

**FACUNDO A. DALISAY, JUDICIAL ADMINISTRATOR OF THE
INTESTATE ESTATE OF THE LATE AMADO B. DALISAY, PETITIONER,
VS. THE HON. FRANCISCO Z. CONSOLACION, PRESIDING JUDGE OF
THE COURT ...**

G.R. No. L-44702. July 30, 1979

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari and prohibition impugning the order of respondent court of August 16, 1976 removing petitioner as judicial administrator in Special Proceeding No. 1986, Court of First Instance of Davao Branch II, the Intestate Estate of Amado Dalisay y Bangoy, and the order denying reconsideration thereof.

According to the allegations of the petition filed below, Amado Dalisay y Bangoy died on September 1, 1975 in Davao City; he was a bachelor without descendants or ascendants, whether legitimate or otherwise, apparently, without any forced heir; he left personal and real properties worth about One Million (P1,000,000) Pesos; and he died intestate. The petition prayed for the issuance of letters of administration to the Clerk of Court, Atty. Eriberto A. Unson.

After due notice and hearing, respondent judge selected and appointed petitioner from among several nominees of the parties, as the judicial administrator of the estate. Aniceto S. Dalisay, herein private respondent, claiming to be the nearest of kin of the deceased, moved for reconsideration, but His Honor denied said motion holding inter alia that:

"x x upon its finding that, of all the would be administrators herein recommended, Facundo Dalisay appears to be the most qualified and suitable in that he not only enjoyed the confidence of the decedent, but, also because up to the death of the latter, he appeared to have been managing and overseeing the affairs of the estate and therefore is in a position to better handle the preservation of the entire estate for the estate." (Annex 'B', Order, March 8, 1976)

Corresponding letters of administration were accordingly issued to petitioner on March 15, 1976. An attempt of private respondent to appeal from said appointment was later withdrawn.

Because certain properties happened to be in the possession of herein private respondent, petitioner moved for delivery thereof to him but this motion was denied by the vacation judge then acting in place of herein respondent judge. Apparently, respondent Aniceto Dalisay must have submitted some kind of inventory at least of the properties in his possession, for on May 31, 1976, respondent judge issued the following order:

"The inventory submitted by Aniceto Dalisay shows that a promissory note was executed by Facundo Dalisay on August 18, 1973 with the information that there is no record of payment.

"IN VIEW WHEREOF, Facundo Dalisay is hereby directed to appear before this Court on June 10, 1976 at 8:30 A.M. to explain and produce receipts of payment of said promissory note if there is any in his possession.

"SO ORDERED." (Annex "H", p. 36, Record.)

Then on June 14, 1976, His Honor issued another order, which is self-explanatory, thus:

"This refers to the Order of the Court dated May 31, 1976, requiring Facundo Dalisay to appear, and explain or produce receipts of payment for the promissory note in the amount of P10,000.00 which he executed in favor of the late Amado Dalisay on August 18, 1973, which appeared in the reports submitted by Aniceto Dalisay per Order of this Court.

"In the hearing, Facundo Dalisay admitted that he signed the promissory note (Exhibit 'C' – Motion-Facundo Dalisay) after the execution of the Deed of Sale (Exhibit 'A' – Motion-Facundo Dalisay) of 2 motor vehicles in his favor. Facundo Dalisay further admitted that he was not able to pay the installments in the manner set forth in the promissory note but he was able to pay it all.

"When asked to produce any receipt of the payments he made, Facundo Dalisay claimed that he did not get any receipt, because he and the late Amado Dalisay are like brothers. If this is so, then why did the late Amado Dalisay require him to sign a promissory note?

"Again, if the claim of Facundo Dalisay is true since the Deed of Sale stated that the consideration was already paid, why did not the late Dalisay return the promissory note to him, gratis et amore, or after he (Facundo Dalisay), had fully paid the same.

"In the face of the record, the explanation of Facundo Dalisay does not merit any serious consideration.

"WHEREFORE, Facundo Dalisay is hereby directed to pay the intestate estate of Amado Dalisay the sum of Ten Thousand (P10,000.00) Pesos within a period of sixty (60) days from receipt of this order.

