

NATIVIDAD I. VDA. DE ROXAS, PETITIONER, VS. POTENCIANO PECSON, JUDGE OF FIRST INSTANCE OF BULACAN, MARIA ROXAS AND PEDRO ROXAS, RESPONDENTS.

G.R. No. L-2211. December 20, 1948

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for certiorari filed against the respondent Judge of the Court of First Instance of Bulacan.

The facts in this case may be summarily stated as follows: Pablo M. Roxas died leaving properties in Bulacan. The other respondents Maria and Pedro Roxas, sister and brother respectively of the deceased, filed on August 3, 1946, a petition for the administration of the latter's estate, in special intestate proceeding No. 1707 of the Court of First Instance of Bulacan, and Maria Roxas was appointed special administratrix upon an ex-parte petition. On August 10, 1946, the petitioner Natividad Vela, de Roxas, widow of Pablo M. Roxas, filed a petition for the probate of an alleged will of her deceased husband, and for her appointment as executrix of his estate designated in said will, and the petition was docketed as special proceeding No. 172 of the same court. In said will the deceased bequeathed one half of his estate to his widow, the herein petitioner, and the other half to Reynaldo Roxas, an adulterous child 9 years old of the decedent. Upon agreement of both parties, the intestate proceeding No. 170 was dismissed and ordered closed by the court.

In view of the opposition to the probate of the will by the respondents Maria and Pedro Roxas, the petitioner was appointed on September 10, 1946, special administratrix and qualified as such over the objection of the respondents Maria and Pedro Roxas, who sought the appointment of Maria as such. The said respondents filed on October 21, 1946, a motion for reconsideration of the order of the court appointing the petitioner an special administratrix, with an alternative prayer that Maria Roxas be appointed as special co-administratrix, which motion was not acted upon.

After hearing on December 15, 1947, the respondent judge rendered a decision denying the probate of the will presented by the petitioner on the ground that the attesting witnesses did not sign their respective names in the presence of the testator, from which the petitioner has appealed, and the appeal is now pending.

On December 29, 1947, the respondents Maria and Pedro Roxas renewed their petition for the appointment of Maria Roxas as special administratrix or special co-administratrix and on May 5, 1948, the respondent judge rendered his resolution appointing the petitioner Natividad I. Vda. de Roxas as special administratrix only of all the conjugal properties of the deceased, and Maria Roxas as special administratrix of all capital or properties belonging exclusively to the deceased Pablo M. Roxas.

The present petition for certiorari has been filed with this Court against the last order or resolution of the Court of First Instance of Bulacan based on the ground that the respondent judge acted in excess of the court's jurisdiction in appointing two special co-administratrices of the estate of the deceased Pablo Roxas, one of the capital or properties belonging exclusively to the deceased, and another of his conjugal properties belonging exclusively to

the deceased, and another of his conjugal properties with his wife (now widow), the petitioner.

It is well settled that the statutory provisions as to the prior or preferred right of certain persons to the appointment of administrator under Sec. 1, Rule 81, as well as the statutory provisions as to causes for removal of an executor or administrator under section 653 of Act No. 190, now Sec. 2, Rule 83, do not apply to the selection or removal of special administrator. (21 Am. Jur., 833; *De Gala vs. Gonzalus and Ona*, 55 Phil. 104, 106). as the law does not say who shall be appointee as special administrator and the qualifications the appointee must have, the judge or court has discretion in the selection of the person to be appointed, discretion which must be sound, that is, not whimsical or contrary to reason, justice or equity.

There is nothing wrong in that the respondent judge, in exercising his discretion and appointing the petitioner as special administratrix, had taken into consideration the beneficial interest of the petitioner the estate of the decedent and her being designated the will as executrix thereof. But the respondent's subsequent act of appointing her as special administratrix only of the conjugal or community property and Maria Roxas as special administratrix of the capital or exclusive property of the decedent, does not seem to be in conformity with logic or reason, the petitioner has or claims to have the same beneficial interest after the decision or the court disapproving the will, which is now pending on appeal, as she had prior to it, because the decision is not yet final and may be reversed by the appellate court.

