

FRANCISCO DE BORJA, CRISANTO DE BORJA, AND MATILDE DE BORJA, PETITIONERS, VS. BIENVENIDO TAN, AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, AND JOSE DE BORJA, RESPONDENTS.*G. R. No. L-6108. May 25, 1953*

Ponente: LABRADOR, J.

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Petitioner Francisco de Borja is the duly appointed executor of the will of his deceased spouse Josef Tangco. Letters testamentary were issued to him on April 1, 1946. His co-petitioners Crisanto de Borja, Matilde de Borja, Cayetano de Borja, and the respondent Jose de Borja are his children by his deceased spouse. On August 25, 1951, the court, acting on a letter of Matilde de Borja dated August 20, 1951, informing the court that her father "is weak due to his old age, for many months can not see nor recognize persons, cannot read nor write, can not raise up and move about, nor do his personal necessities alone without the aid or help of someone," and that practically the estate "is being managed by our stepmother who has nothing to do with the said properties," appointed Crisanto de Borja as co-administrator. The letter of Matilde de Borja cites a medical certificate of Dr. A. G. Sison to the effect that Francisco de Borja is practically bed-ridden and unable to be up and about. Crisanto de Borja qualified as co-administrator on August 29, 1951. In the month of September, 1951, all the children and heirs of the deceased, including Crisanto de Borja himself, filed a petition ex parte praying that the appointment of Crisanto de Borja as co-administrator be set aside, on the ground that the appointment was not to the executor's liking, and that any way said Crisanto de Borja is helping him in the administration. (Annex G.) No action, however, was taken by the court on this petition. On March 21, 1952, the executor presented in court an amended account covering the period from 1946 to 1951, with a net balance of P1,640.42 in favor of the administration, and he suggested therein that his son Crisanto be appointed administrator, if the court would desire to do so. But instead of following the above recommendation and without previous notice to the parties in interest, the court on April 9, 1952, appointed Jose P. de Borja co-administrator, expressly directing him to examine the account and submit his comment thereon. (Annex C.) This order is the *casus belli* that gave rise to the misunderstanding culminating in these proceedings for certiorari.

Upon being informed of the above order, Francisco de Borja promptly presented a motion for its reconsideration dated April 22, 1952 (Annex D), through counsel, alleging that the appointment disregards the provisions of the will (which points to Crisanto de Borja as the substitute executor should the original appointee die before the testatrix should die), as well as the recommendation of the executor, that the appointment was issued without previous notice, and that the appointee holds an interest adverse to that of the estate under administration. The other heirs joined in opposing the order in a motion dated also April 22, 1952, alleging that the appointment of a co-administrator of the regular administrator is not sanctioned by law; that the interest of the appointee is adverse to that of the movants, and that he is unsuitable to discharge the duties of the administrator. (Annex E.) In denying the above motions for reconsideration the court explained that it desired to "be informed of the real status of the

estate made impossible by the refusal of Francisco de Borja and Crisanto de Borja to render a complete account of the estate," and because both Crisanto de Borja and Francisco de Borja failed to show the vouchers, receipts, "comprobantes," etc., with which they claimed to support the expenses. The order also declares that Francisco de Borja appeared personally, and the court observed that he can not read nor write, can hardly walk, and appeared old and feeble, etc. The court approved the *ex parte* petition for the removal of Crisanto de Borja as co-administrator, and expressly directs the newly appointed co-administrator to submit his comment on the amended accounts, so the court may properly act on it. The order is dated June 14, 1952, and is marked Annex F. Motions to reconsider the above order were denied. Thereupon Francisco de Borja filed another motion praying the court to prohibit Jose de Borja to act as co-administrator until the appeal against his appointment had been decided, but again the court denied this motion. Upon the court's refusal to reconsider this order, and after the court had ordered Gregorio de Borja and Crisanto de Borja to refrain from interfering with the administration of the estate, the present petition for certiorari was presented alleging that the court's orders (1) appointing Jose de Borja as co-administrator, (2) revoking the appointment of Crisanto de Borja, (3) directing the administrator not to appoint one Gregorio de Borja as encargado, and (4) prohibiting Crisanto de Borja and Pedro Pillas from interfering in the management of the Hacienda Jala-jala, are all in excess of jurisdiction and issued with grave abuse of discretion on the part of the respondent judge.

