

INES FELICIANO, PETITIONER, VS. LUIS, MELCHORA AND ELISA, BY SURNAME FELICIANO Y CAMAHORT, AND THE HONORABLE CARLOS A. IMPERIAL, JUDGE OF FIRST INSTANCE OF MANILA, RESPONDENTS.

G.R. No. 27846. August 11, 1927

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is an original proceeding initiated in this court wherein the petitioner prays that a writ of certiorari be issued directing the respondents to forward to this court case No. 1407, entitled "Trust of the property of Luis, Melchora and Elisa Feliciano y Camahort;" that the order of the respondent judge entered in said case on March 14, 1927 be annulled; and, pending final judgment, that a writ of preliminary injunction be issued against said judge restraining him from proceeding with the case in connection with said order of March 14, 1927, and, finally, that the respondents be ordered to pay the costs.

The respondents having been summoned and having answered the complaint, the case was heard and submitted to the court for decision.

The order of the lower court of March 14, 1927 against which the present proceeding is directed, required the herein petitioner, notwithstanding the appeal taken by her from the order of February 19, 1927, to deliver all of the property held in trust by her, within a period of fifteen days, to the beneficiaries named in the will of the deceased Benedicta Feliciano and to render a final account of its administration.

The order of the lower court of February 19, 1927 above referred to from which the herein petitioner appealed, declared the trust and administration of all the property left by the deceased Benedicta Feliciano terminated and ordered the trustee to deliver said property to the beneficiaries within ten days and to render a final account of her administration within said period.

Benedicta Feliciano executed a will before her death, of which the tenth, thirteenth and fourteenth clauses read as follows:.

"10. It is my will to institute as heirs, as to all the remainder of my property, rights and actions, my nephew Luis and my two nieces Melchora and Elisa Feliciano y Camahort, children of my deceased brother Julian Feliciano and his wife Elisa Camahort; but considering the infidelity committed by said Elisa Camahort during the lifetime of my unfortunate brother, according to her own declaration and that of her paramour Miguel Pavon in a written document executed on August 20, 1904, before Lorenzo A. Barretto, notary public for and in the City of Manila, and considering further that the said Camahort and Pavon are now married and have my nephew and nieces under their control, it is my will that the institution of heirs I now make in their favor shall take effect only from the time they are emancipated from parental authority or are married. In the meantime, all of my property shall remain in trust, and I commit the same to my sister Ines Feliciano, Juan Camahort and to my cousin Maximo Feliciano, who will successively discharge the commission in the order in which they are

named and with a compensation of five per cent on all the amounts set aside for the payment of debts, expenses and hereditary portions. An authentic copy of the notarial document which shows the unworthiness of Elisa Camahort to attempt to intervene in my estate, is attached to this will.

"13. The trust herein established shall last until my nephew and nieces above-mentioned are capable of taking care of their persons and property. When the portion pertaining to each of them, in accordance with the foregoing distribution, has been delivered to them, the trustees shall cease to discharge their commission. I particularly order them not to dispose of the apartment house and land at the corner of Tabora and Aceyteros Streets, in remembrance of the family, the same having been acquired by my parents, and I wish them to conserve and transmit them to their children and their children's children.

"14. The following instructions are given to the trustees for the administration of the trust, which I wish them to comply with. After the administration expenses have been paid, the net income produced by my property up to December, 1926 shall be deposited in a current account in a bank or Monte de Piedad for investment in pacto de retro transactions which earn interest at twelve per cent per annum on real estate with good title and desirably located; and the interest obtained therefrom is to be devoted to the future welfare of my minor nephew and nieces aforementioned. From January, 1927 to March, 1931, the income from my property shall be deposited in a bank or institution which pays the highest rate of interest and offers the best security, and this income thus deposited must necessarily be used in acquiring or purchasing the building constructed by the lessees on the land at Tabora and Aceyteros Streets."

Ines Feliciano, the first named trustee in the tenth clause above quoted, entered upon her duties as such. On February 2, 1927, all the beneficiaries referred to in said clause as instituted heirs, having reached their majority, petitioned the proper court, in accordance with the provisions of the said tenth and thirteenth clauses, to declare the trust terminated and that the trustee Ines Feliciano be ordered to deliver the property of the deceased, rendering a final account of the same.

The respondent judge granted said petition issuing the orders referred to above.

