

JUAN JAMORA, PETITIONER, VS. MANUEL BLANCO, JUDGE OF FIRST INSTANCE OF ILOILO, RESPONDENT.

G.R. No. L-1131. May 31, 1947

Ponente: PARAS, J.

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PARAS, J.:

This is an original action for certiorari instituted by the petitioner, Juan Jamora, seeking the annulment of the order of the respondent Judge of the Court of First Instance of Iloilo, Honorable Manuel Blanco, dated October 18, 1946, which dismissed special proceeding No. 36 (Intestate Estate of the Deceased Gorgonia Jamora Vda. de Mapa: Juan Jamora, petitioner), and set aside all the proceedings theretofore accomplished therein.

The order complained of recites that the respondent Judge personally knew that the estate of the deceased Gorgonia Jamora Vda. de Mapa had been settled and distributed according to her will probated in the Court of First Instance of Manila some fifteen years ago, and that the petitioner, then already appointed administrator, when required to explain, stated that he instituted special proceeding No. 36 in the Court of First Instance of Iloilo, because the records of the testate proceedings in the Court of First Instance of Manila were destroyed as a result of the war.

Petitioner's main contention is that the respondent judge acted illegally in basing the order of dismissal on his personal knowledge of alleged facts not borne out by any evidence. While said respondent was perhaps somewhat hasty in the matter, due undoubtedly to his reaction to the anomaly that confronted him, we are not inclined to hold that the petitioner was thereby deprived of his day in court. Indeed, lack of a formal hearing for the reception of necessary evidence, is more than supplied by petitioner's own admission in his petition for certiorari (paragraphs 10, 11, 13) of the existence of the testate proceedings in the Court of First Instance of Manila, of the destruction of the records thereof, and of the absence of any petition for reconstitution. Such admission also points to the belief that the petitioner; as alleged in the order in question, really confirmed at the hearing held on October 15, 1946, what the respondent judge personally knew. And this is the reason why the order in question relies on the fact that—

"Dicho Sr. Jamora admitio ser ciertos los hechos expuestos en el parrafo anterior, y explicando su proceder al instituir la presente actuacion especial dijo que lo hizo porque con motivo de la guerra se ha destruido el expediente de la testamentaria de su finada hermana, la referida Gorgonia Jamora viuda de Mapa, obrante en el juzgado de primera instancia de Manila."

Petitioner's remedy is to file in the Court of First Instance of Manila the proper petition for reconstitution of the records in the testate proceedings. The circumstance that he is not in possession of documents sufficient for the purpose, is not a valid excuse for his reluctance or omission to institute reconstitution proceedings. He had no right to suppose that the records could not be reconstituted, because other interested parties may be successful in the task; and even if reconstitution should be impossible after proper proceedings, it would be incumbent upon the court to order a new trial or permit the filing of a new action.

The herein petition will therefore be, as the same is hereby, dismissed, and it is so ordered with costs against the petitioner.

Pablo, Bengzon, and Padilla, JJ., concur.

DISSENTING

PERFECTO, J.:

Petitioner alleges that he is the administrator of the estate of his deceased sister Gorgonia Jamora Vda. de Mapa, in process of administration and distribution in the Court of First Instance of Iloilo as special proceedings No. 36, besides being one of the heirs.

On September 11, 1945, after consulting Judge Gervasio Diaz of the Court of First Instance of Iloilo, petitioner filed the petition initiating the proceedings, and on September 12, 1945, Judge Gervasio Diaz ordered the petition set for hearing at 8 o'clock a. m. on October 6, 1945, and the publication of the order in the *Ang Tigbatas*, a newspaper edited in the city of Iloilo and of general circulation, requiring all interested parties to appear and show cause why the petition should not be granted.

The order was duly published. Nobody appeared to contest the petition. No creditor filed any claim against the estate notwithstanding the lapse of six months from the date of the publication of the notice.

In authorizing the filing of the petition and giving it due course, Judge Gervasio Diaz had personal knowledge of the testate proceedings which was pending in Manila, and was duly informed of the fact that the record was destroyed and could not be reconstituted, and in said testate proceedings no specific adjudication was made of a parcel of land, property of the deceased, located in Negros Occidental.

Petitioner complains that more than a year after special proceedings No. 36 had been pending, without any motion, petition, or any pleading or incident justifying it, respondent made a verbal order placing the case in the calendar for October 15, 1946. On said day, respondent judge propounded a few questions to petitioner. On October 18, 1946, respondent judge issued an order declaring null and void the proceedings and set aside the court's approval to a lease contract between Roberto Jamora and petitioner, dated October 21, 1945, and ordered that a copy of the order be sent to the register of deeds of Negros Occidental for proper compliance with respect to lot No. 628 of Silay cadaster, covered by original certificate of title No. 6676.

