

LUISA AVECILLA VDA. DE CELIS, PETITIONER, VS. ASUNCION ROQUE VDA. DE LA SANTA AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-5294. September 30, 1953

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal by certiorari from a judgment of the Court of Appeals affirming that of the Court of First Instance of Manila which annulled the sale of a lot and the buildings erected thereon situated at Nos. 2191, 2193, 2195, 2197 and 2199 Rizal Avenue and 428 Batangas Street, City of Manila, made by the executor, as authorized by the probate court of Manila, to Luisa AVECILLA Vda. de Celis, in so far as one-seventh undivided share thereof is concerned, belonging to Asuncion Roque Vda. de la Santa, for the reason that she was not notified of the petition for authority to sell the lot and buildings erected thereon and of the court order granting such authority to the executor.

The Court of Appeals made the following findings:

Plaintiff-appellee Asuncion Roque Vda. de la Santa is one of the instituted heirs in the will of her deceased brother, Teofilo Roque, together with her other brothers and sisters, Marcela, Catalina, Sofronio, Joaquin, Manuela and Francisco, all surnamed Roque, and was given a one-seventh (1/7) undivided share in a house and lot located at Nos. 2191-2199 Rizal Avenue and No. 428 Batangas Street, City of Manila. The said will was allowed to probate in special proceedings No. 60588, of the Court of First Instance of Manila. Sofronio Roque, one of the heirs, is the executor of the estate.

In Special Proceedings No. 60588, the following pertinent facts giving rise to this action appear undisputed:

- On November 10, 1942, a petition (Exhibit O) was filed by Ricardo de la Santa praying that he be allowed to file such petitions, pleadings, etc., as may be necessary for the protection of his mother's (Asuncion Roque) interest, as one of the heirs of the estate, attaching to said petition the affidavit (Exhibit P), executed by appellee in favor of her said son, Ricardo de la Santa, authorizing the latter to "represent and act for my interest for the protection of my rights in the proceedings, and to do any and all means to protect my interest." On the same date, Ricardo de la Santa also filed a motion (Exhibit Q) praying that the administrator be compelled to pay to the Agricultural and Industrial Bank the amount of P1,600 due from the deceased Teofilo Roque. In both the aforesaid petition and motion, Ricardo de la Santa gave as his address No. 428 Batangas Street, Manila. Pending resolution of said petition and motion, Ricardo filed with the said special proceeding, a special power of attorney (Exhibit A), executed by appellee Asuncion Roque, on November 13, 1942, granting the same power conferred upon him by the affidavit (Exhibit P).

- On December 4, 1942, the court issued an order (Exhibit B) denying the petition (Exhibit O) on the ground that there was no showing that Ricardo de la Santa was a duly authorized member of the bar. The court, however, abstained from acting on his motion (Exhibit Q) which sought to compel the administrator to pay the indebtedness of the estate to the Agricultural and Industrial Bank.

- On January 24, 1944, the late Judge Gervacio Diaz issued an order (Exhibit C), wherein it was recited that the instituted heirs, with the exception of Asuncion Roque who was very ill in the provinces, had prayed for the sale of the house and lot in question for the price of P350,000; that the administrator asked that the said authority be not given until after 2 weeks, in view of the fact that Asuncion Roque had not appeared before the court; and, that the difficulty of her non-appearance might be avoided in view of the fact that Asuncion Roque had already executed a special power of attorney (Exhibit A) in favor of her son, Ricardo. The said order contained the provision that notice should be given to Ricardo de la Santa, as attorney-in-fact of appellee, of said petition and the hearing of the same which was reset for January 28, 1944.

- The hearing of the petition above-stated, originally set for January 28, 1944, was postponed to February 11, 1944, by order of the court (Exhibit D). In the said order, the court expressly stated that Ricardo de la Santa should appear in court on the said date, February 11, 1944, to express his conformity or non-conformity to the proposed sale.

- On February 19, 1944, the court again issued another order (Exhibit F), requiring the appearance in court of the heir-petitioners, together with the administrator, Sofronio Roque, and Ricardo de la Santa, as attorney-in-fact of Asuncion Roque, at 9:30 a.m., on February 25, 1944, in order to manifest to the court as to the minimum as well as the maximum price for which they wanted the property sold or whether to employ a commission agent to sell the said property for the best price obtainable.

- On February 25, 1944, the late Judge Diaz issued another order (Exhibit G), which authorized the administrator to sell the property for a price of not less than P350,000 within one month from the date thereof, which authority shall automatically be cancelled if the sale is not realized within said period of time.

- On June 5, 1944, appellee Asuncion Roque filed a petition (Exhibit H), dated May 21, 1944, at Boac, Marinduque, praying that since the order to sell had not been carried out, which order was obviously motivated by a reason, among others, of paying the mortgage debt of P1,600 to the Agricultural and Industrial Bank, the personal properties of the estate which were being concealed by the other heirs and administrator, and undervalued by the latter at P2,053.83, should be sold and the proceeds thereof to be applied to the payment of said debt. Although the said petition was set for hearing on June 16, 1944, nothing appears in the record of any action taken by the court thereon.

