

**DORA PERKINS ANDERSON, PETITIONER AND APPELLEE, VS.  
IDONAH SLADE PERKINS, OPPOSITOR AND APPELLANT.***G.R. No. 15388. January 31, 1961*

Ponente: REYES, J.B.L., J.

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Appeal against an order of the Court of First Instance of Manila in Special Proceedings No. 29636 authorizing the special administrator of the testate estate of the late Eugene Arthur Perkins to sell at public auction certain personal properties left by the deceased.

It appears that said special proceedings were commenced on May 10, 1956, by a petition presented by Dora Perkins Anderson for the probate of the supposed last will and testament of the late Eugene Arthur Perkins, who died in Manila on April 28, 1956 allegedly possessed of personal and real properties with a probable value of P5,000,000. On the same date of the filing of the aforesaid petition, petitioner Dora Perkins Anderson also filed an urgent petition for the appointment of Alfonso Ponce Enrile as special administrator of the estate, and on the same day, the court issued an order appointing Alfonso Ponce Enrile as such special administrator upon his posting of a bond in the amount of P50,600. On July 9, 1956, Idonah Slade Perkins, surviving spouse of the deceased, entered an opposition to the probate of the will presented by petitioner Dora Perkins Anderson. On September 28, 1956, the special administrator submitted an inventory of all the assets, which have come to his knowledge as belonging to the deceased Eugene Arthur Perkins at the time of his death.

About two years later, or on September 4, 1958, the special administrator submitted to the court a petition seeking authority to sell, or give away to some charitable or educational institution or institutions, certain personal effects left by the deceased, such as clothes, books, gadgets, electrical appliances, etc., which were allegedly deteriorating both physically and in value, in order to avoid their further deterioration and to save whatever value might be obtained in their disposition. When the motion was heard on September 25, 1958, the court required the administration to submit a specification of the properties sought to be sold, and in compliance therewith, the special administrator, on October 21, 1958, submitted to the court, in place of a specification, a copy of the inventory of the personal properties belonging to the estate with the items sought to be sold marked with a check in red pencil, with the statement that said items were too voluminous to enumerate.

On July 9, 1956, Idonah Slade Perkins filed an opposition to the proposed sale. Reasons for the opposition were that (1) most of the properties sought to be sold were conjugal properties of herself and her deceased husband; and (2) that unauthorized removals of fine pieces of furniture belonging to the estate had been made.

The opposition notwithstanding, the lower court, on December 2, 1958, approved the proposed sale, authorizing the Sheriff of Manila to conduct the same. Oppositor Idonah Slade Perkins moved to reconsider this order on the grounds (1) that said order in effect authorized the special administrator to sell the entire personal estate of the deceased, contrary to Rule 81, sec. 2, Rules of Court; (2) that said order was issued without a showing that the goods and chattels sought to be sold were perishable, pursuant to Rule 81, section 2, Rules of Court; (3) that the

personalty sought to be sold represented the lifetime savings and collections of oppositor; (4) that there is evidence on record showing unauthorized withdrawals from the properties of the estate, and the sale of the inventoried lot would prevent identification and recovery of the articles removed; and (5) that there is also evidence showing oppositor's separate rights to a substantial part of the personal estate.

On February 23, 1959, the lower court denied the above motion for reconsideration. Whereupon oppositor Idonah Slade Perkins appealed to this court.

Appellant first claims that the personal properties sought to be sold not being perishable, the special administrator has no legal authority to sell them. This argument is untenable, because section 2, Rule 81, of the Rules of Court, specifically provides that the special administrator "may sell such perishable and other property as the court orders sold" which shows that the special administrator's power to sell is not limited to "perishable" property only.

It is true that the function of a special administrator is only to collect and preserve the property of the deceased until a regular administrator is appointed (sec. 2, Rule 81; *De Gala vs. Gonzales*, 53 Phil., 104; *Collins vs. Henry*, 118 S. E. 729, 155 Ga. 886; *Sqydelko vs. Smith's Estate*, 244 M. W. 149, 259 Mich. 519). But it is not alone the specific property of the estate which is to be preserved, but its value as well, as shown by the legal provision for the sale by a special administrator of perishable property (*Gao vs. Cascade Silver Mines & Mills, et al.*, 213 P. 1092, 66 Mont. 488). It is in line with this general power of the special administrator to preserve not only the property of the estate but also its value, that section 2, Rule 81, also empowers such administrator to sell "other property as the court ordered sold".

There is, however, a serious obstacle to the proposed sale, namely, the vigorous opposition presented thereto by the appellant, the surviving spouse of the deceased, on the ground that she is allegedly entitled to a large portion of the personal properties in question, either because they were conjugal property of herself and the deceased, or because they are her own exclusive, personal property. Indeed the records show that up to the time the proposed sale was asked for and judicially approved, no proceedings had as yet been taken, or even started, to segregate the alleged exclusive property of the oppositor-appellant from the mass of the estate supposedly left by the deceased, or to liquidate the conjugal partnership property of the oppositor-appellant and the deceased. Until, therefore, the issue of the ownership of the properties sought to be sold is heard and decided, and the conjugal partnership liquidated; or, at least, an agreement be reached with appellant as to which properties of the conjugal partnership she would not mind being sold to preserve their value, the proposed sale is clearly premature. After all, most of the items sought to be sold—pieces of furniture, kitchen and dinner ware, electrical appliances, various gadgets, and Books—can easily be protected and preserved with proper care and storage measures in either or both of the two residential houses (in Manila and in Baguio City) left by the deceased, so that no reasons of extreme urgency justify the proposed sale at this time over the strong opposition and objection of oppositor-appellant who may later be adjudged owner of a substantial portion of the personal estate in question.

The special administrator claims in his brief that the oppositor-appellant should have indicated the alleged "fine furniture" which she did not want sold and that her refusal to do so is an indication of her unmeritorious claim. But it does not appear that appellant was given a reasonable opportunity to point out which items in the inventory she did not want sold. In fact, her opposition to the proposed sale and later her motion for reconsideration to the order approving the same were overruled by the court without so much as stating reasons why the grounds for her opposition were not well-founded; the records do not even, show that an inquiry was made as to the validity of the grounds of her opposition.

Wherefore, the lower courts order of December 2, 1958 authorizing the special administrator to sell certain personal properties of the estate is set aside, with costs against the special administrator Alfonso Ponce Enrile and

petitioner-appellee Dora Perkins Anderson.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, and Dizon, JJ., concur.

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