

**FELICIANO DE GUZMAN, PETITIONER, VS. THE HONORABLE
TEOFILO GUADIZ, JR., JUDGE OF THE COURT OF FIRST INSTANCE
OF NUEVA ECIJA, BRANCH V, GAPAN, AND JULIAN VILLEGAS,
NATIVIDAD VILL...**

G.R. No. L-48585. March 31, 1980

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for certiorari instituted by Feliciano de Guzman against Honorable Teofilo Guadiz, Jr., Judge of the Court of First Instance of Nueva Ecija, Branch V, Gapan, and Julian Villegas, Natividad Villegas, Geminiano Villegas, Cesar Villegas, Maximo Matias, Rosario Villegas Matias, Ana Marie V. Matias, and Lourdes V. Matias, seeking the following relief:

"WHEREFORE, petitioner most respectfully prays:

a) That respondents be ordered to answer this petition;

b) That after hearing the Order of respondent Judge dated December 23, 1977 denying petitioner's Motion for Appointment of a Special Administrator and consequently, the Order dated July 15, 1978 denying petitioner's Motion for Reconsideration be annulled and that said respondent Judge be declared to have committed a grave abuse of discretion amounting to lack or excess of jurisdiction in refusing the appointment of the Special Administrator;

c) That respondent Judge be directed to appoint a Special Administrator pending the probate of the Last Will of Catalina Bajacan.

Petitioner respectfully prays for such other relief just and equi-table in the premises.

Manila, Philippines, August 14, 1978."[1]

On August 31, 1978, without giving due course to the instant petition, this Court adopted a resolution directing the respondents to comment thereon within ten (10) days from notice thereof.[2]

The respondents filed on October 10, 1978 their comment dated October 9, 1978.[3]

Meanwhile, on September 29, 1978, the petitioner submitted a Constancia manifesting that the respondent judge cancelled the hearing on the petition for probate of the will scheduled on September 20, 1978 "pending the outcome of the case before the Supreme Court."[4]

On October 18, 1978, this Court resolved: a) to GIVE DUE COURSE to the petition; and b) to REQUIRE (1) the petitioner to deposit P80.40 for costs and clerk's commission within five (5) days from notice thereof, and both parties to submit simultaneous memoranda within thirty (30) days from notice thereof.[5]

Both petitioner and respondents having filed their respective memoranda,[6] on December 6, 1978, this Court

resolved to declare this case submitted for decision.[7]

The record discloses that on March 16, 1977, the petitioner filed a petition with the Court of First Instance of Nueva Ecija, Branch V, Gapan, docketed as Special Proceeding No. 865[8] for the probate of a will alleged to have been executed by one Catalina Bajacan instituting the herein petitioner as sole and universal heir and naming him as executor; that Catalina Bajacan died on February 3, 1977; that on May 10, 1977, the private respondents filed a motion to dismiss and/or opposition contending, among others, that all the real properties of Catalina Bajacan are now owned by them by virtue of a Deed of Donation Intervivos executed on June 19, 1972 by Arcadia Bajacan and Catalina Bajacan in their favor;[9] that on September 30, 1977, the respondent judge resolved to defer resolution on the said motion to dismiss until the parties shall have presented their evidence;[10] that a motion for the appointment of a special administrator[11] was filed by the petitioner on September 23, 1977 alleging that the unresolved motion to dismiss would necessarily delay the probate of the will and the appointment of an executor; that the decedent's estate consists of eighty (80) hectares of first class agricultural rice land, more or less, yielding fifty thousand pesos (P50,000.00) worth of rice harvested twice a year; that somebody representing the estate should collect and receive the palay harvests pending the probate of the will; that on December 23, 1977, the respondent judge issued an order denying the motion for appointment of a special administrator, the pertinent portion of which reads:

"The appointment of a special administrator is predicated on the necessity of enabling somebody to take care of the properties where there is a considerable delay in the appointment of a regular administrator. In the present case, since the properties covered by the will are undoubtedly in the possession of the oppositors who claim to be the owners thereof, the Court sees no necessity of appointing a special administrator.

