

**SALVACION LOPEZ, PETITIONER, VS. JOSE TEODORO, SR., JUDGE OF THE COURT OF FIRST INSTANCE OF OCCIDENTAL NEGROS, EULALIO LOPEZ, JR., AND JESUS JALBUENA, RESPONDENTS.***G.R. No. L-3071. May 29, 1950*

Ponente: TUASON, J.

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Eulalio Lopez, Sr., an incapacitated under the judicial guardianship of Eulalio Lopez, Jr., was the exclusive and absolute owner of an hacienda in Silay, Negros Occidental, having a total area of over 100 hectares. On September 3, 1948, the Court of First Instance, acting upon a notion of Senen L. Gamboa and Adelaida Gamboa filed in the proceedings for guardianship, ordered the guardian to. pay the movants P7,312 plus 12 percent interest from August, 1944, amount which represented loans properly authorized by court. The order provided that if the guardian did not have funds to pay those debts, he should take the necessary steps for the sale of some of the property of the guardianship.

In pursuance of this authority, the guardian sold the above tract of land, the only property of which the incapacitated was possessed, on January 11, 1949, to Jesus Jalbuena for P66,000, who, under the terms of the sale, bound himself to pay the mortgage debt and other obligations aggregating P22,3460,30, and to satisfy the balance in two installments.

It is admitted that in authorizing the sale of some of the property of the incapacitated, the court did not follow the requirement of Section 2 of Rule 96 to the effect that the court shall direct the next of kin of the ward, and all persons interested in the estate, to appear at a reasonable time and place to be specified in the order, to show cause why the prayer for the sale should not be granted. Nor did the court specify, as provided by Section 1 of the same Paile, whether the sale should be effected publicly or privately.

Although Eulalio Lopez, Jr. was the judicial guardian, the incapacitated was and is under the actual care and custody of his sister, Salvacion Lopez. Believing that the sale was prejudicial to her brother's interests, Salvacion Lopez filed a motion for reconsideration of the court's order authorizing said sale, and upon the motion being denied, she brought this .petition for certiorari and mandamus, contending that the sale was null and void by .reason of the court's failure to adhere to Rule 96, and praying that the orders of the respondent court be corrected and the said court directed to revoke the sale.

The judicial guardian, Eulalio Lopez, Jr., and the vendee, Jesus Jalbuena, have filed separate answers and raised several defenses,. These are, first, that the petitioner's remedy, if she has any, is by appeal and not certiorari and/or mandamus; second, that the petitioner has no interest whatsoever in the subject matter of her petition; third, that whether the sale is prejudicial or not is a proper ground for a separate action and not certiorari or mandamus; fourth, that the sale was not made in contravention of existing laws; and fifth, that the court, as a probate court, has lost jurisdiction over the property sold because the land is now registered in the name, of the purchaser to whom a new transfer certificate of title has been duly issued.

Without deciding the legality or illegality of the sale, or whether this matter should be ventilated in an ordinary action instead of in a proceeding for certiorari, it is evident that appeal and not certiorari or mandamus is the proper remedy. Unquestionably, the court of First Instance in which the guardianship proceedings were pending had jurisdiction to order the questioned sale. The court's jurisdiction is not disputed. Nor was there an abuse of discretion, judging from the averments in the answers. It appears that the outstanding Indebtedness of the guardianship properly and legally incurred amounted to P36,833.66, part of which was due the petitioner for the support and maintenance of the incapacitated.

The other defense that; does not leave much room for discussion is that the petitioner has no legal interest in her complaint. H!he Incapacitated has children, all of age, one of whom Is the judicial guardian, while the petitioner is only the ward's sister. Not being Eulalio Lopez's forced heir, she was not prejudiced by the sale she seeks to impugn. It is true that she was a creditor but she does not claim any right to be notified of the sale as such creditor, and her credit was not impaired. On the contrary, she was benefited by the sale in that she was paid what was due her from its proceeds. As to the other creditors, they did not appear to have any objection to the action taken by the judicial guardian and authorized by the court.

The petitioner insists: that she is next of kin. She is In error."Next of kin" within the meaning of Rule 96 are relatives whose relationship is such that they are entitled to share in the estate as distributees. (33 C. J. 930-931.) "Next of kin" is also defined in Black's Law Dictionary, 3rd Ed., to mean not the next of kindred but those relatives who share in the estate according to the statute of distribution including those claiming per stripes or by representation.

None of the children of the incapacitated is or was opposed to the sale sought to be set aside. Only these had an interest in the land of their father, besides the creditors, and only they or the creditors who may have been prejudiced by the sale have a right to object thereto.

Having reached these conclusions, it is unnecessary for us to discuss the other questions raised.

The petition, is denied, without costs.

Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

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