

NATIVIDAD V. A. JARODA, PETITIONER, VS. THE HONORABLE VICENTE N. CUSI, JR., PRESIDING JUDGE, BRANCH I, COURT OF FIRST INSTANCE OF DAVAO, AND ANTONIO V. A. TAN, IN HIS CAPACITY A...

G.R. No. L-28214. July 30, 1969

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Questioned as null and void in this petition for certiorari with preliminary injunction are two (2) orders of the Court of First Instance of Davao, Branch I, issued in its Special Proceeding No. 1391 entitled "In the Matter of the Intestate Estate of Carlos Villa Abrille, deceased, Antonio V. A. Tan, petitioner".

The first of the said two orders, dated 5 May 1965, granted an ex-parte petition by then special administrator Antonio V. A. Tan, the herein respondent, to withdraw from the Philippine National Bank the amount of P182,531.08 deposited in savings and checking accounts in the name, and during the life-time, of Carlos Villa Abrille (now deceased) but allegedly held in trust for the decedent's co-owners in the Juna Subdivision.

The second order, dated 3 September 1965, approved ex-parte the power of attorney executed by special administrator Tan appointing himself attorney-in-fact to sell the share of the estate in the sub-division lots.

The aforesaid Special Proceeding No. 1391 was commenced by Antonio V. A. Tan on 22 April 1965, alleging in his petition filed with the respondent court that Carlos Villa Abrille died intestate on 3 April 1965; that he left an estate consisting of his conjugal share in real and personal properties, among which are:

"p. Nineteen (19) Percent share in the co-ownership known as Juna Subdivision;

----- x ----- x ----- x -----

----- x ----- x ----- x -----

"t. Cash on Bank: BPI (Savings) D-1365 in the amount of P55,284.11; PNB (Savings) 8189, in the amount of P9,047.74; and PCIB (Savings) 337, in the amount of P416.24." (Annex "A" to Petition, Rollo, pages 14 - 15);

that the heirs of the deceased are his surviving spouse, nine (9) children (among them the herein petitioner, Natividad V. A. Jaroda), and four (4) grandsons, among them the herein respondent, Antonio V. A. Tan.

On 26 April 1965, respondent Tan was appointed special administrator.

On 4 May 1965, respondent special administrator Tan filed an ex-parte petition for the withdrawal of the sums of P109,886.42 and P72,644.66 from the Philippine National Bank, Davao Branch, which sums were not listed in his petition for administration as among the properties left by the deceased, alleging that these sums were deposited in the name of the deceased but that they actually belong to, and were held in trust for, the co-owners of the Juna Subdivision, and alleging as reason for the withdrawal that it would be advantageous to the estate of the deceased.

Annexed to the said petition are powers of attorney purportedly signed by the co-owners in 1948 and 1949 authorizing the late Carlos Villa Abrille to sell the lots in the Juna Subdivision and to deposit the proceeds thereof with the Philippine National Bank. The alleged co-owners of the subdivision concurred in the petition, but not the heirs of the deceased (Annex "C" to Petition, Rollo, page 19).

The respondent court found the petition for withdrawal of the bank deposits as "meritorious", and granted the petition in an order on 5 May 1965.

On 7 May 1965, special administrator Tan executed, together with the other co-owners of the Juna Subdivision, a power of attorney appointing himself as attorney-in-fact to "sell (or) dispose upon terms and conditions as he deems wise" the lots in the 99.546-hectare subdivision (Annex "F-1" to Petition, Rollo, pages 30-32).

On 9 September 1965, respondent Tan was issued letters of administration by the respondent court.

On the same day, 9 September 1965, as regular administrator, respondent Tan filed a petition with the respondent court, alleging that the deceased was the manager of and a co-owner in the Juna Subdivision and that he had been engaged in the business of selling the lots, and praying for the approval by the court of the power of attorney executed by him, in behalf of the intestate estate, and appointing and authorizing himself to sell the lots.

The court granted the petition, "as prayed for", on 3 September 1965.

On 29 November 1966, herein petitioner Natividad V. A. Jaroda moved to nullify the order of 5 May 1965, that allowed the withdrawal of the bank deposits, as well as the order of 3 September 1965, which approved the power of attorney.

The respondent court denied, on 25 February 1967, "for lack of merit" the aforesaid motion.

Petitioner Jaroda appealed from the order of denial, but the respondent court dismissed the appeal on the ground that the order appealed from was interlocutory. Jaroda then filed before the Supreme Court a petition for certiorari and/or mandamus on 8 July 1967, docketed as G. R. No. L-27831, but this Court dismissed the petition, adding in its resolution that appeal in due time is the remedy.

