

AUREA MATIAS, PETITIONER VS. HON. PRIMITIVO L. GONZALES, ETC., ET AL., RESPONDENTS.*G. R. No. L-10907. June 29, 1957*

Ponente: CONCEPCION, J.

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Petitioner Aurea Matias seeks a writ of certiorari to annul certain orders of Hon. Primitivo L. Gonzales, as Judge of the Court of First Instance of Cavite, in connection with Special Proceedings No. 5213 of said court, entitled "Testate Estate of the Deceased Gabina Raquel."

On May 15, 1952, Aurea Matias initiated said special proceedings with a petition for the probate of a document purporting to be the last will and testament of her aunt, Gabina Raquel, who died single on May 8, 1952, at the age of 92 years. The heir to the entire estate of the deceased—except the properties bequeathed to her other niece and nephews, namely, Victorina Salud, Santiago Salud, Policarpio Salud, Santos Matias and Rafael Matias—is, pursuant to said instrument, Aurea Matias, likewise, appointed therein as executrix thereof, without bond. Basilia Salud, a first cousin of the deceased, opposed the probate of her alleged will, and, after appropriate proceedings, the court, presided over by respondent Judge, issued an order, dated February 8, 1956, sustaining said opposition and denying the petition for probate. Subsequently, Aurea Matias brought the matter on appeal to this Court (G. R. No. L-10751), where it is now pending decision.

Meanwhile, or on February 17, 1956, Basilia Salud moved for the dismissal of Horacio Rodriguez, as special administrator of the estate of the deceased, and the appointment, in his stead of Ramon Plata. The motion was set for hearing on February 23, 1956, on which date the court postponed the hearing to February 27, 1956. Although notified of this order, Rodriguez did not appear on the date last mentioned. Instead, he riled an urgent motion praying for additional time within which to answer the charges preferred against him by Basilia Salud and for another postponement of said hearing. This motion was not granted, and Basilia Salud introduced evidence in support of said charges, whereupon respondent Judge, by an order, dated February 27, 1956, found Rodriguez guilty of abuse of authority and gross negligence, and, accordingly, relieved him as special administrator of the estate of the deceased and appointed Basilia Salud as special administratrix thereof, to "be assisted and advised by her niece, Miss Victorina Salud," who "shall always act as aide, interpreter and adviser of Basilia Salud." Said order, likewise, provided that "Basilia Salud shall be helped by Mr. Ramon Plata * * * who is hereby appointed as co-administrator."

On March 8, 1956, Aurea Matias asked that said order of February 27, 1956, be set aside and that she be appointed special co-administratrix, jointly with Horacio Rodriguez, upon the ground that Basilia Salud is over eighty (80) years of age, totally blind and physically incapacitated to perform the duties of said office, and that said movant is the universal heiress of the deceased and the person appointed by the latter as executrix of her alleged will. This motion was denied in an order dated March 10, 1956, which maintained "the appointment of the three above-named persons"—Basilia Salud, Ramon Plata and Victorina Salud—"for the management of the estate of the late Gabina Raquel pending final decision on the probate of the alleged will of said decedent."

However, on March 17/1956, Basilia Salud tendered her resignation as special administratrix by reason of physical disability, due to old age, and recommended the appointment, in her place, of Victorina Salud. Before any action could be taken thereon, or on March 21, 1956, Aurea Matias sought a reconsideration of said order of March 10, 1956. Moreover, on March 24, 1956, she expressed her conformity to said resignation, but objected to the appointment, in lieu of Basilia Salud, of Victorina Salud, on account of her antagonism to said Aurea Matias—she (Victorina Salud) having been the principal and most interested witness for the opposition to the probate of the alleged will of the deceased—and proposed that the administration of her estate be entrusted to the Philippine National Bank, the Monte de Piedad, the Bank of the Philippine Islands, or any other similar institution authorized by law therefor, should the court be reluctant to appoint the movant as special administratrix of said estate. This motion for reconsideration was denied on March 26, 1956.

Shortly afterwards, or on June 18, 1966, respondents Ramon Plata and Victorina Salud requested authority to collect the rents due, or which may be due, to the estate of the deceased and to collect all the produce of her lands, which was granted on June 23, 1956. On June 27, 1956, said respondents filed another motion praying for permission to sell the palay of the deceased, then deposited in different rice mills in the province of Cavite, which respondent judge granted on June 10, 1956. Later on, or on July 10, 1956, petitioner instituted the present action against Judge Gonzales, and Victorina Salud and Ramon Plata, for the purpose of annulling the above mentioned orders of respondent Judge, upon the ground that the same had been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

In support of this pretense, it is urged that petitioner should have preference in the choice of special administratrix of the estate of the decedent, she (petitioner) being : the universal heiress to said estate and the executrix appointed in the alleged will of the deceased, that, until its final disallowance—which has not, as yet, taken place—she has a special interest in said estate, which must be protected by giving representation thereto in the management of said ; estate; that, apart from denying her any such representation, the management was given to persons partial to her main opponent, namely, Basilia Salud, inasmuch as Victorina Salud is allied to her and Ramon Plata is a very close friend of one of her (Basilia Salud's) attorneys; that Basilia Salud was made special administratrix despite her obvious unfitness for said office, she being over eighty (80) years of age and blind; that said disability is borne out by the fact that on March 17, 1956, Basilia Salud resigned as special administratrix upon such ground; that the Rules of Court do not permit the appointment of more than one special administrator; that Horacio Rodriguez was removed without giving petitioner a chance to be heard in connection therewith; and that Ramon Plata and Victorina Salud were authorized to collect the rents due to the deceased and the produce of her lands, as well as to sell her palay, without previous notice to the petitioner herein.

