

ESTEBAN MONTERAMOS ET AL., PETITIONERS, VS. HONORABLE ISIDRO PAREDES, JUDGE OF FIRST INSTANCE OF LAGUNA, AND INES ANGEL, RESPONDENTS.*G.R. No. 30981. March 02, 1929*

Ponente: STREET, J.

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This is an original petition for the writ of certiorari by which the four petitioners seek to abrogate an order of the respondent judge, dated December 8, 1928, in the Intestacy of Potenciano Sanvictores, deceased, wherein execution is directed to issue against the petitioners for the purpose of making the principal sum! of P560, plus P63 of costs, in favor of one Ines Angel. The cause is now before us for determination upon the petition and the answer of the respondents, with the corresponding exhibits.

The first pair of the petitioners in this case, namely, Esteban Monteramos and Andres Cabantog, became sureties, onl May 18,1918, upon the bond of Romualdo Alampay, as administrator of the estate of Potenciano Sanvictores, deceased, in civil case No. 1874, of the Court of First Instance of Laguna. While Alampay was serving as administrator he applied to the court for leave to sell a certain parcel of real property as pertaining to the estate of his intestate; and the court having acceded to the petition, said parcel was sold on March 15, 1919, to Ines Angel, for the sum of P560, which was paid in cash. The proceeds of this sale, after coming to the hands of Alampay, were applied by him to the purposes of the administration.

Romualdo Alampay, the first administrator, was removed from office in the year 1923, and one Gerardo Revolteado was appointed as his successor. The second pair of petitioners in¹ this case, namely, Pablo Pamilacan and Sebastian Kalakas, became sureties on the bond of the new administrator.

Ines Angel, the purchaser of the parcel at the sale above-mentioned, was unable to get possession, owing to the fact that it was then in the adverse possession of Irene Pefia and others. For this reason Ines Angel instituted an action of revindication against the occupants (civil case No. 2940, of the Court of First Instance of Laguna). In this action Romualdo Alampay, ex-administrator of the estate of Potenciano Sanvictores, and Gerardo Revolteado, the then administrator of the same estate, were made defendants for the purposes of holding them liable upon their warranty in case the plaintiff should fail in the action.

In the year 1925 said case was decided in the Court of First Instance, it being declared that the parcel which had been sold to Ines Angel did not belong to the estate of Potenciano Sanvictores, The defendants in said action, Irene Pena and others were therefore absolved from the complaint, and at the same time the defendants Romualdo Alampay and Gerardo Revolteado, ex-administrator and administrator, respectively, of the estate of Potenciano Sanvictores, were ordered to return to Ines Angel the sum of P560 which she had paid for the land, with legal interest, and with costs. Upon appeal to the Supreme Court said judgment was affirmed.[1]

In the course of his decision in the case above-mentioned, the trial judge stated that Romualdo Alampay had acted with malice in asking judicial authorization for the sale of the property; for, said the court, he knew that this lot

was and had been in the possession, of Irene Pena for a long time prior to the presentation of the petition and this fact was apparent from his own inventory. We do not feel very confident that this observation was entirely justified, since the title to the property seems to have been really in a state of doubt, as is manifest from the efforts that were necessary for the court to demonstrate that the property really belonged to the occupants. Moreover, when the case reached this court upon appeal, the author of the decision affirming the judgment expressed an individual doubt as to whether the appealed decision ought to stand. The point, however, need not detain us, as it exerts no decisive influence on the case.

To proceed to matters more vital we find that when the record in the civil case No. 2940 was returned to the Court of First Instance of Laguna, execution was sued out in favor of Ines Angel against Romualdo Alampay and Gerardo Revolteado, but this execution proved unfruitful for lack of property pertaining to the persons against whom the process was directed. The creditor in the execution then moved the court, in the intestacy proceedings, to order execution against the two sets of bondsmen of Alampay and Revolteado, that is, against the four petitioners in this case. To this motion the respondent judge acceded in the order dated December 8, 1928, which is the subject of the present petition.

