

**ANTONIO M. BUENAVENTURA, VIRGINIA JURADO DE LEON,
GODOFREDO JURADO AND CORAZON JURADO LAMAGNA,
PETITIONERS VS. THE PHILIPPINE TRUST COMPANY AND HON.
HERMOGENES CALAUAG JUDGE OF ...**

G.R. No. 10832. June 29, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a writ of certiorari to annul and set aside an order of the Court of First Instance of Quezon City, dated 21 April 1956, entered in Special Proceedings No. A-573.

On 26 May 1955 Antonio M. Buenaventura filed a petition in the probate court of Quezon City praying for allowance of a will purportedly executed by the late Antonio L. Geronimo (Annex 3). On 30 June 1955 the Philippine Trust Company was appointed special administrator of the estate pending the probate of the will. On 2 December 1955 the special administrator reported to the probate court that the petitioners were occupying the premises at Nos. 34— B and 34— E Dapitan street and 164 Kanlaon street, Quezon City, belonging to the estate, and prayed that they cannot pay the rentals (Annex A). On 8 and 10 December 1955 Leonardo Geronimo, oppositor to the probate of the will, moved that the special administrator be directed to file an action for detainer against the petitioners and to sell at public auction the personal properties of the estate listed as Items Nos. 1 to 35 in the inventory report dated 24 October 1955 submitted to the probate court by the special administrator (Annexes B and D). On 12 and 22 December 1955 Antonio M. Buenaventura filed his objections thereto (Annexes C and E). Acting upon both the motion and opposition, on 2 February 1956 the probate court denied the motions for the reasons that it did not deem necessary to direct the special administrator to file an action for detainer against the occupants of the premises referred to belonging to the estate for their failure to pay the monthly rentals, because the special administrator to file an action for authority to sell personal properties of the estate, if there be sufficient ground therefor (Annex F). On 12 March 1956 the special administrator filed a petition praying for authority to sell the personal property consisting of furniture and fixtures listed as Items Nos. 9 to 35 in the inventory report submitted by it, in the possession of Corazon Jurado Lamagna, "on the ground that said furniture and fixtures are being used, (and) consequently would depreciate in value" (Annex G.) On 16 March 1956 Antonio Buenaventura filed his objection to the petition on the ground the the personal properties in question are not perishable in nature; that they are antiques and aside from their intrinsic worth have great sentimental value; that the estate is solvent and for that reason there is no need of selling the same; and that they were left in the possession if Corazon Jurado Lamagna by the special administrator (Annex H). On 16 April 1956 the special administrator filed a motion praying that the petitioners be directed to deliver to it the possession of the premises occupied by them (Annex I). On 19 April 1956 Antonio M. Buenaventura filed an objection thereto, on the ground that the probate court has no jurisdiction over the subject matter, as the proper action should be one of detainer (Annex J). On 21 April 1956 the probate court entered an order, the dispositive part of which provides:

As prayed for, Virginia Jurado de Leon, Godofredo Jurado, Antonio Buenaventura and Corazon Jurado

Lamagna, who are presently occupying the estate's premises at Nos. 34, 34—A and 34—B DApitan St., and 164 Kanlaon St., respectively, are hereby granted 15 days from receipt hereof within which to pay the rentals in arrears and to vacate the premises occupied by them, otherwise they will be declared in contempt.

The Special Administrator is hereby authorized to take possession of the furniture and other articles appearing in Items 9 to 35 of the Inventory and which are allegedly in possession of Mrs. Carazon Lamagna, and to sell the same at the best price obtainable at the sound discretion of said Special Administrator (Annex K.)

On 4 June 1956 the motion for reconsideration dated 10 May 1956 (Annex L), objected to by the special administrator (Annex M), objected to by the special administrator (Annex N). Hence this petition for certiorari with a prayer for a writ of preliminary injunction. on July 1956, upon the filing of the requisite bond, this Court issued the writ of preliminary injunction prayed for.

Within a year after unlawful deprivation of possession of any land or building by force, intimidation, threat, strategy or stealth; or within a year from the withholding of possession of any contract, the proper action to recover possession us forcible entry or detainer, as the case may be, [1] exclusively cognizable by the inferior courts. [2] One year thereafter, the remedy is accion publicana or plenaria de possession for the recovery of possession, exclusively cognizable by the Courts of First Instance. [3]

The petitioners have been occupying the premises in question before the death of the owner Whether it be gratuitously as beneficiaries, or onerously as lessees, the action to disposses the petitioners must be brought in the proper court and not heirs instituted, the petitioner Godofredo Jurado, father of the two women petitioners, is alleged to be universal heir named, in the will sought to be probated. The respondents' contention that the order sought to be annulled is incidental to the probate court's power to gather and collect the properties of deceased for the purpose of administration and distribution cannot be sustained, because the law expressly provides that an action to dispossess a party of a land or building claimed to be unlawfully in possession of such party must be brought either in the municipal court or Court of First Instance.

As to the sale of furniture and fixtures belonging to the estate, section 2, Rule 81, provides:

Such 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 appointed, and for that purpose may commence and maintain suits as administrator, and may sell such perishable and other property a the court orders sold. A special administrator shall not be liable to pay any debts of the deceased.

The special administrator, by authority of the probate court, may only sell perishable and other property s the Court may direct. The chattels ordered to be sold, consisting of furniture and fixtures, are not perishable. The only reason given by the special administrator for authority to sell the chattels is that it is "for the best interest of the estate". The authority to special administrator given by the probate court is unauthorized.

The writ prayed for is granted and the order of 21 April 1956 complained of being unauthorized is annulled and set aside, and the writ of preliminary injunction heretofore issued is made final, without pronouncement as to costs.

Paras, C.J., Bengzon, Montemayor, Bautista Angelo, Concepcion, and Endencia, JJ., concur.

[1] Section 1, Rule 72.

[2] Section 88, in connection with section 44(b), Republic Act No. 296.

[3] Section 44(b), Republic Act No. 296.

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