

MARIA LIWANAG-REYES, AND HER CHILDREN CARLOS, LOURDES, RAFAEL AND CARMENCITA, ALL SURNAMED REYES, PETITIONERS VS. THE COURT OF APPEALS, PHILIPPINE TRUST COMPANY, VICTOR S. REYES...

G.R. No. L-31371. December 19, 1974

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari and prohibition to set aside the decision of the Court of Appeals dated August 14, 1969 in CA-G.R. No. 41420-R reversing the order dated March 19, 1968 of the Court of First Instance of Manila, Branch VI, in Special Proceedings No. 62055 which terminated the appointment of herein respondent Victor S. Reyes as special administrator of the Intestate Estate of Clemente G. Reyes and appointed the other respondent herein, Philippine Trust Company, as regular administrator of said estate; and to enjoin both the Court of Appeals and the respondent Court of First Instance of Manila from enforcing or implementing said decision.

Special Proceedings No. 62055 was initiated in the Court of First Instance of Manila on August 6, 1965 by respondent Victor S. Reyes for the settlement of the estate of his deceased father, Clemente G. Reyes. Eventually, said respondent was appointed special administrator. About three years later, upon petition for letters of administration by petitioner Maria Liwanag-Reyes and her children, which petition was opposed by Victor, who claimed legal preference to such appointment and, therefore, asked that letters be issued to him instead, respondent probate court issued the questioned order of March 1968 above-referred to. Upon denial of his motion for reconsideration of this order, Victor sought to have the adverse orders set aside by the Court of Appeals in a certiorari proceeding which culminated in the aforementioned decision of the appellate court which petitioners are now asking to be nullified.

In his petition for certiorari filed with the Court of Appeals, Victor made the following pertinent allegations:

"V

"That the respondent court acted without or in excess of jurisdiction, and with grave abuse of discretion, in issuing the orders in Annexes A and B of the petition. The orders complained of are in violation of the provisions of section 6 of Rule 78, Rules of Court, and of the order of preference established therein. The said section enumerates the persons who may be appointed as administrator in the order prescribed therein. Such priority of right is based primarily on nearness of relationship and extent of interest. It is in accordance with natural right and justice, based on the assumption that ties of marriage and consanguinity and the effect of personal interest will lead the persons enumerated therein to exercise care and attention in the management of the estate. (Martin, Rules of Court, 1964 ed., Vol. 2, p. 740; 21 Am. Jur. 406; De Guzman vs. Lincolinoc 68 Phil. 673). The order of preference provided in said section is founded on the assumption that the persons preferred are suitable. If they are not, the court may entirely disregard the preference thus provided. This is the reason for the rule that in the selection of an administrator, the courts may exercise discretion. (Moran, Comments on the Rules of Court, 1963 ed., Vol. 3 p. 386; Capistrano vs. Nadurata 46 Phil. 726; Esler et al. vs.

Tad-y et al. 46 Phil. 854). But, the order of preference may be disregarded only when the reasons therefor are positive and clear. *Torres vs. Sicat Vda. de Morales*, L-5236, May 25, 1953). In the case at bar, there is no showing, much less a clear and positive one, that the petitioner, or the other persons preferred to the respondent/company according to the order of preference established by law, are unfit or unsuitable for appointment as regular administrator of the estate in question. The fact that the petitioner while then special administrator had opposed the applications of certain heirs, whether legitimate or not, for withdrawals of funds of the estate, or that he had moved to reconsider certain orders of the respondent court authorizing the same, or that there appears to be some disharmony or hostility among some persons interested in the estate, we beg to submit, is not sufficient to render the petitioner unfit or unsuitable for appointment as regular administrator, or to warrant the disregard by the respondent court of the order of preference established by law. Partial distribution of an estate pending its liquidation is illegal. (*Ngo Hua vs. Chung Kiat Keng*, L-19091, Sept. 30, 1963). Also, a mere finding of the trial judge that the widow consistently refused to recognize the credits and had shown determination to resist the claims of creditors, was held insufficient to show that she was unsuitable for appointment. (*Torres vs. Sicat Vda. de Morales*, supra). Moreover, a mere hostile feeling on the part of an executor or administrator towards persons interested in the estate is not a ground for removal unless it prevents the management of the estate according to dictates of prudence. (33 CJS 1036; *Borromeo vs. Borromeo* 51 O.G. 5145).

"On the other hand, a person may be disqualified from acting as executor or administrator on the ground of unsuitableness. Unsuitableness for appointment as administrator may consist in adverse interest of some kind to such an extent as to render the appointment inadvisable. (*Sioca vs. Garica* 44 Phil. 711; *Arevalo vs. Bustamente* 69 Phil. 656). In the case at bar, the record shows that the respondent Philippine Trust Company has an adverse interest in the estate in question, which disqualified it from acting as the administrator thereof, hereto attached as Annex F and F-1.