Upon the facts above stated, three questions present themselves for consideration, namely, first whether the sureties on the official bond of an administrator are liable for the proceeds of property sold as pertaining to the estate in administration but as to which the title fails, after such proceeds have been received by the administrator and duly accounted for in course of the administration; secondly, whether a judgment for a sum of money against two individuals as ex-administrator and administrator respectively of the estate of a deceased person can be executed against the sureties on the official bonds of such ex-administrator and administrator; and, thirdly, supposing the bondsmen to be so liable, have the proper steps been taken in the intestate proceeding to justify the issuance of execution against them?

Upon the first of these questions it is quite apparent that the first set of sureties are not legally liable for money which their principal, Romualdo Alampay, received in ordinary course as pertaining to the estate in administration, and which said principal applied to the purposes of administration according to the requirements of law. The obligations of the sureties on the bond of an administrator are defined in section 643 of the Code of Civil Procedure, the most pertinent part of which is found in paragraph No. 2. Under that provision the bondsmen must answer according to law for the proper application of property pertaining to the estate. In the case before us property was sold, as pertaining to the estate, by authority of the court having charge of the administrative proceedings; and the proceeds of the property, as clearly appears from Exhibit 2, were applied to the legitimate purposes of administration. The money paid by Ines Angel was received by Alampay in the character of administrator, and as such he has properly accounted for it, and his accounts have been duly approved by the court. There has been no embezzlement or waste by said administrator for which he could be held liable to the estate. The obligation of the bondsmen goes only to the proper conduct of the administrator, in his official character, and more especially to the proper application of the assets pertaining to the estate.

It is true that in No. 4 of section 643 of the Code of Civil Procedure it is declared that the bond of the administrator shall be conditioned for the performance by him of all orders and decrees of the court by him to be performed. But this must be understood as having reference to orders to be performed in the character of administrator; and although the two administrators in this case were in effect ordered to refund the sum of P560 to Ines Angel, the circumstance that all assets which have come to the hands of either have been fully administered, supplies a complete answer to that order. With respect to the second administrator, Gerardo Revolteado, it appears that the money which the court has ordered to be returned to Ines Angel never touched his hands at all, having been administered under the regime of his predecessor; and although the order for this refund ought to have been

complied with by Revolteado out of any available assets of the estate, nevertheless the want of such assets would have been a sufficient answer to the effort to make him personally liable. It must, however, be remembered in this connection that we are not now concerned with the question of the liability of the administrator and ex-administrator, either in their personal or official character, because they are not parties to this proceeding; and liability in any character is apparently indifferent to them since an execution against them has been returned "nulla bona".

With respect to the second question, we are of the opinion that the judgment entered in civil case No. 2940, entitled Ines Angel vs. Irene Pefia et al., against Romualdo Alampay and Gerardo Revolteado, as ex-administrator and administrator respectively of Potenciano Sanvictores, was, as the respondent judge at one time ruled, a judgment that ought to have been paid out of the assets of the estate; and inasmuch as there are now no assets pertaining to the estate available for the payment of said judgment, the remedy of Ines Angel, in so far as the process of execution against the present petitioners is concerned, must remain fruitless.

Upon the third point, that is, as to the manner in which the petitioners, as sureties, have been impleaded in the administration proceeding, it will be noted that the original judgment under which they have been declared liable was entered, not in the intestacy proceedings to which the petitioners were virtual parties, but in an independent action to which the petitioners were not parties. Manifestly the proper course to pursue in order to establish their liability, supposing liability to exist, was to institute an original action against them upon their bond or to obtain an order from the court in the administration proceedings requiring the petitioners to appear and show cause why execution should not issue against them. The petitioners were certainly entitled to be heard in some way before execution could properly be issued against them; and it is not clear that the motion of Ines Angel, dated September 26, 1928, in which she asked the court to direct the sheriff to levy upon the property of the petitioners, was a proper method to raise the question of their liability. But it is unnecessary to unravel this knot, because, as we have already shown, the liability involved was not one for which the petitioners were responsible under the terms of their bond.

From what has been said it is apparent that the respondent court acted in excess of its jurisdiction in ordering execution to issue. The petition must therefore be granted; the order complained of will be, as it hereby is, set aside; and the temporary injunction issued by this court against the carrying into effect of the execution under said order will be made permanent. So ordered, with costs against the respondent Ines Angel.

Johnson, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

[1] Angel vs. Pua Cose, G. R. No. 24155, promulgated November 9, 1925, not reported.

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