

IN RE ESTATE OF THE DECEASED MARIANO LOPEZ. NATALIA AREVALO, ADMINISTRATRIX OF THE ESTATE OF MARIANO LOPEZ, DECEASED, PETITIONER, VS. LEOPOLDO ROVIRA, JUDGE OF FIRST INSTANCE OF...

G. R. No. 41433. March 28, 1934

Ponente: GODDARD, J.

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GODDARD, J.:

This is an application for a writ of certiorari. In her verified petition filed March 13, 1934, the petitioner prayed this court:

"(a) That a writ of certiorari issue ex parte directing the respondent Judge Leopoldo Rovira to certify to this Hon. Supreme Court a transcript of the proceedings in the testamentary estate of Mariano Lopez, civil case No. 41309.

"(b) That pending the final hearing and determination of this proceeding an order of preliminary injunction be granted directing the respondent Judge Leopoldo Rovira to desist and refrain from, until further orders from this court, continuing to enforce his order of February 13, 1934, and to order the sheriff of Manila to desist from making any payment whatsoever to Carmen Adriano out of any amount or money which has accrued or will accrue to the said estate, and to deliver to the administratrix Natalia Arevalo immediately all the properties, money or whatever sum which has accrued or will accrue to the said estate and which are now under his possession and control by virtue of the order of the respondent judge of February 13, 1934.

" (c) That the petitioner recover her costs."

The questioned order of the Honorable Leopoldo Rovira reads:

"Se ha registrado una mocion de reconsideration a la decision de este Juzgado de fecha 19 de diciembre de 1933 resolviendo las cuentas y ciertos incidentes. Dicha mocion de reconsideracion es denegada y el que no este conforme debe apelar de esta decision.

"En ausencia del infrascrito, que es Juez de otro distrito, el Hon. Pedro Concepcion nombro administradora, en lugar de Natalia Arevalo, a Carmen Adriano, madre del finado Mariano Lopez. La representation de Carmen Adriano pidio que fuera nombrado Antonia de Besa, hija de Carmen Adriano. La representacion de Natalia Arevalo se opone al nombramiento de Antonia de Besa y propone que se nombre al Banco de las Islas Filipinas o a cualquiera persona extrafia.

"Resulta que Carmen Adriano ha prestado ya la fianza en virtud de aquella orden y ahora esta pendiente una mocion de reconsideracion a la orden del Juez Concepcion, que dejo en suspenso la orden nombrando administradora a Carmen Adriano.

"El Juzgado esta cansado de tantos incidentes proyenientes de las relaciones entre suegra y nuera, imposibles de compaginar, y es necesario que estos bienes esten realmente en custodia legis bajo el control del Juzgado, de lo contrario pereceran todos estos bienes con cuentas y mas cuentas.

"El Juzgado no comprende como esta testamentaria, no teniendo bienes y, sin embargo, los abogados no hacen mas que llenar de papeles el expediente, que se supone no trabajan gratuitamente, y, por lo tanto, algo se oculta a los ojos del Juzgado.

"El Juzgado ordena al Sheriff de la Ciudad de Manila tome inmediatamente, dentro del termino de veinte cuatro horas, posesion de todos los bienes de esta testamentaria, con la advertencia a cualquiera persona que desobedezca esta orden, sea la solicitante, sea la opositora o cualquiera persona colateral, se ordenara su arresto inmediato en prision, hasta que deje de obstaculizar esta orden.

"Se ordena al Sheriff que todas las cantidades que recaude, sean aplicadas, en primer termino, al pago de la pension de P100 a Carmen Adriano, con cargo a la hijuela que a esta pueda corresponder en su dia.

"Se deja sin efecto cualquiera orden en contradiccion con la presente. Asi se ordena.

"Dada en corte abierta, Manila, 13 de febrero, 1934."

The record before this court discloses the following:

On January 2, 1934, respondent Carmen Adriano filed a motion in civil case No. 41309 of the Court of First Instance of the City of Manila, entitled "Estate of Mariano Lopez", to remove the petitioner as administratrix of the estate.

On January 19, 1934, the court ruling upon said motion issued an order removing the petitioner from office and appointed the respondent Carmen Adriano as administratrix of said estate, to which office, the said respondent, on January 23, 1934, duly qualified, and assumed office on the same date.

On January 24, 1934, the petitioner filed a motion ex parte for the reconsideration of the order of January 19, 1934, appointing Carmen Adriano as administratrix and at the same time moved that the force and effect of said order be stayed during the pendency of the resolution of said motion for reconsideration.

On the same day, January 24, 1934, Judge Pedro Concepcion issued the following order:

"Por la presente, se ordena a Carmen Adriano, sus agentes y demas empleados que desistan por ahora de ejecutar cualquier acto tendente a tomar posesion de los bienes relictos de esta testamentaria y abandonen la oficina y casa residencia de Natalia Arevalo hasta nueva orden de este Juzgado."