Besides, even if the will is not probated, the widow in the present case would have, under the law, the right of usufruct over one half of the exclusive property of the decedent, besides her share in the conjugal partnership. The beneficial interest required as a qualification for appointment as administrator of the estate of a decedent is the interest in the whole estate and not only in some part thereof, The petitioner being entitled to one half in usufruct of all the exclusive properties of the decedent, she would have as much if not more interest in administering the entire estate correctly, in order to reap the benefit of a wise, speedy, economical administration of the estate, and not suffer the consequences of waste, improvidence or mismanagement thereof. The good or bad administration of a property may affect rather the fruits than the naked ownership of a property.

However, for the decision of the question involved in this proceeding it is not necessary for us to determine whether or not the respondent judge has acted with grave abuse of discretion in rendering the resolution complained of for the reasons just stated, in view of our conclusion that the respondent judge acted in excess of the court's jurisdiction in appointing two separate special administrators of the estate of the decedent: one of the conjugal or community property and another of the capital or exclusive property of the deceased Pablo M. Roxas.

According to section 2, Rule 75, taken from section 685 of the former Code of Civil Procedure, Act No. 190, as amended, "when the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof paid, in the testate or intestate proceedings of the deceased spouse." That is the reason why, according to Sec. 4, Rule 78, the "letters testamentary, or letters of administration with the will annexed, shall extend to all the estate of the testator in the Philippines," and Sec. 6, Rule 79, provides for appointment of one administrator in case of intestacy, except in certain cases in which, two or more joint, but not separate and independent, administrators may be appointed under Sec. 3, Rule 82. Therefore the administrator appointed to administer and liquidate the exclusive property of a deceased spouse shall also administer, liquidate and distribute the community property, because the estate of a deceased spouse which has to be settled, that is, administered, liquidated and distributed, consists not only of the exclusive properties of the decedent, but also of one half of the assets of the conjugal partnership, if any, which may pertain to the deceased, as determined after the liquidation thereof in accordance with the provisions of articles 1421 to 1424 of the Civil Code.

There is absolutely no reason for appointing two separate administrators, specially if the estate to be settled is that of a deceased husband as in the [present case, for according to Articles 1422 and 1423 of the Civil Code, only after the dowry and parapherna of the wife and the debts, charges, and obligations of the conjugal partnership have been paid, the capital or exclusive property of the husband may be liquidated and paid in so far as the inventoried estate may reach; and if the estate inventoried should not be sufficient to pay the dowry and the parapherna of the wife, and the debts, charges and obligations of the partnership, the provision of title XXVII of the Civil Code relating to concurrence and preference of credits shall be observed. If two separate administrators are appointed as done in the present case, in every action which one of them may institute to recover properties or credit of the deceased, the defendant may raise the question or set up the defense that the plaintiff has no cause of action, because the property or credit in issue belongs to the class which is being administered by the other administrator, which can not be done if the administrator of the entire estate is only one.

As under the law only one general administrator may be appointed to administer, liquidate and distribute the estate of a deceased spouse, it clearly follows that only one special administrator may be appointed to administer temporarily said estate, because a special administrator is but a temporary administrator who is appointed to act, in lieu of the general administrator "When there is delay in granting letters testamentary "or of administration occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the court may appoint a special administrator to collect and take charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators thereupon appointed," (sec. 1, Rule 81); Although his powers and duties are limited to "collect and take 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, and may sell such perishable and other property as the court orders sold, a special administrator shall not be liable to pay any debts of the deceased.¹¹ (Section. 2, Rule 81).

In view of all the foregoing, we hold that the court below has no power to appoint two special administratrices of the estate of a deceased husband or wife, one of the community property and another of the exclusive property of the decedent, and therefore the respondent judge acted, in excess of the court's jurisdiction in rendering or issuing the order complained of, and therefore said order is hereby set aside, with costs against the respondents. So ordered.

Moran, C.J., Paras, Pablo, Perfecto, Bengzon, Briones, and Tuason, JJ., concur.

Petition granted, order set aside.

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