

**CORAZON V. AGONCILLO, PETITIONER, VS. COURT OF APPEALS;
HON. ALFREDO CATOLICO (AS PRESIDING JUDGE OF THE COURT OF
FIRST INSTANCE OF CAVITE); AND EMILIO AGUINALDO, JR.,
RESPONDENTS.**

G.R. No. L-32094. November 24, 1972

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal by certiorari from the decision of the Court of Appeals in CA-G.R. No. 44157-R, Corazon V. Agoncillo vs. Hon. Alfredo Catolico, etc. et al., dismissing the petition for certiorari and mandamus of herein petitioner against the orders of the Court of First Instance of Cavite in its Special Proceedings No. N-705, Intestate Estate of the deceased spouses Emilio Aguinaldo and Maria Agoncillo, which dis-missed petitioner's appeal from the order denying her motion for reconsideration of the appointment of private respondent Emilio Aguinaldo, Jr. as administrator of the joint estates just mentioned as well as her non-appointment as separate administratrix of the estate of the deceased Maria Agoncillo, said dismissal of her appeal having been, according to her, erroneously ordered by the court on the ground of abandonment.

The record shows that on September 22, 1964, private respondent Emilio Aguinaldo, Jr. was appointed administrator of the joint estate of the above-mentioned spouses. On October 7, 1964, petitioner moved to reconsider said order and prayed that she be appointed administratrix of the separate estate of Maria Agoncillo, she being her nearest of kin of said deceased. This motion for reconsideration was denied and it was this order of denial that gave rise to the disputed appeal.

After petitioner had filed on January 20, 1966 the corresponding notice of appeal, appeal bond and record on appeal and moved for the approval of her appeal (See Annex D), Judge Jose B. Jimenez; the then presiding judge, took no action on said appeal to give the parties a chance to ultimate their efforts to reach an amicable settlement of their conflicting claims. In the meantime, Judge Jimenez was appointed and transferred to the Court of First Instance of Manila, and his sala was without any permanent presiding judge until respondent Judge Alfredo Catolico was appointed thereto sometime in June, 1969. On July 24, 1969, Judge Catolico *motu proprio* declared petitioner's appeal abandoned and disapproved the same, hence the petition for certiorari and mandamus before the Court of Appeals wherein the decision sanctioning the action of Judge Catolico now under review was rendered.

Before passing on the main issue in this case, two preliminary points need be disposed of. First, private respondent alleges in his brief that petitioner's record on appeal submitted to the respondent trial court does not show on its face that her appeal was made on time. This point does not appear to have been raised in the Court of Appeals, much less passed upon it, but inasmuch as it is jurisdictional and copy of the record on appeal is annexed to the petition herein, We have taken pains to examine the same. While it is true that it is not stated therein when petitioner was served with the order of September 22, 1964 which she is appealing from, since it appears,

however, in the said record on appeal (1) that petitioner's motion for reconsideration was dated October 7, 1964 and respondent's opposition thereto October 9, 1964; (2) that the order of denial was issued only on November 6, 1965 and served on petitioner on January 8, 1966, whereas petitioner's appeal was made on January 20, 1966; and (3) that, therefore, from September 22, 1964 to October 7, 1964 or October 9, 1964 only 15 or 17 days had passed and from January 8, 1966 to January 20, 1966 only 12 days had passed, hence petitioner consumed only 29 days to take her appeal, the statement of the respondent trial judge in Annex D of herein petition that "way back on January 20, 1966, all the requirements of an appeal (were) satisfied," appears to be an accurate statement of the timeliness of petitioner's appeal. Accordingly, respondent's jurisdictional point must be overruled.

Second, petitioner, on her part, complains that the appellate court deprived her of her day in court when it ruled that anyway the trial court acted correctly in not appointing her as administratrix of the separate estate of Doña Maria considering she has interests conflicting with those of said estate. We find merit in this charge.

