In view of all the foregoing, the court declares that the document which was executed by the testator on May 19, 1945 (Exhibit D), is the last will of Carlos Palanca Tanguinlay, and its probate is hereby allowed. The court appoints the petitioner, Roman Ozaeta, as executor, with a bond of P50,000 with sufficient sureties and subject to the approval by this court. Once this decision has become final and upon the approval of the said bond and the taking of the oath of office, let letters testamentary issue accordingly. With costs against the oppositors.

And on October 25, 1951, the court allowed the Philippine Trust Company to resign, reconsidered its order appointing Sebastian Palanca special administrator, and appointed instead the Bank of the Philippine Islands. Petitioner moved to reconsider the order, but his motion was denied, and thereupon the present petition was filed. In its order the court held that it has discretion to choose the special administrator and is not bound to appoint the person named therein as executor, because the order had been appealed.

Petitioner claims that the reason why the respondent judge does not appoint him special administrator is his

personal dislike for him, and that the reasons given by the judge in not appointing him, namely, alleged partiality to one group of heirs, less ability and experience in handling estates as the appointees—the previous and the subsequent one—are not actually the reasons that impelled him to deny petitioner's appointment. On the other hand, intervenors Maria Cuartero, et al., (a group of heirs), claim that petitioner had close personal relations with Rosa Gonzales (second wife of deceased) and her children, acting as sponsor in her marriage with the deceased, obtaining a loan from her family, etc. We have overlooked all the personal grounds or reasons given by the parties, and have chosen to decide the issue from a purely legal point of view.

It should be noted at the outset that Rule 81 of the Rules of Court, under the provisions of which the order appealed from was made, grants discretion to the probate court to appoint or not to appoint a special administrator. It is silent as to the person that may be appointed as special administrator, unlike section 6 of Rule 79, which expressly gives the order of preference of the persons that may be appointed regular administrator. We have held in the case of *Roxas vs. Pecson*, however, that the appointment of special administrators is not governed by the rules regarding the appointment of regular administrators. (*Roxas vs. Pecson*, 82 Phil., 407, 46 Off. Gaz. [5] 2058.) But we further held, however, that while the choice of the person lies within the court's discretion, such discretion should not be a whimsical one, but one that is reasonable and logical and in accord with fundamental legal principles and justice. The fact that a judge is granted discretion does not authorize him to become partial, or to make his personal likes and dislikes prevail over, or his passions to rule, his judgment. Such discretion must be based on reason and legal principle, and it must be exercised within the limits thereof. And there is no reason why the same fundamental and legal principles governing the choice of a regular administrator should not be taken into account in the appointment of the special administrator.

The choice of his executor is a precious prerogative of a testator, a necessary concomitant of his right to dispose of his property in the manner he wishes. It is natural that the testator should desire to appoint one of his confidence, one who can be trusted to carry out his wishes in the disposal of his estate. The curtailment of this right may be considered as a curtailment of the right to dispose. And as the rights granted by will take effect from the time of his death (Article 777, Civil Code of the Philippines), the management of his estate by the administrator of his choice should be made as soon as practicable, when no reasonable objection to his assumption of the trust can be interposed any longer. It has been held that when a will has been admitted to probate, it is the duty of the court to issue letters testamentary to the person named as executor upon his application (23 C. J. 1023). It is the testator that appoints his executor, as the question as to his peculiar fitness for such a position or his want of ability to manage the estate can not be addressed to the discretion of the county judge. (*Holbrook vs. Head*, 6 S. W. 592, 593, 9 Ky. 755.)

In the case at bar, the will has already been admitted to probate, and respondent judge himself has expressly appointed petitioner as administrator. The only reason or ground, therefore, for suspending his appointment, and for the appointment of a special administrator, who is not the petitioner himself, is a very technical one. It also appears that the Philippine Trust Company, which had acted as special administrator for a period of only a few months, has submitted a bill for P90,000. This would cut deep into the income of the estate, and if the new special administrator appointed by the respondent judge takes office, it is not improbable that the estate may again be subjected to the same expensive cost of administration. Under these circumstances, it would seem unreasonable to refuse to appoint the petitioner as special administrator. To do so would be delaying the fulfillment of the wishes of the testator and subjecting the estate to unnecessary expense. Petitioner has cited precedents in the surrogate courts of the State of New York to support his claim that as the will appointing him regular administrator has been admitted to probate by the trial judge, he should now be appointed special administrator during the pendency of the appeal against the order admitting the will to probate. In the case of *In re Shonts' Estate*, 178 N. Y. S. 762, 767-768, the judge makes the following very pertinent remarks:

"* * * It is my firm, belief that the appointment of the executors named in a will as temporary administrators during contested probates is not only more economical for suitors and estates in ninety-nine cases out of a hundred, but more consonant with the dignity of a court of this character. The intrusion of nominees of the court, strangers to the dead, very distasteful to the inhabitants of this state, should be as rare as possible in this court if people of property are to continue to feel at ease and in security in this state."

The case of *In re Erlanger's Estate*, 242 N. Y. S. 249, also reiterates the same principle.

"The courts have always respected the right which a testator enjoys to determine who is most suitable to settle his testamentary affairs, and his solemn selection should not lightly be disregarded. After the admission of a will to probate, the courts will not name a better executor for the testator nor disqualify, by a judicial veto, the widow or friend or other person selected in the will, except upon strict proof of the statutory grounds of incompetency. *Matter of Leland's Will*, 219 N. Y. 387, 393, 114 N. E. 854. For the foregoing reasons the person selected by the testator in three successive wills will be appointed. (Pages 254-255)

"The claimant's principal objection to the selection of Mr. Baron as temporary administrator is founded upon her charge that he exercised undue influence upon the testator in the drafting of the will offered for probate here. She also stresses his personal hostility to her. In my opinion, and in view of the special circumstances of this case, these considerations do not constitute a disqualification. *Matter of Hilton's Will*, 29 Misc. Rep. 532, 61 N. Y. S. 1073; *Jessup-Redfield Surrogate's Courts*, 6th Edit, page 743; *Matter of Robert*, N. Y. Law Journal, January 9th, 1912; *Matter of Ashmore's Estate*, 48 Misc. Rep. 312, 96 N. Y. S. 772. He receives no legacy under the will. He is an attorney of long experience and his professional standing is attested by several affiants. In addition to the fact that he was selected by Mr. Erlanger as executor in three of the wills, it appears from several affidavits that he was for a long period of time intimately associated with Mr. Erlanger. This association not only involved a personal friendship, but also the relationship of Mr. Baron as lawyer and Mr. Erlanger as client. It involved also knowledge of Mr. Erlanger's financial transactions, and, in addition, a close business contact with Mr. Erlanger's various enterprises. Mr. Baron was an officer or director of over thirty corporations through which Mr. Erlanger's various activities were conducted. He held powers of attorney from him in the last years of Mr. Erlanger's life. He is qualified, therefore, by this experience to safeguard the estate as temporary administrator." (Pages 252- 253)

The writ prayed for is, therefore, granted, the appealed order reversed, and the temporary injunction issued by the court made absolute. Let temporary letters of administration be issued in favor of petitioner during the pendency of the appeal from the order admitting the will to probate.

Paras, C. J., Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

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