The order was based on respondent's personal knowledge, acquired while he was provincial fiscal of Iloilo in 1931, to the effect that in said year Gorgonia Jamora died in Manila leaving a will which was legalized in the court of first instance of said city, and that the fact was admitted by petitioner when he was questioned on October 15, 1946.

Petitioner alleges that the order was null and void because (a) it was not supported by any evidence on record and was issued by respondent judge *motu proprio*, (b) the same is based on hearsay evidence of respondent himself and on facts not falling within his judicial knowledge, and (c) it makes the statement that the properties of the deceased were distributed according to her will, which is not true.

Respondent answered by alleging: (a) that it is "almost of judicial knowledge" that the deceased was a resident of Manila; (b) that she has never been a resident of Iloilo; (c) that the Court of First Instance of Iloilo is not the one competent; (d) that "it is known to everybody" that since 1931 proceedings were initiated in the Court of First Instance of Manila for the distribution of the properties of the deceased according to her will, and distribution was

effected accordingly, and that the proper proceeding is to reconstitute the record in Manila. The respondent judge also alleged that petitioner acted in bad faith and made false allegations, and induced Judge Conrado Barrios to give his approval to the lease contract which was set aside by respondent.

Nowhere does it appear that any record or memorandum has been taken of the hearing which took place on October 15, 1946.

We cannot give our approval to the procedure followed by respondent judge. The bitter smack of arbitrariness in it is highly noticeable. More than a year after the case was initiated and, apparently, in regular process, respondent made an oral order to include it in the calendar of hearings for October 15, 1946. No reason at all has been given why no written order was issued. Except petitioner, no one of the several interested parties, the heirs, appears to have been notified of the hearing. No explanation has been given why the hearing was concealed from said parties. The hearing was set on the judge's own notion, without any request from any interested party. No motion, petition, incident, or proceeding called for a hearing. Because petitioner is the clerk of the court, he could not fail to learn about the hearing. He was asked some questions, and the whole hearing was reduced to said questioning. No stenographic notes were taken. No record or memorandum of the hearing was shown. The omission has never been explained.

On October 18, 1946, respondent issued the order annulling all the proceedings in the case, and dismissing it with costs against petitioner, without stating who is the creditor entitled to collect said costs. Although the order mentioned admissions made by petitioner during his questioning, respondent relied principally on facts of his own personal knowledge. The record is lacking of any evidence upon said facts. Respondent avers that said facts are "almost of judicial knowledge." He ought to know that, while evidence can be dispensed with to show facts of judicial knowledge, said facts are specifically mentioned in the rules. There is no law authorizing the lower court to enlarge the scope of facts of judicial knowledge. That power is reserved to the rule-making authority of the Supreme Court and to the legislative functions of Congress.

Respondent's personal knowledge of the facts in question does not make them of judicial knowledge. The latter refers to undisputed facts which, by common experience, are of universal knowledge among intelligent persons within a country or community. It does not include personal knowledge of specific facts about which individual judges may know or get information of. Respondent is entitled to his opinion to presume that facts known or heard by him may be elevated to the category of being "almost of judicial knowledge." But what is "almost" may not be included within the purview of the rule on judicial knowledge. If respondent wanted the case to be disposed of upon facts of his personal knowledge, the proper procedure for him to do was to take the witness stand and allow another judge to take cognizance of the case. The order of October 18, 1946, has been issued with abuse of judicial power, crowning a line of anomalous actuations incompatible with justice and judicial dignity.

Respondent judge accuses petitioner of fraudulence, bad faith and perjured testimony. If the accusations are based on fact, petitioner should be called into account for them, but proper procedure should be followed, the one in consonance with law and approved practice, and avoiding all irregularities. The question whether special proceedings No. 36 of Iloilo should or should not be dismissed is within jurisdiction of the lower court to decide, but the decision should not be rendered through an arbitrary procedure or in disregard of the law and the rules.

Petitioner complains of the intemperate language used by respondent judge in his pleadings before this Court. Besides the fact that petitioner himself is not free from all blame in this respect, we feel that the verbal outbursts of the parties in this case are explainable as natural in view of the high tension of feelings provoked by the controversy. Although the passion exhibited by both parties may not be justified, it is hard to set fixed rules by which the emotive manifestations of the parties may be disciplined or put under control.

We conclude that the petition should be granted and the respondent's order of October 18, 1948, be set aside as null and void.

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