In ruling on this point, the Court of Appeals held:

"In the second, neither the petitioner nor petitioner's oral argument claims, much less shows that in appointing Emilio Aguinaldo, Jr. administrator of the estate of the deceased spouses Emilio Aguinaldo and Maria Agoncillo, respondent court exceeded its jurisdiction or gravely abuse its discretion. The respondent court rightly denied oppositor's motion for reconsideration despite her claim to be nearest of kin of her deceased Aunt Maria Agoncillo, on the ground of conflicting interest as alleged by respondent Aguinaldo in his counter-reply and opposition, thus:

"x x x Moreover, the fact that the claims to be in possession of certain property herein involved, under circumstance indicating a claim of right, precisely shows the adverse interest which disqualifies her from being appointed as administratrix of the estate of the deceased Maria Agoncillo. As the undersigned counsel made of record in open court on October 12, 1964, Corazon V. Agoncillo is the sole heir of deceased Gregorio Agoncillo. The property in question is a parcel of land located at Barrio San Gabriel, Talisay, Batangas with an area of approximately 2,038 hectares and covered by Transfer Certificate of Title No. 3752 of the Register of Deeds of Batangas, and valued at approximately P3,000,000.00. Although said property is registered in the name of Gregorio Agoncillo, the fact is that one-half (1/2) thereof belonged to the deceased Maria Agoncillo, which fact has been admitted by Corazon V. Agoncillo. Now, however, it appears that Corazon V. Agoncillo is claiming the sole (ownership) of said property, and said claim absolutely disqualified her from being appointed as administratrix of the estate of the deceased Maria Agoncillo. As the Supreme Court held in the case of *Borromeo vs. Borromeo* 51 O.G. 5145:

'x x x Conflict between the interest of the executor and the interest of the deceased is ground for removal or resignation of the former, who and thereby become unsuitable to discharge the trust. (Section 2, Rule 83.)

'An executor or administrator should be removed where his personal interest conflict with his official duties, but a mere hostile feeling towards persons interested in the estate is not ground from removal unless it prevents the management of the estate according to the dictates of prudence. (33 C.J.S. 1036). (Citing many cases).

'Reason for Rule . An executor is a quasi trustee, who should be indifferent between the estate and claimant of the property except to preserve it for due administration, and when his interest conflicts court, in the exercise of a sound discretion, may resolve him.' (In re Manser, 60 Or. 240, 246, 118 p. 1024).

'An executor will be removed where it appears that he asserts claims against the estate of the testator to the extent of two-thirds of the value of the estate and such claims are disputed by the beneficiary under the will.' (Henry's Est., 54 Ps. Super. 274).

'Claim of Gift from Decedent . - Where an executor, in answer to petition for his removal on the ground of maladministration in claiming property of the estate, he manifested an interest adverse to the beneficiaries,

authorizing his removal; but the county court has no jurisdiction to determine, the question of gift.' (In re Manswer, 60 Or. 240, 118 p. 1024.) x x x" (pages 5148-5149).

The above-cited authorities refer to the removal of administrator or executor; but it is generally held that where there exists at the time of an application for appointment such an adverse interest or position as would be grounds for removal, it is also a disqualification for appointment in the first instance (Howd vs. Clay, 18 ALR2d 629, 312 Ky. 508, 228 SW2d 437; Re Guzzette's Estate, 217 P2d 460, 97 Cal. App2d 169). More in point is the recent pronouncement of the Supreme Court that in this jurisdiction, one is considered to be unsuitable for appointment as administrator where he has an adverse interest of some kind or hostility to those immediately interested in the estate (Lim vs. Diaz-Millares, 18 SCRA 371, 374, citing Sioca vs. Garcia, 44 Phil. 711; Arevalo vs. Bustamante, 69 Phil. 656). To the same effect; Justice vs. Wilkin, 251 111 13, 95 NE 1025; Anno: 1 ALR 1250, the Stewart's Estate, 139 Mont 295, 363 P2d 161; Kidd vs. Bates, 120 Ala 79 23 So. 735; Martin vs. Otis, 6 ALR 1340, 233 Mass 491, 124 NE 294."