"WHEREFORE, in view of the foregoing, the Court hereby denies the motion for the appointment of a special administrator filed by the petitioner dated September 22, 1977 x x x"[12];

that on June 5, 1978, the petitioner filed a motion for reconsideration of the order dated December 23, 1977[13]; that said Motion was also denied by the respondent judge in an order dated June 9, 1978 which states:

"In a motion for reconsideration filed by the petitioner on June 5, 1978 praying for a reconsideration of the Order dated Dec. 23, 1977, which denied the motion for appointment of a Special Administrator filed by him, it is alleged that the Court made a premature determination of ownership and possession of the oppositors over the properties of the estate of Catalina Bajacan. This assertion is not accurate. What the Court merely stated in said Order is that the oppositors, who claim to be the owners, are in possession of the properties covered by the Will.

"WHEREFORE, in view of the foregoing, the Court hereby:

xxxx

(b) denies the motion for re-consideration filed by petitioner on June 5, 1978."[14]

The main issue in this case is whether the respondent judge presiding the Court of First Instance of Nueva Ecija, Branch V. Gapan, acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the order dated December 23, 1977 denying petitioner's motion for the appointment of a special administrator and the order dated June 9, 1978, denying petitioner's motion for reconsideration.

It is the petitioner's contention that the respondent judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction because the facts warrant the appointment of a special administrator of the estate of Catalina Bajacan.

Rule 80, Sec. 1, of the Revised Rules of Court provides:

"Section 1 - Appointment of Special Administrator - When there is delay in granting letters testamentary or of administration by any cause including an appeal from the allowance or disallowance of a will, the court may appoint a special administrator to take possession and charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators appointed."

Under the above rule, the probate court may appoint a special administrator^[15] should there be a delay in granting letters testamentary or of administration occasioned by any cause including an appeal from the allowance or disallowance of a will. Subject to this qualification, the appointment of a special administrator lies in the discretion of the Court.^[16] This discretion, however, must be sound, that is, not whimsical, or contrary to reason, justice, equity or legal principle.^[17]

The basis for appointing a special administrator under the Rules is broad enough to include any cause or reason for the delay in granting letters testamentary or of administration as where a contest as to the will is being carried on in the same or in another court, or where there is an appeal pending as to the proceeding on the removal of an executor or administrator, or in cases where the parties cannot agree among themselves.^[18] Likewise, when from any cause general administration cannot be immediately granted, a special administrator may be appointed to collect and preserve the property of the deceased.

It is obvious that the phrase "by any cause" includes those incidents which transpired in the instant case clearly showing that there is a delay in the probate of the will and that the granting of letters testamentary will consequently be prolonged necessitating the immediate appointment of a special administrator.

The facts justifying the appointment of a special administrator are:

- (1) Delay in the hearing of the petition for the probate of the will.
- (2) The basis of the private respondents' claim to the estate of Catalina Bajacan and opposition to the probate of the will is a deed of donation dated June 19, 1972 allegedly executed by the deceased Catalina Bajacan and her late sister Arcadia Bajacan in their favor.^[19]

There is an immediate need to file an action for the annulment of such deed of donation in behalf of the estate. Precisely, the petitioner filed Civil Case No. 1080 in the Court of First Instance of Nueva Ecija, Branch V, against the herein private respondents. The case was dismissed by the respondent judge in an order dated June 9, 1978 on the ground that the petitioner has no personality to file the action because although he is named heir in the will, the said will is not yet probated.^[20] In the meantime there is nobody to sue in order to protect the interest of the estate considering that the probate of the will and the appointment of an executor will take time.

Upon the filing of this petition, the respondent judge, on motion of the private respondents, postponed the hearing of the probate of the will which was then scheduled on August 23, 1978 to September 20, 1978. Again, in view of the motion for reconsideration of the private respondents dated September 4, 1978, the respondent judge issued an order dated September 12, 1978, which in part reads: "x x x the hearing of this case scheduled on September 20, 1978 is hereby cancelled pending the outcome of the case before the Supreme Court."^[21]

The reasons for the appointment of a special administrator are:

"The reason for the practice of appointing a special administrator rests in the fact that estates of decedents frequently become involved in protracted litigation, thereby being exposed to great waste and losses if there is no authorized agent to collect the debts and preserve the assets in the interim. The occasion for such an appointment usually arises where, for some cause, such as a pendency of a suit concerning the proof of the will, regular administration is delayed. No temporary administration can be granted where there is an executor in being capable of acting, however."^[22]

"Principal object of appointment of temporary administrator is to preserve estate until it can pass into hands of person fully authorized to administer it for benefit of creditors and heirs." [23]

It appears that the estate has properties registered under the Torrens system in the name of the deceased Catalina Bajacan consisting of eighty (80) hectares of first class agricultural land. It is claimed that these 80 hectares produce P50,000.00 worth of palay each harvest twice a year. Obviously there is an immediate need for a special administrator to protect the interests of the estate as regards the products.