Upon the other hand, respondents maintain that respondent Judge acted within the scope of his jurisdiction and without any abuse of discretion; that petitioner can not validly claim any special interest in the estate of the deceased, because the probate of the alleged will and testament of the latter—upon which petitioner relies—has been denied; that Horacio Rodriguez was duly notified of the proceedings for his removal; and that Victorina Salud and Ramon Plata have not done anything that would warrant their removal.

Upon a review of the record, we find ourselves unable to sanction fully the acts of respondent Judge, for the following reasons:

- Although Horacio Rodriguez had notice of the hearing; of the motion for his removal, dated February 17, 1956, the record shows that petitioner herein received copy of said motion of February 24, 1956, or the date after that set for the hearing thereof. Again, notice of the order of respondent Judge, dated February 23, 1956, postponing said hearing to February 27, 1956, was not served on petitioner herein.

- In her motion of February 17, 1956, Basilia Salud prayed for the dismissal of Horacio Rodriguez, and the appointment of Ramon Plata, as special administrator of said estate. Petitioner had, therefore, no notice that her main, opponent, Basilia Salud, and the latter's principal witness, Victorina Salud, would be considered for the management of said estate. As a consequence, said petitioner had no opportunity to object to the appointment of Basilia Salud as special administratrix, and of Victorina Salud as her assistant and adviser, and the order of February 27, 1956, to this effect, denied due process to said petitioner.
- Said order was issued with evident knowledge of the physical disability of Basilia Salud. Otherwise respondent Judge would not have directed that she "be assisted and advised by her niece Victorina Salud and that the latter "shall act as aide, interpreter and adviser of Basilia Salud."
- Thus, respondent Judge, in effect, appointed three (3) special administrators—Basilia Salud, Victorina Salud and Ramon Plata. Indeed, in the order of March 10, 1956, respondent Judge maintained "the appointment of the three (3) above-named persons for the management of the estate of the late Gabina Raquel."
- Soon after the institution of said Special Proceedings No. 5213, an issue arose between Aurea Matias and Basilia P. Salud regarding the person to be appointed special administrator of the estate of the deceased. The former proposed Horacio Rodriguez, whereas the latter urged the appointment of Victorina Salud. By an order dated August 11, 1952, the Court, then presided over by Hon. Jose Bernabe, Judge, decided the matter in favor of Horacio Rodriguez and against Victorina Salud, upon the ground that, unlike the latter, who, as a pharmacist and employee in the Santa Isabel Hospital, resides in the City of Manila, the former, a practicing lawyer and a former public prosecutor, and later, mayor of the City of Cavite, is a resident thereof. In other words, the order of respondent Judge of February 27, 1956, removing Rodriguez and appointing Victorina Salud to the management of the estate, amounted to a reversal of the aforementioned order of Judge Bernabe of August 11, 1952.
- Although the probate of the alleged will and testament of Gabina Raquel was denied by respondent Judge, the order to this effect is not, as yet, final and executory. It is pending review on appeal taken by Aurea Matias. The probate of said alleged will being still within the realm of legal possibility, Aurea Matias has—as the universal heir and executrix designated in said instrument—a special interest to protect during the pendency of said appeal. Thus, in the case of *Roxas vs. Pecson* * (46 Off. Gaz., 2058), this Court held that a widow, designated as executrix in the alleged will and testament of her deceased husband, the probate of which had been denied in an order pending appeal, "has * * * the same beneficial interest after the decision of the court disapproving the will, which is now pending appeal, because the decision, is not yet final and 'may be reversed by the appellate court.'"
- The record shows that there are, at least two (2) factions among the heirs of the deceased, namely, one, represented by the petitioner, and another, to which Basilia Salud and Victorina Salud belong. Inasmuch as the lower court had deemed it best to appoint more than one special administrator, justice and equity demands that both factions be represented in the management of the estate of the deceased.

The rule, laid down in *Roxas vs. Pecson* (supra), to the effect that "only one special administrator may be appointed to administer temporarily the estate of the deceased, must be considered in the light of the facts obtaining in said case. The lower court appointed therein one special administrator for some properties forming part of said estate, and a special administratrix for other properties thereof. Thus, there were two (2) separate and independent special administrators. In the case at bar there is only one (1) special administration, the powers of which shall be exercised jointly by two special co-administrators. In short, the *Roxas* case is not squarely in point. Moreover, there are authorities in support of the power of courts to appoint several special co-administrators (*Lewis vs. Logan*, 87 A. 750; *Harrison vs. Clark*, 52 A. 514; *In re Wilson's Estate*, 61 N.Y.S. 2d., 49; *Davenport vs. Davenport*, 60 A. 379).

Wherefore,, the orders complained of are hereby annulled and set aside. The lower court should re-hear the

matter of removal of Horatio Rodriguez and appointment of special administrators, after due notice to all parties concerned, for action in conformity with the views expressed herein, with costs against respondents Victorina Salud and Ramon Plata. It is so ordered.

Paras, C.J., Bengzon, Padilla, Montemayor, reyes, A., Bautista angelo, Labrador, Reyes, J. B. L., and Felix, J.J., Concur.

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