

FRANCISCO DE BORJA AS EXECUTOR OF THE ESTATE OF THE DECEASED JOSEFA TANGCO, PETITIONER, VS. BIENVENIDO A. TAN, AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, AND JOSE DE BORJ...*G.R. No. L-6476. November 19, 1955*

Ponente: MONTEMAYOR, J.

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This is a petition for mandamus to compel respondent Judge Bienvenido A. Tan to approve and admit the record on appeal filed before him and to give due course to the appeal. The facts involved as gathered from the record may be briefly stated as follows. On October 25, 1940, petitioner Francisco de Borja filed a petition in the lower court for the probate of the Last Will and Testament of his deceased wife Josef a Tangco. The will was probated on April 2, 1941, and named Francisco de Borja as executor thereof. One of the heirs who is now one of the respondents herein Jose de Borja appealed the case to the Court of Appeals but later his motion for dismissal of the appeal was granted. All the records of the case were destroyed or lost during the last Pacific war but were on January 1, 1946, reconstituted. On March 26 of that year Francisco de Borja qualified as executor and administrator.

Due to the physical inability of Francisco de Borja to fully administer the estate he being quite weak and unable to see, on August 25, 1951, on petition of Matilde de Borja, one of the heirs, the lower court appointed Crisanto de Borja, another heir, as co-administrator, Crisanto qualified as co-administrator on August 29, 1951.

On April 9, 1952, the trial court according to petitioner, without petition of or notice to anyone appointed respondent Jose de Borja as co-administrator, this, after holding in abeyance consideration of Francisco de Borja's amended account dated March 25, 1952. Francisco, Matilde and Crisanto moved for reconsideration of the appointment of Jose de Borja but by order of August 14, 1952, respondent Judge indirectly denied the motion for reconsideration, and acting upon an alleged ex-parte petition of the heirs Jose, Crisanto, Cayetano and Matilde, all surnamed De Borja, revoked the appointment of Crisanto as co-administrator and directed administrator Jose de Borja to comment on the amended account filed by Francisco de Borja.

On July 22, 1952, Francisco, Matilde and Crisanto filed a notice of appeal from the order appointing Jose de Borja as co-administrator and the order denying the motion for reconsideration and later they filed the corresponding record on appeal. By order of December 27, 1952, respondent Judge Tan disapproved the record on appeal and refused to give due course to the appeal on the ground that the appointment of Jose de Borja as co-administrator was interlocutory in nature and so was not appealable. Hence, this petition for mandamus, as already stated, to compel respondent Judge to approve the record on appeal and to give due course to the appeal.

An order appointing a regular administrator is appealable (See *Sy Hong Eng vs. Sy Liac Suy*, 8 Phil., 594). On the other hand, according to Rule 105, section 1(e) an order appointing a special administrator is not appealable. Respondents contend that a co-administrator is not a regular or general administrator, and his duties and functions

rather partake those of a special administrator; consequently, his appointment is not subject to appeal. We cannot share this view. The powers and functions of a special administrator are quite limited. Under Rule 81, section 1, a special administrator is appointed only when there is a delay in granting letters testamentary or of administration occasioned by an appeal from allowance or disallowance of a will or from any other cause, and such special administrator is authorized to collect and take charge of the estate until the questions causing the delay are decided and an executor or administrator thereon appointed. Under Rule 87, section 8, a special administrator is also appointed when the regular executor or administrator has a claim against the estate he represents and said special administrator shall have the same power and subject to the same liability as a regular executor or administrator. In other words, a special administrator is appointed only for a limited time and for a specific purpose. Naturally, because of the temporary and special character of his appointment, it was deemed by the law not advisable for any party to appeal from said temporary appointment. On the other hand, a co-administrator performs all the functions and duties and exercises all the powers of a regular administrator, only that he is not alone in the administration. Further taking into consideration the circumstances obtaining in this case, that petitioner Francisco de Borja though originally designated administrator, is and has for several years been one only in name due to his physical and mental disability, as a result of which respondent Jose de Borja is now practically the sole administrator, there is no question that for all practical and legal purposes the appointment of Jose de Borja as co-administrator is equivalent to and has the same effect as a sole regular or general administrator.

In view of the foregoing, holding that the appointment of a co-administrator, especially in the present case, is appealable, the petition for mandamus is granted and respondent Judge is hereby directed to approve the record on appeal and to give due course to the appeal. No costs.

Paras, C. J., Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B. L., JJ., concur.

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