

**ANASTACIA GALLARDO-ABELED, IN HER CAPACITY AS
ADMINISTRATRIX OF THE ESTATE OF MAGDALENA F. GAL-LARDO,
PETITIONER, VS. COURT OF FIRST INSTANCE OF BAGUIO AND
BENGUET, LUCIO GALLA...**

G.R. No. L-35173. February 28, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal by certiorari from an order of the court of first instance of Baguio affirming the Baguio City court's order of dismissal of petitioner's suit for recovery of unpaid rentals and other sums of money due from private respondents on a Baguio City apartment house of the estate of the late Magdalena F. Gallardo on the ground that "plaintiff Anastacia Gallardo-Abeleda in her capacity as special administratrix of the estate of Magdalena Gallardo is without authority to file this suit in Baguio City before this court." [1]

Under date of June 2, 1969, petitioner was issued, by the court of first instance of Nueva Ecija in Special Proceeding No. 65 thereof for the settlement of the Intestate Estate of the deceased Magdalena F. Gallardo, letters of administration as "special administrator of the estate of the late Magdalena F. Gallardo, with full authority to take possession of all property of the said deceased, in Jaen, Nueva Ecija, San Antonio, Nueva Ecija and Quezon City for the preservation of the said property." [2]

On January 5, 1970, petitioner as such special administratrix filed her complaint against private respondents in the Baguio City court for the recovery of some P9,000.00 representing unpaid rentals for occupancy of the estate's apartment house situated in said city. [3] The case proceeded to trial after respondents filed their answer with counterclaim, and petitioner testified and identified her documentary evidence in substantiation of her complaint.

Respondents' counsel in turn limited his cross-examination to obtaining an affirmative answer from petitioner that her special letters of administration of June 2, 1969, supra, was the only appointment extended to her by the intestate court. Thereupon, respondents' counsel refused to proceed any further and verbally moved to dismiss the complaint on the ground of petitioner's lack of capacity to sue, contending that her appointment as administratrix "does not authorize her to take possession of any property in Baguio City."

Although the Baguio city court manifested to respondents' counsel that "the court would like you to finish cross-examining this witness," it apparently acceded to said counsel's view that there is no point of cross-examining if the case is dismissed" if the said court would sustain his contention on petitioner's lack of authority to file the suit, for it did not require counsel to terminate his cross-examination and instead subsequently issued its order of September 16, 1970 dismissing the complaint on the ground of petitioner's lack of authority to file the suit before it.

Petitioner's appeal of the dismissal order to respondent Baguio court of first instance, [4] under the procedure prescribed in section 1 of Republic Act No. 6031 dispensing with trials de novo in such cases appealed from the

municipal courts, met the same fate. Respondent court sustained the city court's dismissal order, holding in its order of March 14, 1972 that whatever may have been the probate court's reasons, its specific mention in the letters of administration of the estate's properties in Jaen and San Antonio, Nueva Ecija, and Quezon City excluded the Baguio property and divested petitioner of "authority to institute this case in an action involving the property in Baguio" and that "if (petitioner) believes that the issuance of the letters of administration was not conformable to law, he should have taken the necessary steps to have it amended."

Petitioner's motion for reconsideration was likewise denied per order dated March 25, 1972. Hence, the present appeal filed on June 30, 1972.

Petitioner at bar insisted on her submittal that her appointment as "special administratrix of the estate of the late Magdalena F. Gal-lardo" fully authorized her under Rule 80, section 2 of the Rules of Court[5] to "take possession and charge of the decedent's entire estate" and that the addition of the phrase "with full authority to take possession of property of said deceased in Jaen, Nueva Ecija, San Antonio, Nueva Ecija and Quezon City" was a mere surplusage which should not be construed to exclude the decedent's Baguio property from her duty of administering and preserving the same. Petitioner further prayed for the rendition of the money judgment as prayed for in her complaint, on the ground that she had established a prima facie case with her testimony while respondents, in moving to dismiss, did not make any reservation to present evidence in case their motion was not sustained.

Respondents on the other hand stood on their strict literal construction of the letters of special administration as presented by petitioner and that "the road has always been open for the petitioner to seek an amendment of her appointment by the proper court." There has not been any contention whatever on respondents' part that the probate court had appointed another special administrator for the Ba-guio and other properties of the deceased's estate or that petitioner was in any way disqualified by conflict of interest or other similar cause from administering said properties not specifically mentioned in her special letters of administration.

