

BORRROMEO BROS. ESTATE, INC., PETITIONER, VS. THE COURT OF APPEALS, ET AL., RESPONDENTS.*G.R. No. 12240. April 15, 1959*

Ponente: BAUTISTA ANGELO, J.

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Dr. Maximo Borrromeo died in Cebu on July 31, 1940 leaving a will wherein he instituted the Borrromeo Bros. Estate, Inc., a family corporation, as his heir. He named in the will as his executor Canuto O. Borrromeo who in due time assumed the position as such.

On July 12, 1949, Johanna Hofer Borrromeo, widow of the deceased, moved for the removal of Canuto O. Borrromeo as executor and for her appointment in his place as administratrix of the estate. After hearing, the court issued an order removing Borrromeo as executor but denying the widow's request for appointment as administratrix. Canuto having appealed from the order of removal, this Court rendered a confirmatory judgment, and in compliance therewith, Borrromeo ceased to take charge of the estate, which in the meantime remained without any administrator.

On January 26, 1956, the widow filed a motion reiterating her appointment as administratrix, which was opposed by the heir-corporation, but this opposition notwithstanding, the court issued an order appointing her administratrix of the estate. On January 27, 1956, after putting up the required bond, which was approved by the court, letters of administration were issued to her, and in due course she assumed her trust. On January 30, 1956, a motion for reconsideration of this order was filed by the oppositor, and when this motion was denied, the oppositor filed a notice of appeal on July 19, 1956. Thereafter, on July 1956 the court issued another order directing the removed executor to deliver certain records in his possession to the administratrix. The order also contained a notice to the Chartered Bank of India, Australia and China to the effect that the account of the estate in said bank was placed under the custody of the widow as administratrix.

On August 1, 1956, oppositor filed a motion to set aside (1) the letters of administration issued to the administratrix on January 27, 1956, and (2) the order of July 21, 1956 ordering the removed executor to deliver certain records to the administratrix and notifying the Chartered Bank of India, Australia and China of the change in the administration as above stated. This motion was denied in two orders entered on August 15, 1956. Failing to secure a reconsideration of these orders, oppositor filed a petition for certiorari and prohibition in the Court of Appeals.

In its decision, dated January 30, 1957, the Court of Appeals denied the petition, ruling that respondent judge did not exceed his jurisdiction nor act with grave abuse of discretion in issuing its order of July 21, 1956. With respect to the letters of administration issued to the widow, said court decided not to act or pass upon the applicability of Section 2, Rule 39, of the Rules of Court to the order granting said letters of administration, stating that the proper remedy of the oppositor is appeal and not certiorari. Hence the present petition for review.

The main issue raised by petitioner refers to the propriety of the issuance by respondent judge of his order of

January 27, 1956 directing that letters of administration be issued to the widow so that she may qualify as administratrix, as well as of the order of July 21, 1956 directing the removed executor to turn over to the widow certain records belonging to the estate, and notifying the Chartered Bank of India, Australia and China that the account of the estate was already placed under her administration. It is contended that the order appointing the widow as administratrix having been appealed, the same cannot be given due course, nor immediately executed, by granting letters of administration to the widow, or allowing her to qualify as administratrix, without said widow having before hand filed a motion to that effect, giving notice to the interested parties, and without a special order having been issued by respondent judge pursuant to Section 2, Rule 39, of the Rules of Court, stating the reasons for allowing the immediate execution of the order. And since respondent judge has allowed the immediate execution of the order appointing the widow as administratrix notwithstanding the appeal taken therefrom in disregard of the rule above set forth, said judge acted in excess of his jurisdiction, or with grave abuse of discretion.

While under the section above cited, before the expiration of the time to appeal, execution may issue in the discretion of the court, on motion of the prevailing party, with notice to the adverse party, only upon good reasons to be stated in a special order, there are however cases where the application of this rule may be relaxed when there exist special reasons or circumstances that warrant it. The application of this rule is not deemed absolute. Cases there are where, in the use of its sound discretion, the court, may even without any previous motion to that effect, give immediate effect to an order when the interest of the parties so justifies. This is the view entertained by this Court in at least two recent cases involving the appointment of a regular administrator. We refer to the cases of *Alcasid, et al. vs. Samson, et al.*, 102 Phil., 735; 54 Off. Gaz. [15], 4479, and *Borja, et al. vs. Tan, et al.*, 93 Phil, 167, which we will briefly essay in the following paragraphs.

In the first case, the estate was at first under the administration of a special administrator. When the probate court found that nothing has been accomplished during the entire period that the estate was under his administration, it issued an order appointing a regular administrator to whom the corresponding letters of administration were immediately issued notwithstanding the fact that an appeal had been taken from said order. The respondents in that case maintained that the letters of administration could not be issued while the appeal that had been interposed was still pending. On appeal by certiorari, however, this Court overruled this contention and held that the immediate issuance of the letters of administration and the assumption of the regular administrator of his office was justified under the circumstances even though the provisions of Section 2, Rule 39, of the Rules of Court had not been followed.