"In disregarding the order of preference established in the aforesaid section 6 of Rule 78, Rules of Court, in removing the petitioner herein as special administrator of the subject estate, and in appointing the respondent company as the regular administrator thereof, without consultation or the agreement of the heirs in this case on the matter, the respondent court acted arbitrarily and without or in excess of jurisdiction, and with grave abuse of discretion. Granting that there is a right to appeal from the final judgment which may be rendered in the subject probate case, the same is inadequate as a remedy, as the aggrieved party has to wait for the rendition of such final judgment before he can take an appeal from the orders in question, and it cannot promptly relieve him from their injurious effects. (*Silvestre vs. Torres* 57 Phil. 885; *Moran*, idem, p. 149; II CJ 113). Where the order which is sought to be reviewed is merely of interlocutory or peremptory character, and the appeal therefrom can be interposed only after final judgment is rendered and may, therefore, be of no avail, certiorari may be granted. (*Moran*, idem, p. 153; *Rustia vs. Abeto* 72 Phil. 133; *Rocha vs. Crossfield* 6 Phil. 355; *Leung Ben vs. O'Brien*, 38 Phil. 182).

VI

"That there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law against the orders complained of, except this proceeding for certiorari with preliminary injunction." (Pars. V and VI, pp. 30-33, Record.)

Strangely, herein petitioners were not originally made parties in said petition, but upon being granted permission to intervene, they filed an answer wherein they alleged, inter alia, that Victor had no cause of action for certiorari because the questioned orders had already been appealed by him to the Court of Appeals (pp. 107--108, Record). In other words, petitioners contended that inasmuch as what was being assailed was an order appointing a regular administrator and not really the order removing Victor as special administrator, the remedy was not certiorari but appeal. Ruling on this contention, the Court of Appeals held:

"On the other hand, intervenors Maria Liwanag Reyes and her children aver that the instant case is not a proper

subject matter of certiorari, in that the appointment of the Philippine Trust Company as regular administrator being in the nature of a final judgment, could not be impugned by way of certiorari but could only be elevated to a higher court by way of appeal. As proof that the right of appeal exists, intervenors cite the notice of appeal made by petitioner before the respondent Court. Moreover, intervenors submit that the appointment and removal of a special administrator lies entirely on the sound discretion of the Court.

"While it is true that the appointment of a regular administrator is appealable and hence, not the proper subject of certiorari, it is equally true that the removal of a special administrator is interlocutory in nature and therefore, not appealable. (*Alcasid vs. Samson*, No. L-11435, Dec. 27, 1957; 54 O.G. 4479; *Garcia vs. Flores*, 54 O.G. 4049). In which case, the proper remedy would be a petition for certiorari. In like manner, although the matter of appointing and removing a special administrator lie entirely on the sound discretion of the Court, this discretion must be a sound one, that is, not whimsical or contrary to reason, justice or equity. (*Roxas vs. Pecson*, No. L-2211, Dec. 20, 1948; 82 Phil. 407.) Thus, the order of preference in the appointment of a regular administrator may be disregarded only when the reasons therefor are positive and clear. (*Torres vs. Vda. de Morales*, No. L-5236, May 25, 1953.)" (P. 205, Record.)

Having thus opined that certiorari is a proper remedy in the premises the appellate court went on to hold that the trial court committed grave abuse of discretion in removing Victor as special administrator:

"The order of the respondent Court removing petitioner as special administrator of the Reyes estate gives as reason therefor 'the lack of good harmony among the heirs.' Nowhere in the questioned orders does respondent Court make any finding that petitioner has betrayed the trust reposed in him or that he has refused to obey any of the orders issued by said Court. Thus, it appears that petitioner's removal was not based on justifiable grounds, since the fact of lack of harmony alone is not a valid reason for his removal.

"Intervenors cite petitioner for his alleged failure to render an accounting of his administration, and yet they admit in their Opposition to Motions for Reconsideration dated April 23, 1968 (p. 7) that he has been submitting financial reports. In fact, intervenors object to the employment by petitioner of a bookkeeper in addition to a certified public accountant. (Pp. 16-17, Reply, March 14, 1968) Moreover, intervenors admit that petitioner filed a sworn inventory and preliminary accounting on December 3, 1965. (P. 16, Reply, supra.) From the foregoing, it is evident that petitioner had no intention of shirking his duty to keep a faithful record of the administration of the estate as well as to render an accounting to the respondent Court. Otherwise, it would have been unnecessary for him to employ the services of a certified public accountant whose duty it would be to check minutely the accounts of the estate.

"It is not denied that petitioner represents one set of heirs while intervenors represent another set of heirs. (P. 2, Urgent petition for leave of Court to intervene, July 19, 1968). In fact, intervenors call petitioner 'an acknowledged natural child of the deceased Clemente G. Reyes out of his common law relationship by another woman named Rufina Santillan.' (P. 3, Opposition, September 15, 1965). What is controverted is the legality of the alleged marriages contracted by the decedent with the mother of petitioner and intervenor Maria Liwanag-Reyes.

