

HERNANDO PABILONIA AND ROMEO PABILONA, PETITIONERS, VS. HON. VICENTE SANTIAGO, JUDGE OF THE COURT OF FIRST INSTANCE OF QUEZON PROVINCE, BRANCH II; ANTONIA ABAS AND PANFILO NAGAR...*G. R. No. L-5110. July 29, 1953*

Ponente: TUASON, J.

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This is an original petition to compel the Hon. Vicente Santiago, Judge of the Court of First Instance of Quezon, to approve and certify petitioners' record on appeal filed in special proceedings No. 2387 of that court. The proposed appeal is from an order entered in those proceedings on June 20, 1951, whereby Panfilo Nagar, as judicial administrator, was "ordered to execute another deed of sale of the property referred to and described in transfer certificate of title No. 2992 in favor of Antonia Abas under the terms and conditions which appear in the amended deed of sale of January 30, 1936 mutatis mutandis, subject to the approval of the Court." The respondent judge hold that the sale mentioned in his order was final and execution oil the deed ministerial on the part of the court.

To properly understand the status of the sale being impugned it is necessary to recite the salient circumstances under which it was made.

This sale dates as far back as the inception of the above-mentioned special proceedings in 1935. It was executed in due form by and at the behest of Pedro Pabilonia as special administrator, who was the surviving spouse of the deceased and father of the present petitioners, both of whom were then minors. Initiator of those proceedings, Pabilonia not only asked for authority to sell the questioned property but named the price of sale (P2,600) and the person to whom the sale was to be made, Antonia Abas, aunt of his deceased wife. Regarding the necessity for the sale, Pabilonia alleged that the property was mortgaged to the Philippine National Bank; that the mortgage was overdue and the mortgagee was threatening to foreclose it; that on account of the prevailing financial depression the obligation could not be met with the income derived from the land, which was the only asset of the estate; etc., etc.

Pabilonia's recommendation was granted without any modification following which a deed was executed by him in strict accordance with his recommendation and the court's order. But the court thought, for the first time, when the deed of sale was submitted for the confirmation, that a regular administrator and not a special administrator like Pabilonia should sign the instrument if the same was to be valid. Consequently, on February 20, 1936, it withheld its approval of the said sale "por ahora" pending the "conversion" of the special administrator into a regular one. To this end, presumably, the court directed Pabilonia to apply for appointment as regular administrator.

In the meanwhile, Pabilonia delivered the possession of the land to the buyer, who since then has been paying the mortgage debt to the Philippine National Bank under a new arrangement reached with the creditor. For all the

records would show, the mortgage may have been paid off completely by now.

For the reason, so it seems, that the buyer had already entered upon the possession of the land, novated the contract of mortgage with the Bank, and there was no other property to administer and no other obligation to settle, Pabilonia and Abas lost interest in the appointment of a regular administrator. As a result of their inaction the court, now presided by another judge, dismissed the proceedings on June 20, 1939, "por falta de gestion" by the parties.

Nevertheless, on May 28, 1947, Pabilonia and Antonia Abas made a joint motion for the reinstatement of the expediente. That motion was promptly granted, whereupon Pabilonia asked that he be appointed regular administrator to carry out the court's order of January 1936, and he was so appointed on June 6, 1947. But for reasons which can be guessed in the light of his subsequent actions, Pabilonia refused to qualify and proposed a brother-in-law, Leon Abrigo, in his place. Antonia Abas was not agreeable to Abrigo's appointment and nominated Panfilo Nagar.

Now entered the present petitioners, Pabilonia's children who had become of age. With their father they opposed Nagar's appointment, insisting on the appointment of their candidate, branded the sale to Abas as invalid, and sought to recover the possession of the property from the buyer. After considerable wrangling between the parties the court overruled the petitioners' objections and denied their prayers, and on June 9, 1950, issued to Nagar letters of administration "con todos los derechos y obligaciones anexos al cargo." The herein petitioners took steps to appeal from that order, but later they gave up the idea.

On January 30, 1951, after the petitioners' appeal was withdrawn, Nagar filed a motion praying that the deed executed by Pabilonia as special administrator on January 30, 1936, be approved or, if this be not possible, that he be authorized to execute a new document with the same terms. It was upon this motion that the order quoted at the outset of this decision and from which petitioners now seek to appeal was made.

It will be seen from the foregoing narration of facts that the sale executed by Pabilonia on January 30, 1936, has never been disapproved, set aside, or modified. Upon the contrary, it was assumed to be valid in every respect except that it was deemed that a regular administrator should have made the sale. All these long years the appointment of such administrator was distinctly understood by the parties and the court to be the only unfinished matter to be attended to, and Panfilo Nagar's appointment and the court's order for him to execute a new deed, exactly like that signed by the former administrator were nothing more than in furtherance of that understanding. Except, therefore, for that appointment and the court's final approval, and as far as the estate was concerned, the right of the buyer was complete, absolute and incontestable. Not only was the sale made in pursuance of the special administrator's motion, but the parties have fully complied with its terms. Under the circumstances, only want of any of the essential elements of a contract can give the petitioners the right to stop the court's confirmation of the transaction. The petitioners have not submitted a copy of the record on appeal, nor other supporting papers except excerpts thereof or of some of them, and we are not informed of the exact basis of their objection to the sale.

As a matter of fact, we incline to the opinion that the conveyance made by the special administrator was valid and effective and that there was no necessity of appointing a regular administrator to ratify it or execute a new deed. While Sections 1 and 2 of Rule 81 and Section 8 of Rule 87 specify the cases in which a special administrator shall be appointed and the duties which they in general are to perform, Section 2 of Rule 81 expressly authorizes him to sell "such perishable and other property as the court orders sold." Further, debts which a special administrator may not be sued for may be settled and satisfied by him if "expressly ordered by the court to do so." (*Golingco vs. Calleja, et al.*, 69 Phil., 446.) If the court may authorize a special administrator to pay debts, it

seems to follow that it may authorize him to sell property to raise the money to pay the debts. Here there was a debt to pay and there was an order to sell the only property of the intestate for the purpose of paying that debt.

The court finds no merit in the application and, accordingly, denies it, with costs against the petitioners.

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

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