There can not be any question as to the physical inability of the executor Francisco de Borja to efficiently manage the estate, which is large. This fact is conclusively shown by the certificate of the physician who had him under treatment, the letter of his daughter Matilde de Borja, his age, and the results of the observation of the judge in the various occasions in which the executor personally appeared before the court. The court could have removed him because of his physical inability and his consequent unsuitability to manage the big estate under his administration. This the court did not do, but limited itself to appointing a co-administrator in the person of Jose de Borja, respondent.

It is insisted, however, that his appointment (that of Jose de Borja) was made without any petition, without any notice, and without any hearing. It will be noted that Crisanto de Borja was first appointed co-administrator upon petition of heir Matilde de Borja, and upon the court finding that Francisco de Borja is old and physically unfit. Then in September, 1951, all the heirs had joined in an *ex parte* motion to cancel Crisanto de Borja's appointment. But this was not acted upon. When in April, 1952, the court found that it was necessary to have one appointed as co-administrator, because it appeared to the court that the one making the report of the administrator was not the latter himself, it had only to choose between Jose de Borja and Cayetano de Borja, and it chose the former.

It can be seen from the record that the haste of the judge in making the appointment of Jose de Borja without previous notice or hearing was due to his apparent desire to have the amended account promptly acted upon by the court, with a view to terminating the administration as soon as possible. It is true that there was no previous notice of the court's intention to appoint him and thus give the other interested parties opportunity to express their objection thereto. But this procedural defect was cured when the said interested parties presented their motions to reconsider the appointment. When the court, therefore, overruled their objection and confirmed the the appointment, the interested parties were given their day in court, and the previous objection of lack of notice or opportunity to be heard fully met. What the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard. There was an opportunity given in this case when the petitioners presented their motions for reconsiderations.

It is also contended that the revocation of Crisanto de Borja's previous appointment as co-administrator was without justification, because the motion of the heirs for the cancellation of his appointment had been abandoned. It must be stated that there is sufficient cause of his removal, even without the request for the cancellation of his

appointment. It is his failure to produce the vouchers, receipts, and other papers supporting the expenses, and the unsatisfactory excuse later given by him of said failure, i.e., that said vouchers and receipts were lost. (See order of June 14, 1952, Annex F of petition.)

The choice of a co-administrator is not the absolute right or privilege of the majority of the heirs. If the administration of the estate of a deceased person were not a judicial proceeding, the majority of the heirs would have the right to determine who would manage the estate. But as the proceeding is judicial, the law places discretion in the choice of the administrator upon the judge, and said discretion may not be interfered with unless abused. (*Navas L. Sioca vs. Garcia*, 44 Phil. 711). We find no abuse of discretion under the circumstances of the case, and the appointment made must be sustained.

Another ground upon which the petition is based is the supposed perfection of the appeal from the order of the court appointing de Borja co-administrator, as a result of which the order should have been considered suspended and Jose de Borja prohibited from acting as co-administrator. There is no proof that when the orders sought to be annulled were carried out by the respondent judge, the appeals therefrom had already been perfected. As a matter of fact, the court states in its order of August 8, 1952 (Annex M), that the appeals had not yet been perfected. The presentation of a record on appeal alone does not perfect an appeal. The notice of appeal and appeal bond must also be presented. It does not appear that these requisites had been complied with. (Sec. 9, Rule 41, Rules of Court.) Be that as it may, we find that the qualification of Jose de Borja as co-administrator and his immediate assumption of the position were fully justified. The court had found out as a fact that the report of the administrator was made by another person. The administration of one of the estates under administration was entrusted to an encargado, over whom the court had no direct power or authority. The administrator, because of his old age and physical inability, had to perform his duties through others over whom the court had no power or control. These circumstances must have impelled the court in allowing Jose de Borja to assume his position immediately, without waiting for the perfection of the appeal. We can not say that the court abused its discretion in appointing a co-administrator under these circumstances.

The other orders sought to be revoked seek to implement the order appointing Jose de Borja co-administrator. The appointment having been found to be within the prerogative of the judge, and was legal and valid, the implementing orders must also be sustained.

The petition is hereby denied and the preliminary injunction dissolved, with costs against petitioners.

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

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