Counsel for the petitioner alleges that the respondent judge exceeded his jurisdiction because said petition granted by him had already been previously denied by two judges of the same court, the Honorable George R. Harvey on January 16, 1922 and the Honorable Pedro Concepcion on December 10, 1926, and because the fourteenth clause above quoted provides that:

"From January, 1927 to March, 1931, the income of my property shall be deposited in a bank or institution which pays the highest rate of interest and offers the best security, and this income thus deposited shall necessarily be used in acquiring or purchasing the building constructed by the lessees on the land at Tabora and Aceyteros Streets."

The aforesaid orders of Judges Harvey and Concepcion denying the petition, are not final and, therefore, are no bar either to the interested parties renewing the petition which was denied, or to the court deciding contrary to said orders and granting the petition.

As to the provision with regard to the income contained in the fourteenth clause just quoted, the same cannot be considered to have the effect of prolonging the trust until the year 1931. Such provision cannot be construed as nullifying or modifying the thirteenth clause above quoted, which reads:

"13. The trust herein established shall last until my nephew and nieces above-mentioned are capable of taking care of their persons and property. When the portion pertaining to each of them, in accordance with the foregoing distribution, has been delivered to them, the trustees shall cease to discharge their commission. I particularly order them not to dispose of the apartment house and land at the corner of Tabora and Aceyteros Streets, in remembrance of the family, the same having been acquired by my parents, and I wish them to

conserve and transmit them to their children and their children's children."

The last part of this clause constitutes an admonition to the heirs not to dispose of the apartment house and land situated at Tabora and Aceyteros Streets; and to better insure its performance, the testatrix states in the fourteenth clause that from January, 1927 to March, 1931, the income of her property shall be used in the acquisition of the building constructed on the lot of said estate in order to insure the integrity of the same in favor of her instituted heirs and their children. This admonition is especially directed to the heirs themselves, as may be clearly inferred from the text of the last part of the thirteenth clause, which says:

"* * * and wish them to conserve and transmit them to their children and their children's children."

And the application of the income to the purchase of the building referred to may be made by the heirs themselves without the necessity of prolonging the trust for this purpose alone.

The period from January, 1927 to March, 1931 designated by the testatrix in the fourteenth clause, is not necessarily related to the term of the trust. Said period was probably fixed on the basis of the amount of the income obtainable during that period and the possible price of the building directed to be bought.

As to the execution of the order entered by the respondent judge terminating the trust and ordering the delivery of the property to the beneficiaries, from which an appeal was taken by the herein petitioner, it is discretionary with the judge to order or not to order the execution of an order issued by him within his jurisdiction. There is no doubt that the order in question was issued within the jurisdiction of the respondent judge, because the law expressly gives Judges of Courts of First Instance jurisdiction over matters relative to the termination of trusts created by will. (Sec. 595, Code of Civ. Proc.) And the execution of an order before it becomes final and subject to execution is discretionary on the part of the court which issued said order, when the law is silent on the matter. The execution of orders issued by a court in special proceedings is not especially regulated by law.

"Discretion of court or judge.—As we have seen, the statutes sometimes give an absolute right to a supersedeas or stay on appeal or writ of error on compliance with certain conditions, and do not leave the granting or refusal of the same to the discretion of the court. But when the matter is not regulated by statute, or when the statute does not give an absolute right, but leaves the matter to the court or judge, a motion for a supersedeas or stay is addressed to the discretion of the court or judge, and, in the case of an application to the trial court, mandamus will not lie to control its discretion in the matter. And when application for a supersedeas or stay is made to an appellate court or judge, the granting or refusal thereof is usually discretionary, and the power to grant the same will be exercised with caution, and only in a clear case." (3 Corpus Juris, pp. 1289-1290.)

And if we consult the provisions of section 144 of the Code of Civil Procedure relative to the execution of judgments entered in ordinary proceedings, we will find the same rule, that is, that it is also discretionary on the part of the court to order or suspend the execution as was held in the case of *Go Changjo vs. Roldan Sy-Changjo* (18 Phil., 405).

For the foregoing, we hold that the respondent judge acted within his jurisdiction in issuing the order of March 14, 1927, as well as in ordering the execution of said order, and not in excess thereof.

Therefore, the writ of certiorari prayed for in the present proceeding does not lie and the same is hereby dismissed with the costs against the petitioner. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Johns, and Villa-Real, JJ., concur.

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