On January 25, 1934, respondent Carmen Adriano filed a motion ex parte and by way of reply to the motion for reconsideration of the petitioner filed on January 24, 1934, urging the reconsideration of the above order, but Judge Concepcion abstained from taking any action thereon stating in open court that said motion as well as the motion filed by petitioner on January 24 would be taken up by Judge Leopoldo Rovira when he resumed his seat in the Court of First Instance of the City of Manila. However, the court issued an order maintaining its order of January 24, 1934, until final resolution of the motion for reconsideration of the herein petitioner.

Under date of February 10, 1934, Carmen Adriano filed another motion to set aside the order of Judge Pedro Concepcion dated January 24, 1934, which motion was set for hearing on February 13, 1934. At the hearing of this motion, the respondent judge, in the order copied above, ordered the sheriff of the City of Manila, to take possession of the property of the estate immediately, within twenty-four hours, and make his report to the court. It was likewise expressly ordered that all orders which were inconsistent with or repugnant to that order be set aside.

We conclude that the order of January 19, 1934, in so far as it orders the removal of the petitioner as administratrix, is final since the petitioner did not appeal therefrom after her motion for reconsideration was overruled. This court held that an order of the Court of First Instance appointing an administrator of the estate of a deceased, pursuant to section 783 of the Code of Civil Procedure, constitutes a final determination of the rights of

the parties thereunder and is appealable (*Johannes vs. Harvey*, 43 Phil., 175). Certiorari proceedings to annul such appointment are therefore improper.

It furthermore appears that under date of January 5, 1934, the petitioner presented a motion for the reconsideration of certain orders of the court in its decision of December 19, 1933. Among said orders is that which refers to the payment of the monthly pension of P100 to the respondent Carmen Adriano. In the questioned order copied above, this motion for reconsideration was denied by the court and a notice of this denial of reconsideration was served upon the petitioner on the same day, February 13, 1934. On February 16, 1934, the petitioner filed an exception to the decision of December 19, 1933, and to the order of February 13, 1934, and gave notice of her intention to perfect the record of appeal. This exception and notice of appeal is attached to the answer of the respondent judge marked Exhibit 11. The record also shows that on September 25, 1933, the court ordered the petitioner, as administratrix of the estate of Mariano Lopez to pay Carmen Adriano, a monthly pension of P100 from the date of the death of Mariano Lopez, said pension to be charged against the share of Carmen Adriano in the estate of the decedent. A notice of this order was received by the petitioner on September 27, 1933. On October 17, 1933, the petitioner filed a motion for the reconsideration of the order dated September 25, 1933. No resolution of this motion for reconsideration was taken by the court until it rendered its decision on December 19, 1933. Said decision of the court among other things again ordered as follows:

"Se ordena a la administradora proceda al pago de las deudas y reclamaciones ya admitidas por la Comision de Avaltio y Reclamaciones y que tiene caracter firme; asi mismo se le ordena que pague a Carmen Adriano la pension de P100 mensual en concepto de alimentos segun orden de este Juzgado de fecha 25 de septiembre de 1933 a contar desde el fallecimiento del finado Mariano Lopez con cargo a la hijuela de la referida Carmen Adriano."

It will be seen that from September 27, 1933, the date on which the petitioner received a copy of the order of September 25, 1933, in which the administratrix was first ordered to pay the pension of P100 to Carmen Adriano, to February 16, 1934, when the petitioner gave notice of her intention to perfect the record of appeal, deducting the number of days employed by the court in passing upon the motions for reconsideration, thirty-nine days have elapsed. Consequently the right of the respondent Carmen Adriano to receive this monthly pension from the estate of Mariano Lopez as ordered by the court on September 25, 1933, has become final.

The petitioner claims that she has filed an appeal bond but admits that the record of appeal is still pending approval by the lower court. It follows that the court may approve or disapprove said record of appeal. It results therefore that whether we consider the order of September 25, 1933, as final or if we accept the theory of the petitioner that the record of appeal is still pending approval, we must conclude that a writ of certiorari is not a proper remedy in this case.

The action of the court in ordering the sheriff of the City of Manila to take possession of the property of the estate is in keeping with the order of the court of January 19, 1934, removing the petitioner from office, which order as we have seen has become final. It will be remembered that the Hon. Pedro Concepcion in his order of January 25, 1934, prohibited the respondent Carmen Adriano, who had been appointed and qualified as administratrix in lieu of the petitioner, from taking possession of the property of the estate until further orders of the court. The result of these two orders was that there was no one with authority from the court to protect the property of the estate from loss, destruction and material injury. It is evident that the order in question was a temporary measure and as the court stated it was necessary "que estos bienes esten realmente en custodia legis bajo el control del Juzgado". We conclude that this order was clearly within the probate jurisdiction of the court. It was held in the case of *Pimentel vs. Palanca* (5 Phil., 436), that " * * The theory of the present system is that the property is all in the hands of the court, and must stay there until the affairs of the deceased are adjusted and liquidated, * * *."

The preliminary injunction issued, upon the filing of this petition, is hereby dissolved and the writ is denied with costs against the petitioner.

Malcolm, Villa-Real, Hull, and Imperial, JJ., concur.

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