- On June 6, 1944, that is, before the hearing of the petition of appellee (Exhibit H), the other heirs, namely, Marcela, Joaquin, Francisco, Catalina and Manuela again filed a motion (Exhibit I) praying for new authority in favor of the administrator to sell the property in dispute at a price ranging from P245,000 to P300,000.

- On June 13, 1944, also before the date set for the hearing of appellee's petition (Exhibit H), former Judge Buenaventura Ocampo issued an order (Exhibit J) authorizing the administrator to sell the said property for not less than P245,000.

- On June 21, 1944, the said Judge issued another order (Exhibit K) approving the deed of sale of the property in controversy, executed by the administrator in favor of defendant-appellant Luisa Avecilla Vda. de Celis, for the price of P320,000, which order also authorized the administrator to receive the purchase price from appellant and to deposit one-half thereof in the Philippine National Bank.

- On August 7, 1944, the final account of the administrator (Exhibit 5) and the project of partition (Exhibit 2) were approved by the probate court (Exhibit L).

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On August 19, 1944, Attorney Roman de Jesus filed a petition exparte (Exhibit M), in behalf of the administrator, alleging that Joaquin Roque had arrived from Boac, and was demanding his share as well as that of the co-heir Francisco Roque, and praying therefor authority to withdraw the sum of P80,644.09 to pay the said co-heirs at P38,828.79 each, and also for the payment of the inheritance tax corresponding to the share of

appellee Asuncion Roque, which petition was granted by the court in its order (Exhibit N).

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* * * As correctly found by the court a quo, no copies of the orders (Exhibit E [should be D], F, G, J, K and N) were received by appellee or her attorney-in-fact, in spite of the fact that the orders (Exhibits E [should be D], F, G and J) contained directives that notice of the same be served upon the appellee or her attorney-in-fact. The copy of the order (Exhibit G), corresponding to Ricardo, which order also contained a proviso that Ricardo be notified thereof, was left by the sheriff in the hands of Manuela Roque, one of the heirs. The copy of the order (Exhibit E [should be D]), which likewise provided that Ricardo should appear in court, was not served upon Ricardo because the sheriff was informed that he (Ricardo) was in Boac, Marinduque, so that the copy corresponding to him was returned to the court. The copy of the order (Exhibit F), which also required the appearance of Ricardo at the hearing of the petition for authority to sell the property, was not received by Ricardo, because, according to the affidavit of the sheriff, Ricardo was then in Marinduque. In the order of the court (Exhibit L), it is recited that Attorney Roman de Jesus appeared in behalf of the administrator and co-heir, Sofronio Roque, attorney J. P. Ozorio for the co-heirs Catalina, Manuela, Marcela, Joaquin and Francisco, but the co-heirs Asuncion, Francisco and Joaquin did not appear as they were all in Boac; that the co-heirs present and their respective attorneys advised the court that there was no objection on the part of the absent heirs to the approval of the final account of the administrator (Exhibit 5) and the project of partition (Exhibit 2) but, on the contrary, they knew that they all desired the early termination of the testate proceedings.

The validity of a judgment or order of a court entered in a special proceedings cannot be assailed collaterally unless the ground for the attack is lack of jurisdiction of the court entering such judgment or order or fraud by the party sought to be charged with it in its procurement.[1] If the nullity of the judgment or order assailed is for failure to adhere to or comply with the statutory requirements which must be followed before such judgment or order may entered, the remedy for the aggrieved party is to appeal from such order of judgment, or, if final, to apply for relief under Rule 38 which is also applicable to special proceedings.[2] The order in question in so far as Asuncion Roque Vda. de la Santa is concerned is not final and executory because, as found by the Court of Appeals, she has not been notified not only of the petition, filed not by the executor but by five of the heirs and devisees named in the will of the late Teofilo Roque duly probated, praying for authority to the executor named in the will and duly appointed to sell the lot and buildings erected thereon but also of the orders granting such authority and approving the sale made by the executor pursuant to such authority. Hence this action is improperly brought because the plaintiff has still the remedy of appeal to assail directly the validity of the order.

The probate court that entered the orders complained of had jurisdiction of the estate of the late Teofilo Roque and acquired jurisdiction over the heirs, devisees or legatees and interested persons, such as the creditors, of the deceased by their appearance and by publication of the summons or notice to all interested persons to appear in the proceedings for the probate of the will and settlement of the estate of the deceased testator. The proceedings are binding upon all parties not only upon those who appeared but also upon those who failed to appear.