"The records further reveal that petitioner is the eldest of the decedent's children by both women and that he had been administering the estate as special administrator for about three years at the time of his removal. Therefore, if only for the fact that he is the eldest child of the decedent and that he is quite familiar with the business of the decedent, coupled with the ruling of the respondent Court that the only ground for his removal was the lack of good harmony between the parties, we believe that he should be given the preference to be appointed the regular administrator of his father's estate.

"On the other hand, the appointment of respondent Bank as regular administrator appears to be disadvantageous to the estate in the sense that such an arrangement would entail a higher administration fee. As stated by the Supreme Court in the case of *Ozaeta, Palance et al. vs. Pecson, et al.* (No. L-5436, June 30,

1953):

'It also appears that the Philippine Trust Company, which had acted as special administrator for a period of only a few months, has submitted a bill for P90,000.00. This would cut deep into the income of the estate, and if the new special administrator appointed by the respondent judge takes office, it is not improbable that the estate may again be subjected to the same expensive cost of administration. Under these circumstances, it would seem unreasonable to refuse to appoint petitioner as special administrator. x x x'

"Moreover, it appears that respondent Bank is a creditor of one of the companies forming the estate in the amount of P25,477.34. In the aforementioned Palanca case (*supra*), the same Bank presented a petition to resign as special administrator on the ground of incompatibility of interest, as it had granted a loan to heir Angel Palanca, who had pledged to it shares of the Far Eastern University allegedly belonging to the estate of the deceased. We see no difference in the situation at hand in view of the fact that respondent Bank granted the Philippine Recapping Plant (forming part of the estate) an overdraft line of P20,000.00 with a mortgage on its properties. As respondent Bank's letter of February 7, 1968, shows, it was threatening to foreclose the mortgage on the Philippine Recapping Plant should it fail to settle its outstanding balance (Annex 'P')" (Pp. 205-206, Record.)

And so, the appellate court did not limit itself to holding that the removal of Victor as special administrator was illegal but went further and appointed him regular administrator, reasoning out that under the circumstances obtaining in the estate, as discussed by it, he was legally entitled to preference over the Philippine Trust Company. But notwithstanding these adverse rulings, petitioners did not appeal from the decision of the Court of Appeals.

It is only in the instant petition filed on December 19, 1969, a little less than four months after the appellate courts decision had become final that petitioners are bringing up for the first time alleged legal infirmities and even jurisdictional defects in the said decision. They maintain that, in the first place, Victor was not removed as special administrator; what the probate court did was simply to terminate his tenure as such pursuant to the provisions of Section 3 of Rule 80, considering that it had appointed the Philippine Trust Company as regular administrator, which appointment could be questioned only in an appeal, not by certiorari. Consequently, according to petitioners, there is absolutely no occasion to charge any abuse of discretion by the probate court, the termination of Victor's special administration being dictated by specific provision of the rules. Secondly, petitioners contend that inasmuch as Victor was attacking only his removal as special administrator, it was beyond the authority of the Court of Appeals to appoint him as regular administrator in the same proceeding.

While much can be said in support of the pose of petitioners, the Court sees an insurmountable obstacle to granting them relief. It appears from the answer of Victor in this case, and it is admitted in petitioners' reply, that after the parties herein came to know of the decision of the Court of Appeals, on September 6, 1969, they executed a document captioned "Agreement", paragraph 4 of which reads as follows:

"4. That we have all agreed that Victor S. Reyes to be our regular administrator and in order to preserve the harmony of the agreement we have thus far reached, Mrs. Maria Liwanag and her children are hereby withdrawing their motion to cite Victor S. Reyes in contempt of court as filed with the Court of First Instance. In other words, we have finally agreed that he would be our regular administrator. (*Italics supplied.*)" (Pp. 240-241, Record.)

Of course, petitioners' counsel is suggesting that they entered into said agreement under a mis-apprehension of facts. If such be the case, it is certainly not in this forum, much less by certiorari, that such an issue can be raised. As things stand presently, whatever defects or flaws there might be in the assailed decision of the Court of Appeals have been either cured or waived by this agreement. And since there is no showing that the alleged infirmities thereof have been brought to the attention of respondent court, the charge of grave abuse of discretion

levelled against it for implementing the decision of the appellate court is without basis.

Anyway, petitioners are not entirely without any remedy should their conformity to the appointment of Victor as regular administrator turn out to be prejudicial to their interests. They can always have him changed with a better choice, for any of the causes provided by law.

IN VIEW OF THE FOREGOING, the petition is dismissed with costs against petitioners.

Fernando, Chairman, Antonio, Fernandez, and Aquino, JJ., concur.

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