

FAUSTO COTIA, PETITIONER, VS. HON. POTENCIANO PECSON, JUDGE OF COURT OF FIRST INSTANCE OF MANILA AND ELENA COTIA, RESPONDENTS.

G.R. No. L-5516. September 29, 1953

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal application for mandamus to compel "the respondent judge to forthwith order Elena Cotia to turn over to the petitioner herein the administration of the estate of the deceased Mariano Cotia." The specific question presented is whether an order removing a regular administrator and appointing a new one is executory during the pendency of an appeal from the order.

We know of no statutory provision or rule of court, and none has been cited, governing the question other than section 2 of Rule 39, which is of general application.

By this rule, the court is authorized to issue execution before a judgment or order becomes final, but this is so only "before the expiration of the time to appeal" and "upon good reasons to be stated in a special order."

Neither of these conditions, both of which must combine, was present in the instant case. Not only no special reasons were alleged but the adverse party had perfected and elevated her appeal to the appellate court.

It is conceivable that a judicial executor's or administrator's removal may be enforced at once pending the appeal when such action is deemed necessary to protect an estate from mismanagement. But the sole ground for Elena Cotia's discharge has nothing to do with her fitness to perform the duties of her trust. The objection which had given rise to her removal and the appointment of the herein petitioner was purely technical in nature and highly controversial. It was simply a matter of which of two alleged marriages of the deceased was legal or whether both were.

For facts, it appears that in the matter of the intestate estate of Mariano Cotia, deceased, special proceedings No. 10916 of the Court of First Instance of Manila, Elena Cotia was, on July 16, 1950, appointed administratrix as daughter of the decedent by Aw Sek, his alleged lawful wife. In due time, Elena Cotia duly qualified and entered upon the discharge of the duties of the office.

On July 26, Maria Jimenez Vda. de Cotia, claiming to be Mariano Cotia's first and only legitimate spouse, and Fausto Cotia, Maria Jimenez's son by the said deceased, demanded the right to choose or be appointed administrator in preference to Elena Cotia, and asked for the revocation of the latter's appointment.

Trial having been held, His Honor, Judge Pecson, found Maria Jimenez's contention well supported by the evidence, and that Mariano Cotia's purported marriage in China to Aw Sek had not been shown to be valid under the laws of that country. Maria Jimenez or her nominee was accordingly declared entitled by law to administer the decedent's estate, and Elena Cotia was ordered removed. It was then that an urgent motion was filed by Fausto Cotia's counsel, to order Elena Cotia "to turn over all properties, real and personal, cash or otherwise, to Fausto

Cotia," motion which was denied on the ground that the order having been appealed had not become final.

In fine, the only reason for petitioner's impatience was the fact that, having been appointed administrator, he had already taken the required oath and put up the required bond. This reason was utterly insufficient to take the case out of the general rule before mentioned, and the respondent judge did not make any mistake in denying premature execution of his order.

The application is denied, with costs against the petitioner.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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