Before the promulgation of the Rules of Court, section 718 of the Code of Civil Procedure provided that the authority to be granted to the administrator or executor to sell personal or real property of the estate of a deceased person when beneficial to the heirs, devisees or legatees, must be with the consent and approbation in writing of said heirs, devisees and legatees; and at the hearing of the petition seeking authority to sell it, the executor or administrator had to produce to the court such assent and approval in writing signed by the heirs, devisees and legatees or by their guardians, if minors, or otherwise under guardianship. The court appointed a time and place of hearing for deciding upon such application and was to require notice to be given of it and of the time and place of hearing to the persons interested, and the notice was to state the nature of the application and the reason for the same, the time and place of hearing, and was to be published three weeks successively previous thereto, in a

newspaper of general circulation in the neighborhood of those interested, to be designated by the court.[3] All such requirements were done away with by section 7, Rule 90, except as to notice. Paragraph (b) of said section provides:

The court shall thereupon fix a time and place for hearing such petition, and cause notice stating the nature of the petition, the reason for the same, and the time and place of hearing, to be given personally or by mail to the persons interested, and may cause such further notice to be given, by publication or otherwise, as it shall deem proper;

Pursuant thereto, the notice caused by the court to be made may be given to the person interested personally or by mail or by publication or otherwise, as it shall deem proper. If the interested party to whom the notice was mailed at his residence, as it appeared on the record of the special proceedings, had absented himself therefrom and failed to receive it, that fact would not deprive the court of the power to proceed with the hearing of the petition of the executor or administrator seeking authority to sell property of the estate of the deceased and to grant and deny it. From the findings of the Court of Appeals which recite the allegations set out in the motion filed by the respondent Asuncion Roque Vda. de la Santa of 5 June 1944, by which she objected, for the reasons therein stated, to the sale of the lot and buildings in question, it appears that she had actual knowledge of the application to sell the lot and buildings erected thereon. Such knowledge is equivalent to notice. The question then that arises is: Granting that she objected to the sale of the lot and buildings erected thereon and her objection considered, as it must be presumed for it was in the record of the special proceedings when the hearing of the application for authority to sell was heard, but was disregarded, by the probate court, could her objection be sufficient to prevent the probate court from granting the executor authority to sell the property? Unlike the statutory provisions before the promulgation of the Rules of Court, which required the consent or approbation in writing signed by the heirs, devisees, or legatees, without which the court was powerless belonging to the estate of a deceased person,[4] the Rules of Court do not deprive the probate court of the power to grant license to the administrator or executor to sell personal or real property of the deceased even if there be an objection to it by an heir, devisee or legatee, provided that such license to sell will redound to the benefit of the interested persons and hasten the winding up or the final settlement of the estate. The doing away by the Rules of Court with certain requirements which shackled and fettered the hands of the probate courts in settling promptly and in the most inexpensive manner the estate of deceased persons and writing up the administration thereof evinces the intent of the framers of the rules to grant more power to probate courts in dealing with the settlement and administration of the estate of deceased persons. Under the Code of Civil Procedure, partition of real estate assigned to two or more heirs, devisees or legatees and held by them in common could be applied to the court or judge having jurisdiction of the estate by any of the co-owners, and such partition may bring about or result in the sale of the real estate held in common despite objection to the sale by a co-owner.[5] Under the Rules of Court, the partition must be by a proper action.[6] But the result of such an action for partition independently of the special proceedings could be the sale of the property even if one of the co-owners would object to it. Consequently, neither the objection of Asuncion Roque Vda. de la Santa to the application for authority to sell the lot and buildings erected thereon belonging to the estate of the deceased Teofilo Roque nor the failure to receive the notice of such application caused to be served upon her personally or upon her son Ricardo de la Santa as her attorney-in-fact, it appearing that she had actual knowledge thereof, is sufficient legal cause to annul the sale, because the probate court had authority under the provisions of sections 4 and 7, Rule 90, to grant authority to the executor or administrator to sell the property of the deceased.

The judgment of the Court of Appeals appealed from is reversed and the complaint of the respondent Asuncion Roque Vda. de la Santa, dismissed, without costs.

Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.
Paras, C.J., no part.

[1] Anuran vs. Aquino and Ortiz, 38 Phil. 29; Gomez vs. Concepcion, 47 Phil. 717; Garchitorena et al. vs. Sotelo, 74 Phil. 25; Almeda et al. vs. Cruz, 47 Off. Gaz. 1179, 84 Phil. 636; Ang Lam vs. Rosillosa et al., 47 Off. Gaz., Supp. No. 12, 103.

[2] In re Estate of Johnson, 39 Phil. 156; Reyes vs. Gonzales et al., 47 Phil. 339; Oñas vs. Javillo, et al., 54 Phil., 602.

[3] Sections 718 and 722, Act No. 190. [4] Section 722, paragraph 3, Act No. 190. [5] Section 762, Act No. 190.

[6] Section 3, Rule 91, Rules of Court.

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