Hence, the petition appears to have merit, especially since in effect the plaintiff and party in interest in the collective suit was in reality the estate of the deceased Magdalena F. Gallardo, and petitioner's having caused the suit to be filed in her capacity as special administratrix would not affect the merits of the case or the estate's right of recovery, if the letters issued to her actually were intended to exclude the Baguio property from her administra-tion. On the other hand, petitioner or her counsel likewise seemed to be at fault in apparently not having sought from the probate court the proper clarification in order to remove the doubts raised by respondents.

To remove all such doubts, the Court, after the filing by the parties of their respective memoranda, issued its Resolution of De-cember 12, 1972, as follows:

"xxx xxx xxx The Court NOTED that the petition at bar has been filed by petitioner as administratrix of the Estate of the late Magdalena F. Gallardo, apparently as regular administratrix, and no longer under the letters of special adminis-tration issued her on June 2, 1969 'to take possession of all property of the said deceased in Jaen, Nueva Ecija, San Antonio, Nueva Ecija, and Quezon City, (Annex B, petition) which were construed by the appealed order to exclude from her administration part of the decedent's estate situated in Baguio City. The Court RESOLVED, in order to expedite disposition of the present appeal, to require petitioner, within five (5) days from notice, to state whether she has been appointed regular administratrix of the decedent's estate or issued an amended appointment as special administra-trix, removing therefrom the limitation of her power of administration to the properties in Nueva Ecija and Que-zon City, and in the affirmative case, to submit to the Court within the same period, a certified copy of such appointment. "

In compliance therewith, petitioner submitted on December 28, 1972 a certified copy of the probate court's order dated September 7, 1971 finding in order and granting the "petition filed by the administratrix (petitioner at bar)

seeking that she be made as permanent administratrix."

Respondents, in turn, in compliance with the Court's resolution of January 8, 1973, filed their comment dated January 25, 1973, manifesting that "the respondent has always been of the contention that the petitioner's remedy is the amendment of her appointment, and not the present appeal on a pure question of law" and "now that the petitioner has finally produced a copy of the amendment of her appointment, the respondent, learning of it for the first time, here-by manifests that such amendment has rendered the present appeal by certiorari moot and academic."

The Court believes accordingly that petitioner's appointment as permanent administratrix removes all doubts as to her authority to take charge of the Baguio property (even under her original special letters of administration) and to file the collection suit in the Baguio city court on behalf of the estate of the deceased Magdalena F. Gallardo. Judgment directly in her favor on said collection suit cannot however be rendered, as respondents' motion was one of dismissal on the ground of her alleged lack of authority or capacity to file the suit as permitted under Rule 16, section 1 (d) and not for a judgment of dismissal on demurrer to evidence under Rule 35, section 1, under which latter rule respondents-movants, upon reversal on appeal of the dismissal order secured by them, would be deemed to have lost their right to present evidence on their behalf, with the result that adverse judgment could then be forthwith rendered against them on the basis of petitioner's evidence.

Far from this appeal having been rendered moot as contended by respondents, the case should be remanded to the Baguio city court, which had acted precipitously in granting respondents' verbal motion to dismiss during the course of its reception of petitioner's evidence and abruptly cut off the trial (instead of simply requiring petitioner to clarify the scope of her authority as issued by the probate court, as has now been finally done), for resumption of the trial and the rendition of the corresponding judgment as the parties' evidence may warrant.

ACCORDINGLY, respondent court's dismissal order of March 14, 1972 is hereby set aside and the records of the case below are hereby ordered remanded to the city court of Baguio City for proper trial and disposition on the merits. With costs against private respondents.

SO ORDERED.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Fernando, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

[1] Annex F, petition.

[2] Annex B, petition.

[3] Civil Case No. 4317 of the city court of Baguio City.

[4] Docketed as Civil Case No. 2193 of the court of first instance of Baguio.

[5] "Section 2. Powers and duties of special administrator. - Such special administrator shall take possession and charge of the goods, chattels, rights, credits, and estate of the deceased and pre-serve the same for the executor or administrator afterwards appointed, and for that purpose may commence and maintain suits as administrator. He may sell only such perishable and other property as the court orders sold. A special administrator shall not be liable to pay any debts of the deceased unless so ordered by the court." (Rule 80).

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