Thus, in the *Alcasid* case, this Court said in part:

"Even assuming that the rule in *Cotia vs. Pecson*, 49 Off. Gaz., 4313 (tho it actually dealt with the removal of a regular administrator) is applicable to the case at bar, in the sense that the appointment of a new administrator should be made effective pending appeal only if Rule 39, sec. 2 (execution pending appeal) is complied with, such compliance exists in the present case, for the order of April 3, 1956 (issued upon motion of herein petitioners) that required the special administrator to turn over the properties and funds of the estate to the regular administrator, was in effect a special order for the carrying out of the regular administration notwithstanding the appeal of respondents that was not perfected until April 12, 1956; while the special reasons for immediately carrying the order into effect are given in the order of March 12, as supplemented by that of May 9, 1956, heretofore quoted. We find these reasons sufficient (cf. *De Borja vs. Encarnacion*, 89 Phil., 239).

"The fact that these reasons were not expressed in the very order of April 3, 1956, is not by itself fatal or constitutive of abuse of discretion; for while Rule 39, sec. 2, prescribes that execution pending appeal may issue for good reasons to be stated in a special order, this Court has decided that the element that gives validity

to an order of immediate execution is the existence of good reasons,. if they may be found distinctly somewhere in the record, altho not expressly stated in the order of execution itself (Lusk vs. Stevens, 54 Phil., 154; Guevara vs. Court of First Instance of Laguna, 70 Phil., 48; People's Bank vs. San Jose, 96 Phil., 895; 51 Off. Gaz. [6] 2918; Moran, Comments on the Rules of Court (1157 Ed., Vol. I, p. 140).

In the Borja case, the estate was at first under the administration of the executor named in the will. When the lower court found later that the executor was too old and too weak to discharge his duties, and the estate is being administered by another person over whom the court had no authority, it issued an order appointing another person as co-administrator to whom the corresponding letters of administration were immediately issued. The petitioners maintained that the co-administrator could not discharge his function until the appeal that had been interposed from the order appointing him as co-administrator had been finally decided. In overruling this contention, this Court held:

"* * * Be that as it may, we find that the qualification of Jose de Borja as co-administrator and his immediate assumption of the position were fully justified. The court had found out as a fact that the report of the administrator was made by another person. The administration of one of the estates under administration was entrusted to an encargado, over whom the court had no direct power or authority. The administrator, because of his old age and physical inability, had to perform his duties through others over whom the court had no power or control. These circumstances must have impelled the court in allowing Jose de Borja to assume his position immediately, without waiting for the perfection of the appeal. We can not say that the court abused its discretion in appointing a co-administrator under these circumstances."

Moreover, the rule which requires that before the expiration of the time to appeal, execution may issue in the discretion of the court, on motion of the prevailing party, upon good reasons to be stated in a special order, as already adverted to, is not to be strictly construed if it would defeat the interest of justice. By this we mean that, even if the reasons for the granting of execution are not expressed in the very order, the same would not have an adverse result, nor constitute abuse of discretion, for, as this Court has already decided, the element that gives validity to an order of immediate execution is the existence of good reasons, which may be found somewhere in the record, even if not expressly stated in the order.[1] Here these reasons exist. One is the fact that the executor named in the will has been removed with the result that the estate was left without any administrator. Another is that, under the law, if the executor or administrator is found to be incompetent, the administration should be given preferentially to the surviving spouse (Section 6, Rule 79); and the third reason is that, during the pendency of the appeal, it is not proper nor convenient that a special administrator be appointed considering that this special proceeding has been dragging for almost ten years during which little progress has been done towards its early termination. And, as we know, the powers and duties of a special administrator are limited to the preservation of the assets of the estate (Section 2, Rule 81), which means that the administration would be at a stand still if the estate were placed in the hands of a special administrator.

It is true that the order dated February 21, 1951 the trial court did not consider the widow a suitable person for the management of the estate for which reason it denied her motion to have her appointed as co-administrator, or that in its order of March 29, 1951, denying the widow's motion for reconsideration, it stated that it is the constant friction between the widow and the deceased's collateral heirs that made the court desist from considering her appointment, but such an observation cannot have the effect of perpetually disqualifying her, for the situation may change or circumstances may arise which may make the court change its opinion. Such is the situation herein obtained. The court, perhaps upon a further study of all the factors surrounding the matter, decided to reconsider its previous orders in the interest of all parties concerned.

It must be noted that as early as February 21, 1951, the trial court already expressed the opinion "that the widow has a better claim to the management of the estate as against deceased's brothers who are not collateral heirs," and

this must have influenced the court in reconsidering its stand. We do not find any abuse of discretion on the matter.

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

Paras, C. J., Bengzon, Padilla, Labrador, and Endencia, JJ., concur.

[1] Lusk vs. Stevens, 54 Phil., 154; Guevara vs. Court of First Instance of Laguna, 70 Phil., 48; People's Bank vs. San Jose, 96 Phil., 895; 51 Off. Gaz. [6] 2918; Moran, Comments on the Rules of Court, 1957 Ed., Vol., I, p. 140.

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