On 28 October 1967, petitioner Jaroda filed the present petition for certiorari with preliminary injunction. She alleged, among other things, that appeal would not be speedy and adequate as respondent Tan has sold and continues to sell the subdivision lots on the strength of the respondent court's order, to her irreparable prejudice and that of the other heirs. This Court gave due course to the petition and issued preliminary injunction on 3 November 1967, restraining the respondent from selling the share of the intestate estate.

We agree with petitioner that the order of 5 May 1965 allowing the special administrator to withdraw the bank deposits standing in the name of the decedent is in abuse of discretion amounting to lack of jurisdiction. In the first place, said withdrawal is foreign to the powers and duties of a special administrator, which, as Section 2 of Rule 80 of the Rules of Court provides, are to -

"take possession and charge of the goods, chattels, rights, credits and estate of the deceased and preserve 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."

In the second place, the order was issued without notice to, and hearing of, the heirs of the deceased. The withdrawal of the bank deposits may be viewed as a taking of possession and charge of the credits of the estate, and apparently within the powers and duties of a special administrator; but actually, said withdrawal is a waiver by the special administrator of a prima facie exclusive right of the intestate estate to the bank deposits in favor of

the co-owners of the Juna Subdivision, who were allegedly claiming the same as alleged by the administrator in his motion (Petition, Annex "C"). The bank deposits were in the name of the deceased; they, therefore, belong prima facie to his estate after his death. And until the contrary is shown by proper evidence at the proper stage, when money claims may be filed in the intestate proceedings, the special administrator is without power to make the waiver or to hand over part of the estate, or what appears to be a prima facie part of the estate, to other persons on the ground that the estate is not the owner thereof. If even to sell for valuable consideration property of the estate requires prior written notice of the application to the heirs, legatees or devisees under Rule 89 of the Rules of Court, such notice is equally, if not more, indispensable for disposing gratuitously of assets of the decedent in favor of strangers. Admittedly, no such notice was given, and without it the court's authority is invalid and improper.

The order of 3 September 1965 approving the power of attorney executed by administrator Tan and appointing himself as attorney-in-fact to sell the subdivision lots for a price at his discretion is, likewise, void for want of notice and for approving an improper contract or transaction.

The very rule, Section 4 of Rule 89 of the Rules of Court, relied on by respondent Tan to sustain the power of attorney for the sale of the pro-indiviso share of the estate in the subdivision requires "written notice to the heirs, devisees, and legatees who are interested in the estate to be sold" and, admittedly, administrator Tan did not furnish such notice. (Answer, pages 1 and 2, paragraph 3, Rollo, page 53) Without such notice, the order of the court authorizing the sale is void. (*Estate of Gamboa vs. Floranza*, 12 Phil. 191; *Gabriel vs. Encarnacion*, 94 Phil. 917)

But respondent Tan holds petitioner Jaroda with actual knowledge of the questioned order, and to show it he quotes the transcript of stenographic notes of a discussion by a lawyer of Jaroda about the said order. The discussion, however, took place on 19 March 1966 while the order was issued on 13 September 1965, and there is nothing in the discussion that may indicate knowledge by Jaroda of the order before, at or immediately after its issuance.

It has been broadly stated that an administrator is not permitted to deal with himself as an individual in any transaction concerning trust property. (*Pesula's Estate*, 64 ALR 2d 851, 150 Cal. App. 2d 462, 310 P.2d 39)

"It is well settled that an executrix holds the property of her testator's estate as a trustee. In *re Heydenfeldt's Estate*, 117 Cal. 551, 49 P. 713; *Firebaugh v. Burbank*, 121 Cal. 186, 53 P. 560. It is equally well settled that an executrix will not be permitted to deal with herself as an individual in any transaction concerning the trust property. Civil Code, S 2230. In *Davis v. Rock Creek L., F. & M Co.*, 55 Cal. 359, at page 364, 36 Am. Rep. 40, it is said: 'The law, for wise reasons, will not permit one who acts in a fiduciary capacity thus to deal with himself in his individual capacity.' The following cases are to the same effect: *Wickersham v. Crittenden*, 93 Cal. 17, 29, 28 P. 788; *Sims v. Petaluma Gas Light Co.*, 131 Cal. 656, 659, 63 P. 1011; *Western States Life Ins. Co. v. Lockwood*, 166 Cal. 185, 191, 135 P. 496; In *re Estate of Parker*, 200 Cal. 132, 139, 251 P. 907, 49 A. L. R. 1025. In *Wickersham v. Crittenden*, supra, 93 Cal. at page 29, 28 P. at page 790, it is further stated in respect to a transaction wherein a trustee sought to deal with trust property: 'Courts will not permit any investigation into the fairness of the transaction, or allow the trustee to show that the dealing was for the best interest of the beneficiary.' This language is quoted with approval in the case of *Pacific Vinegar & Pickle Works v. Smith*, 145 Cal. 352, 365, 78 P. 550, 104 Am. St. Rep. 42." (In *re Bogg's Estate*, 121 P. 2d 678, 683)