"SO ORDERED." (Annex "I", pp. 37-38, Record.)

Petitioner asked for reconsideration of the foregoing order, explaining that he had already paid the amount in question but since he "was precluded from testifying" thereon under the prohibition against testimony of survivors, he proposed that he be allowed to pay the same in monthly installments of P500.00. To this motion, respondent countered with a motion asking that petitioner "be removed or allowed to resign" because his failure to pay "may be considered as evidence of abuse of trust and confidence". (Annex K of petition.) Petitioner filed a rejoinder, Annex L of the petition, contending that there was no legal ground for his removal. Resolving the incident, His Honor relieved petitioner as judicial administrator reasoning out thus:

"The deceased Amado Dalisay as the preliminary record of the case will show, left a considerable estate, consisting principally of income-producing urban and agricultural lands, with some personal properties.

"In considering the appointment of a judicial administrator, this Court took into account that the said person must be a man of utmost integrity. Primarily because of the full trust and confidence that the deceased had apparently shown on the face of the Special Power of Attorney dated August 15, 1963 to Facundo Dalisay and of the Affidavit dated June 2, 1974, he was appointed by this Court as judicial administrator.

"It is sad to state that administrator Facundo Dalisay did not measure up to the standard of integrity and character the Court required and expected of him.

"Due to the sizeable and valuable estate with considerable income, the judicial administrator must have a character to resist temptation for personal gain which is open to him in such a position. He must therefore be, 'like Ceasar's Wife above suspicion'.

"His explanation stated in the aforesaid motion for reconsideration that he 'never denied his obligation under the promissory note but claimed payment', is a posture, under the circumstances shown during the hearing, that does not speak well of the character expected of a judicial administrator.

"Thus, under the said circumstances as shown during the hearing, administrator Facundo Dalisay appears to be unsuitable for the position as judicial administrator and his continuance in the position would work to the disadvantage of the said estate. Coupled with his account with the estate in the amount of P10,000.00, his relief from the position is necessary." (Annex "N", pp. 47-48, Record.)

It is the position of petitioner that in so relieving him of his position as judicial administrator, respondent acted in grave abuse of discretion. He points out that it was actually he who revealed the existence of the promissory note—and this allegation is not denied by respondents—and that if his claim that he has already paid the amount in question has not convinced the court, it cannot be said that it is so entirely and totally incredible that it could be considered as justifying His Honor's conclusion that petitioner has not lived or measured up to the standard of integrity and character of a judicial administrator.

On the other hand, respondent posits that petitioner, not being in any way related to the deceased, was appointed merely in the exercise of the court's discretion and cannot therefore claim any "proprietary and/or pecuniary right to insist in administering the properties now under custodia legis." In other words, the point raised is that respondent judge should also have wide discretion in removing him.

Before passing on such conflicting claims of the parties, it may be mentioned here that in a motion dated May 10, 1979, private respondent prays that he "be allowed to file a motion with the probate court for removal of Facundo A. Dalisay as administrator on grounds different from the ground upon which he was relieved by the probate court." It is alleged in said motion that:

"III

"Private respondent Aniceto S. Dalisay would like to file a motion with the Probate Court for removal of Facundo A. Dalisay as administrator for acts committed prior and subsequent to his relief as administrator by the Probate Court, grounds different from the ground upon which he was removed by the Probate Court, hoping that with two cases pending against him, the termination of one will bring about his early removal as administrator. But because of the temporary restraining order issued by this Honorable Court enjoining the respondent Judge from further proceeding with Special Case No. 1986, leave of this Honorable Court is necessary. The following are some of the grounds upon which he will predicate the motion.

IV

"Facundo A. Dalisay neglected to perform an order of the Court and duties expressly provided by the Rules of Court. These are grounds for removal of administrator pursuant to Section 2, Rule 82, Rules of Court. In the order of the Probate Court dated June 27, 1977, the last paragraph thereof states:

'The judicial administrator is hereby warned that disbursement of any nature without prior approval of the Court shall be chargeable on his personal account.'