All the facts which warrant the appointment of a special administrator in accordance with Rule 80, Sec. 1 of the Revised Rules of Court are present in the case at bar.

The respondent judge opined that there is no need for the appointment of a special administrator in this case because the respondents are already in possession of the properties covered by the will. The respondent judge has failed to distinguish between the partisan possession of litigants from that of the neutral possession of the special administrator under the Rules of Court. When appointed, a special administrator is regarded, not as a representative of the agent of the parties suggesting the appointment, but as the administrator in charge of the estate, and in fact, as an officer of the court. [24] The accountability which attaches to the office of a special administrator to be appointed by the court is absent from the personal possession of private respondents.

The only way to test the validity of the alleged donation in favor of the private respondents is to appoint a special administrator who will have the personality to file the corresponding action.

In view of all the foregoing, the respondent judge committed a grave abuse of discretion in denying the petitioner's motion for appointment of a special administrator.

WHEREFORE, the petition for a writ of certiorari is hereby granted and the Order of the respondent judge dated December 23, 1977, denying petitioner's motion for appointment of a special administrator and the Order dated June 9, 1978 denying the petitioner's motion for reconsideration are set aside. The respondent judge is ordered forthwith to appoint a special administrator pending the probate of the last will of Catalina Bajacan in Special Proceeding No. 865, without pronouncement as to costs.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

[1] Rollo, pp. 10-11.

[2] Rollo, p. 45.

[3] Rollo, pp. 60-79.

[4] Rollo, pp. 49-50.

[5] Rollo, p. 159.

[6] For Petitioner, Rollo, pp. 161-169; and for Respondents, Rollo, pp. 171-186.

[7] Rollo, p. 189.

[8] Annex "A", Petition, Rollo, p. 12.

[9] Annex "B", Petition, Rollo, p. 17.

[10] Rollo, p. 7.

[11] Annex "C", Petition, p. 30.

[12] Annex "D", Petition, Rollo, pp. 32-33.

[13] Annex "E", Petition, Rollo, p. 34.

[14] Annex "F", Petition, Rollo, pp. 38-40.

[15] A special administrator is a representative of a decedent appointed by the probate court to care for and preserve his estate until an executor or general administrator is appointed. (Jones vs. Minnesota Transfer R. Co. NW 606, cited in Jacinto, Special Proceedings, 1965, ed., p. 106, cited in Garcia Fule vs. CA, 74 SCRA 189, 201.)

[16] Relucio vs. San Jose, 91 Phil. 365; Junquera vs. Borromeo, 99 Phil., 276; Alcasid vs. Samson, 102 Phil., 735; Garcia Fule vs. CA, 74 SCRA 189.

[17] Ozaeta vs. Pecson, 93 Phil. 416; Garcia Fule vs. CA, 74 SCRA 189.

[18] Garcia Fule vs. CA, 74 SCRA 189.

[19] Exhibit "FFF", Memorandum for Respondents, Rollo, pp. 179-186.

[20] Annex "G", Petition, Rollo, pp. 41-42.

[21] Constancia of Petitioner, Rollo, pp. 49-50; Annexes "B" and "C", Rollo, pp. 53-57, respectively.

[22] Griffith vs. Frazier, 8 Cranch (U.S.) 9 3L. ed. 471 (South Carolina Law Applied); 21 Am. Jur. 831, in Francisco, Rules of Court, Vol. V-B, pp. 45-46.

[23] Barfield v. Miller, Tex. Civ. App. 70 S.W. 2d 632, Ibid.

[24] 21 Am. Jur. 832 in Francisco, Revised Rules of Court, 1970 Ed., Vol. V-B, p. 45.

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