

TESTATE ESTATE OF VITO BORROMELO, DECEASED: JOSE H. JUNQUERA, SPECIAL ADMINISTRATOR, PETITIONER AND APPELLANT, VS. CRISPIN BORROMELO AND TEOFILO BORROMELO, OPPOSITORS AND APPELLEES...

G.R. No. L-9314. May 28, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On May 17, 1945, Vito Borrromeo executed a testament naming therein Jose H. Junquera as executor. On March 13, 1952, Vito Borrromeo died in Paranaque, Rizal, and on April 21, 1952, Junquera filed in the Court of First Instance of Cebu a petition for the probate of said will praying that, during the pendency of its probate, he be appointed a special administrator of the estate upon his filing of a bond in the amount to be fixed by the court. On June 14, 1952, the court appointed Junquera as special administrator upon his filing a bond of P2,000 and ordered that letters of administration be issued to him.

Crispin Borrromeo and Teofilo Borrromeo filed separately an opposition to the petition for the probate of the will. On January 2, 1953, said oppositors filed a motion for the removal of Junquera as special administrator on the ground that he failed to submit an inventory of the estate as required by law as well as to deposit either in the bank or with the clerk of court all the income of the estate and by his conduct he may be considered as having neglected his duties as such administrator. On February 20, 1953, Junquera filed his opposition to the motion explaining that the reason why he failed to file the inventory and report as required by law is that all the papers or documents relative to the estate are in the possession of one Tomas L. Borrromeo, who was residing in Manila, and who owns one-half of the conjugal properties of the deceased by virtue of a deed of donation executed by the latter in his favor and who, together with the other heirs, claim possession of the other half of said properties by virtue of an agreement entered into with the deceased. And if he was not able to submit a report of the income of the estate, it was because he failed to collect its rentals due to the opposition of Tomas L. Borrromeo, Fortunato Borrromeo and Amelia Borrromeo who are all heirs instituted in the will subject of probate. But on the same date, February 20, 1953, Junquera finally submitted an inventory of the estate and a report of the income as required by law.

After due hearing, the court granted the motion removing Junquera as special administrator and ordering the parties to submit a list of persons from whom the court may select for appointment as the new special administrator. On appeal taken by Junquera, the Court of Appeals certified the appeal to this Court on the ground that it comes within its jurisdiction under section 17 (5) of Republic Act No. 296.

Section 4, Rule 82, of the Rules of Court provides:

"Sec. 4. Bond of special administrator.—A special administrator before entering upon the duties of his trust shall give a bond, in such sum as the court directs, conditioned that he will make and return a true inventory of the goods, chattels, rights, credits, and estate of the deceased which come to his possession or knowledge, and that he will truly account for such as are received by him when required by the court, and will deliver the same

to the person appointed executor or administrator; or to such other person as may be authorized to receive them."

It appears from the above that a special administrator before entering upon his duties shall give a bond conditioned "that he will make and return a true inventory of the goods, chattels, rights, credits, and estate of the deceased which come to his possession or knowledge, and that he will truly account for such as are received by him when, required by the court." Has Junquera complied with this duty?

It appears that he was appointed as special administrator on June 14, 1952 after filing a bond in the amount of P2,000. He assumed office since then and yet until the motion for his removal which was filed on January 2, 1953, or a period of approximately seven months, he appears not to have taken any step to determine the property, real or personal, belonging to the estate and much less has filed an inventory thereof with the court as required by law. While the above-quoted rule (section 4, Rule 82) does not fix any period within which he is required to submit an inventory of the estate, it cannot be denied that such duty has to be performed within a reasonable period, if not as soon as practicable, in order to preserve the estate and protect the heirs of the deceased. Such is inferred from section 2 of Rule 81 wherein it is provided that a special administrator "shall collect and take charge of the goods, chattels, rights, credits, and estate of the deceased and preserve the same for the executor or administrator afterwards (to be) appointed" for only in that manner can we satisfy the real purpose for which the office of a special administrator is provided for. If such were not the case we would be opening the door to the commission of irregularities or other mischiefs which may redound to the detriment of the estate and of the heirs entitled to its distribution. It is for this reason that the law provides for his removal in case he fails to perform "a duty expressly provided by these rules" or "becomes insane, or otherwise incapable or unsuitable to discharge the trust (section 2, Rule 83). (Italics supplied.) And if, as found by the trial judge, Junquera "have not even attempted, much less done any substantial performance of any of (his) commitments", it is evident that he has proved to be unworthy of his trust.

His claim that he has not been able to submit earlier an inventory of the estate because the papers and documents relative thereto were in the possession of one of the heirs who was in Manila and claims to be the owner of one-half of the conjugal properties, is too flimsy to justify the long delay he has incurred in the submission of the requisite inventory. Neither can the opposition to his taking possession of the properties coming from some of the heirs of the deceased justify his inaction for in such a predicament his duty is to inform the court of such opposition in order that the latter may give whatever advice may be necessary to preserve the estate and protect the interest of the heirs. But no such action was taken, and what is more, there is an intimation that the special administrator has never been allowed by the legatees of the will, who apparently are in actual possession of the estate, to take possession thereof, nor to collect its rentals, for which reason the account submitted by him at the last hour appears to be unsatisfactory. Even the inventory he submitted suffers from a substantial deficiency for, as pointed out by the oppositors, many properties belonging to the deceased have not been included therein.

It is true that Junquera is the one named by the testator as the executor of his will but such designation cannot give him any preference or advantage until after the will is admitted to probate. This claim can only be asserted after the will has been admitted to probate for such is "a precious prerogative of a testator, a necessary concomitant of his right to dispose of his property in the manner he wishes" (*Ozaeta vs. Pecson*, 49 Off. Gaz., No. 7, 2805).

The rule is that "The appointment and removal of a special administrator lies entirely in the sound discretion of the court, * * *. The sufficiency of any ground for removal should thus be determined by the court, whose sensibilities are, in the first place, affected by any act or omission on the part of the administrator not conformable to or in disregard of the rules or the orders of the court" (*Moran*, Comments on the Rules of Court, Vol. II, 1925 ed., pp. 405-406, and cases cited therein). Considering the circumstances of this case, we find no plausible reason

to interfere with the action taken by the trial court in removing appellant as special administrator.

Wherefore, the order appealed from is affirmed, without costs.

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

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