A xerox copy of the order of the Probate Court dated October 13, 1977, quoting the order dated June 27, 1977, is enclosed herewith.

"V

"From the above-quoted order, leave of court is necessary before Facundo A. Dalisay makes any disbursement, otherwise the same is chargeable to him.

"VI

"It appears from the account of administrator Facundo A. Dalisay from March 16, 1977 to March 15, 1978, and March 16, 1978 to March 15, 1979, submitted to the Probate Court, that he gave cash advances to himself, his bookkeeper and Atty. Primo O. Orellan, his counsel, in the total amount of P22,064.10 without authority from the Probate Court and although no fees have yet been allowed them by the said court. He gave himself a monthly allowance of P500.00 and Atty. Orellan P300.00.

"VII

"Under Section 1, Rule 85, Rules of Court, the administrator is accountable for the income of the estate. Facundo A. Dalisay failed to collect P21,755.03 from five (5) tenants from Coronon, Sta. Cruz, Davao del Sur, representing the shares of the estate from copra; P8,917.11 from two (2) lessees from Panabo, Davao del Norte, and Barrio Lasang Licanan, Davao City, representing the share of the estate from ramie, and P33,600.00 from two (2) lessees at Binatan, Digos, Davao del Sur, and Sirawan, Sta. Cruz, Davao del Sur, representing unpaid rentals from 35-1/2 hectares of agricultural lands as shown in his annual accounts from March 16, 1977 to March 15, 1978, and March 16, 1978 to March 15, 1979 submitted to the Probate Court.

"VIII

"As also shown in the said annual accounts, Facundo A. Dalisay has not been collecting rentals from the residential and/or commercial lots situated at Claro M. Recto Street, Davao City, belonging to the estate, occupied by him, his counsel Atty. Primo O. Orellan, his brother and relatives-in-laws of the latter, and his sister.

"IX

"Facundo A. Dalisay failed to protect the estate from spurious claims. In fact, he was biased in favor of, if not in connivance with, some claimants.

"X

"Facundo A. Dalisay padded his expenses for travel and inspection as shown in his annual accounts from March 15, 1977 to March 16, 1979.

"XI

"Facundo A. Dalisay committed perjury when he testified in court on March 29, 1979, during the hearing of the claims of Desiderio Dalisay that he does not know Aniceto S. Dalisay." (Pp. 51-54, Vol. IV, Record.)

The Court is of the considered view that if the foregoing allegations are sufficiently substantiated, after appropriate proceedings, the removal of petitioner would be legally justified. Therefore, rather than insist on the ground relied upon by His Honor in his order under review, which to Us appears to be quite flimsy, considering that the mere fact that an administrator happens to owe money to the decedent is not in itself a ground for his removal, and in this case the evidence does not seem indubitable that petitioner's claim of payment was made in bad faith or in an obvious attempt to defraud the estate. It would be fairer for all concerned for respondents to proceed against petitioner on the basis of the above-quoted charges against him. In this connection, it is to be noted that in the considerations of His Honor's order of June 14, 1976 hereinabove earlier quoted, it is not definite that petitioner's explanation was malicious and inherently unfounded. In any event, the petitioner has not refused to pay; he only asked for some liberality so he could pay in installments. Surely, such proposal could not have converted him into a debtor in bad faith. The point of integrity raised by respondent court appears a little harsh.

Otherwise stated, We find the ground for which petitioner has been removed to be rather precipitate. From which, it results that the orders herein assailed constitute grave abuse of discretion and should be set aside.

Accordingly, the petition is granted and the orders mentioned at the outset of this decision are hereby set aside, without prejudice to respondent court acting, as the facts and the law may warrant, on the new move of private respondent for the removal of petitioner. The restraining order heretofore issued is hereby lifted and respondent court is now free to act on all the incidents for which leave of this Court is being sought in various motions to that end. Costs against respondent.

Antonio, Aquino, Concepcion, Jr., and Abad Santos, JJ., concur.
Santos, J., on official leave.

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