The opinion of some commentators that, as a general rule, auto-contracts are permissible if not expressly prohibited (See Tolentino, Civil Code of the Philippines, Vol. IV (1962, pages 375-377), and that there is no express provision of law prohibiting an administrator from appointing himself as his own agent, even if correct, can not and should not apply to administrators of decedent's estates, in view of the fiduciary relationship that they occupy with respect to the heirs of the deceased and their responsibilities toward the probate court. A contrary

ruling would open the door to fraud and maladministration, and once the harm is done, it might be too late to correct it. A concrete example would be for administrator Tan to authorize agent Tan to sell a lot for P50, with the condition that if he can sell it for more he could keep the difference; agent Tan sells the lot for P150.00; he retains P100.00 and deposits in the bank P50.00 "in the name of Antonio V. A. Tan, in trust for Juna Subdivision" (as worded in the power of attorney, Annex "F-1"); thus, administrator Tan's accounting to the estate for the sale of the lot for P50 would be in order, but the estate would have been actually cheated of the sum of P100, which went to agent Tan in his individual capacity.

The court below also failed to notice that, as alleged in the administrator's petition (Annex "F" herein), after the death of Carlos Villa Abrille the administrator Tan, in his personal capacity, had replaced said deceased as manager of the Juna Subdivision by authority of the other co-owners. By the court's questioned order of 3 September 1965 empowering him to re-present the interest of the deceased in the management of the subdivision, the administrator Tan came to be the agent or attorney-in-fact of two different principals: the court and the heirs of the deceased on the one hand, and the majority co-owners of the subdivision on the other, in managing and disposing of the lots of the subdivision. This dual agency of the respondent Tan rendered him incapable of independent defense of the estate's interests against those of the majority co-owners. It is highly undesirable, if not improper, that a court officer and administrator, in dealing with property under his administration, should have to look to the wishes of strangers as well as to those of the court that appointed him. A judicial administrator should be at all times subject to the orders of the appointing Tribunal and of no one else.

That petitioner Jaroda, as heir of the late Carlos Villa Abrille, should hold a minor interest (1/11 of 19%) in the co-ownership known as the Juna Subdivision, and that the early termination of said co-ownership would redound to the benefit of the co-owners, including the heirs of Carlos Villa Abrille, are beside the point. Jaroda's interest in the estate demands that she be heard by the court in all matters affecting the disposal of her share, and that the administrator should primarily protect the interest of the estate in which she is a participant rather than those of the decedent's co-owners.

The resolution of this Court in L-27836 (Natividad V. A. Jaroda vs. the Hon. Vicente N. Cusi, Jr., etc., et al.), dismissing the petition for certiorari and/or mandamus and stating that appeal in due time is the remedy, is no bar to the present petition, for it has not been shown that the allegations in both the dismissed petition and those of the present one are substantially the same. Anyway, certiorari lies if appeal would not be prompt enough to block the injurious effects of the orders of the lower court (*Silvestre vs. Torres, et al.*, 57 Phil. 885; *Pachoco vs. Tumangday*, L-14500, 25 May 1960; *Mayormente vs. Robaco Corp.*, L-25337, 27 Nov. 1967, 21 SCRA 1080).

After the present case was submitted for decision, respondent Tan manifested that the co-owners of the Juna Subdivision and the heirs of the late Carlos Villa Abrille, including the petitioner Natividad V. A. Jaroda, had executed a partial partition and the same has been approved by the probate court. Said approved partial partition has no effect, one way or the other, upon the orders contested in the present case. For one thing, it is not definite whether the lots described in the 57 pages of the partition agreement correspond to those of the Juna Subdivision as described in the power of attorney.

FOR THE FOREGOING REASONS, the orders of 5 May 1965 and 3 September 1965 of the Court of First Instance of Davao, Branch I, in its Special Proceeding No. 1391, are hereby set aside and declared null and void. The preliminary injunction heretofore issued is hereby made permanent. Costs against the respondent, Antonio V. A. Tan, in his personal capacity.

Concepcion, C.J., Dizon, Makalintal, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Zaldivar, J., did not take part.

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