

**VICTORIO REYNOSO AND JUAN REYNOSO, PETITIONERS VS.
VICENTE SANTIAGO, JUDGE OF THE COURT OF FIRST INSTANCE OF
QUEZON, PIA REYNOSO, AGUSTINA REYNOSO, MELITON
PALABRICA, LEONCIO CA...**

G.R. No. L-3039. December 29, 1949

Ponente: TUASON, J.

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TUASON, J.:

Victorio Reynoso and Juan Reynoso apply for a writ of mandamus to compel Judge Vicente Santiago of the Court of First Instance of Quezon to order the opening of a testate estate of the deceased Salvadora Obispo in the place of special intestate proceeding No. 2914, and to appoint Victorio Reynoso as executor of the decedent's last will and testament.

Briefly, the facts are as follows: On April 29, 1947, Leoncio Cadiz and other heirs of Salvadora Obispo presented an application in the Court of First Instance of Quezon for the administration of the property of the deceased, application which was docketed as intestate proceeding No. 2914. Victorio Reynoso and Juan Reynoso, Salvadora Obispo's surviving spouse and eldest son, respectively, opposed the application and filed a document, which purported to be the last will and testament of Salvadora Obispo, with a counterpetition for its probate. Upon trial the court rejected that instrument as a forgery, but on appeal the Court of Appeals reversed the finding of the court below, found the will authentic and drawn with all the formalities of law. The dispositive part of the decision of the Appellate Court, promulgated November 27, 1948, reads as follows:

"Se revoca la sentencia de que se apela, y reuniendo el exhibito A los requisitos exigidos por la ley, se ordena, (a) la legalizacion de dicho documento como testamento y ultima voluntad de la finada Salvadora Obispo, para que surta todos sus efectos legales; (b) la apertura de la testamentaria de dicha finada; y (c) el nombramiento de un albacea de la misma testamentaria de conformidad con el precepto del articulo 6, de la Eegla 70 de los Reglamentos de los Tribunales."

Thereafter Victorio Reynoso and Juan Reynoso filed two petitions, one in special proceeding No. 2914 and another under a separate and new docket number (3107) and with a different title (Testate Estate of the deceased Salvadora Obispo). The first prayed that the special administrator, Meliton Palabrica, who had theretofore been appointed in special proceeding No. 2914, be ordered to turn over the properties of the deceased and the proceeds of coprax, nuts and other agricultural products to Victorio Reynoso, and to render an accounting within a reasonable time. It also asked for the closing of the intestate proceeding. The other petition prayed that the estate be administered and settled in special proceeding No. 3107 and that Victorio Reynoso be appointed executor of Salvadora Obispo's last will and testament. It also contained a prayer for an accounting by Palabrica and delivery by him to the new executor of the properties that came to his possession including the proceeds from the sales of coprax, nuts, etc.

The two petitions were decided separately by Judge Santiago on April 20, 1949. With respect to the opening of

another expediente, His Honor believed that the proposed change or substitution was "not only unnecessary but inconvenient and expensive." An intestate proceeding like special proceeding No. 2914, he said, could and should be converted into a testate proceeding in the same original expediente without the necessity of changing its number, name or title.

This petition has no merit. Whether the intestate proceeding already commenced should be discontinued and a new proceeding under a separate number and title should be constituted is entirely a matter of form and lies within the sound discretion of the court. In no manner does it prejudice the substantial rights of any of the heirs or creditors. Amor proprio is perhaps the only thing that is at stake on this phase of the controversy.

As to the appointment of the deceased's husband as executor or administrator, the court said that action on the petition should be withheld for the time being, because of the pendency on appeal of a case in which the special administrator in special proceeding No. 2914 is plaintiff and appellee and Victorio Reynoso defendant and appellant. It involves the question whether an extensive parcel of coconut land is conjugal property or the exclusive property of the husband.

On this feature of the second petition we disagree with the respondent judge. If one other than the surviving spouse is appointed, which is possible, the feared conflict will not materialize. If Victorio Reynoso is chosen, a special administrator may be named to represent the estate in the suit against him. Section 8 of Rule 87 provides that "If the executor or administrator has a claim against the estate he represents, he shall give notice thereof, in writing, to the court, and the court shall appoint a special administrator who shall, in the adjustment of such claim, have the same power and be subject to the same liability as the general administrator or executor in the settlement of other claims." The situation in which Victorio Reynoso is found with reference to the land in litigation between him and the estate, comes within the spirit if not exactly within the letter of this provision.

Subject to this observation, an administrator should be appointed without delay in accordance with the final decision of the Court of Appeals. The appointment of a special administrator is justified only when there is delay in granting letters testamentary or of administration occasioned by an appeal from the allowance or disallowance of a will or some other cause. The Court of Appeals having decreed the probate of the will and the appointment of an albacea, there is no valid reason for the further retention of the special administrator. The appointment of a regular administrator is necessary for the prompt settlement and distribution of the estate. There are important duties devolving on a regular administrator which a special administrator can not perform, and there are many actions to be taken by the court which could not be accomplished before a regular administrator is appointed.

But whether or not Victorio Reynoso should be appointed as administrator we do not and can not of course decide in a petition for mandamus. While the surviving spouse is entitled to preference in the appointment (section 6, Rule 79), circumstances might warrant his rejection and the appointment of someone else. Mandamus lies where the duty is specific and ministerial. It does not lie where judgment or discretion is exercised in the performance of the act. Applying the rule to this case, it is proper to command the court below to appoint a regular administrator, but it is not proper to tell it whom to appoint.

The petition for the constitution of a separate proceeding for the administration of the estate under the will is denied. The petition for the appointment of a regular administrator is granted subject to the provision of section 6 of Rule 79 in the selection of the person to be appointed. Without costs.

Moran, C.J., Ozaeta, Paras, Pablo, Bengzon, Padilla, Montemayor, Reyes, and Torres, JJ., concur.

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