While it is true that to avoid multiplicity of suits, this Court has in various instances gone into the merits of a case "when it is very evident as shown by the facts of the case that the granting of the writ (compelling the approval of an appeal) would not profit the petitioner to obtain such remedy, for like a mirage it would merely raise false hopes and in the end avail the petitioner nothing" (Paner vs. Yatco, 87 Phil. 271), We cannot extend the application of such a procedure to a case, like the one at bar, wherein it is claimed by petitioner that during the proceedings in the Court of Appeals she never joined issues with private respondent as to the propriety of her appointment, and neither in the decision of the Court of Appeals nor in the brief of private respondents is there any indication to the contrary. The decisions cited by private respondent supporting the view that mandamus to compel the approval of an appeal may be denied where it would serve no useful purpose to reinstate the case of the party intending to appeal, since anyway it is obvious that the appeal is frivolous, dilatory or hopeless must be understood as subject to the qualification that the requirements of due process have been satisfied, that is, that said party has been heard on the substantive merits of his case. (Maria San Miguel Vda. de Espiritu vs. Hon. Court of First Instance of Cavite et al., (G. R. No. L-30486.) Inasmuch as it is not clear in this case that petitioner has had her full day in court in respect to the merits of her appointment, and it appearing that, to be sure, the matter of her alleged conflicting interest relied upon by private respondent is not indubitable, considering that, for one thing, private respondent is a son of the first marriage of Don Emilio, whereas the estate in question is that of his second wife, Doña Maria, and petitioner is the sole heir of the latter, wherefore, perhaps, at least a joint administration of Doña Maria's estate would better serve the interests of justice, it is but fair and proper that such matter of the choice of administrator for her estate be decided only after a full hearing in the appellate court.

Coming now to the main issue before Us, regarding the sudden dismissal *motu proprio* by Judge Catolico of petitioner's appeal, it is to be noted that nowhere in the rules governing the procedure of appeals is the trial court granted authority to dismiss on its own motion an appeal already taken by a party by the timely filing of the notice and record on appeal and appeal bond, upon the ground of failure to prosecute. According to said rules, after a party has submitted his record on appeal and appeal bond for approval, the next step for the perfection of the appeal is supposed to be taken by the court by acting thereon. If after such submittal, the court fails to act for sometime, it is quite odd for the court to punish the party concerned for the court's own inaction. Under Section 3 of Rule 46 the dismissal of an appeal on the ground of abandonment or failure to prosecute may be asked by appellee, after, not before, the approval of the record on appeal, and this, if the appellant fails to see to it that the record on appeal reaches the appellate court within thirty (30) days from such approval. And it is clear under Section 1(c) of Rule 50, that the power to dismiss the appeal pertains to the appellate court and not to the trial court. The only instance provided in the rules when the trial court may dismiss an appeal is under Section 14 of Rule 41, upon the ground that either the notice of appeal, appeal bond or record on appeal has not been filed on

time. What is more, instead of allowing the trial court to dismiss an appeal timely taken, Section 15 of Rule 41 expressly provides that mandamus would lie "when erroneously a motion to dismiss an appeal is granted or a record on appeal is disallowed by said court." Under the circumstances of this case, what the trial judge should have done first was to find out from the parties if, as suggested by Judge Jimenez, they had already settled their controversy amicably and admonish them to ultimate the same without further delay or within a peremptory period fixed by him. He should have due consideration to the fact that the transfer of Judge Jimenez after he had suggested the amicable settlement and the absence of an immediate successor to him could have contributed to the situation in which he found the proceedings herein involved upon his assumption of office.

ACCORDINGLY , the petition is granted and the trial court is hereby ordered to give due course to petitioner's appeal, with costs against private respondent.

Concepcion, C.J., Makalintal, Castro, Fernando, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.

Zaldivar, J., took no part.

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