

RUPERTA ORAIS, PETITIONER AND APPELLEE, VS. JACINTA ESCAÑO, DEFENDANT AND APPELLANT.

G.R. No. 4234. September 23, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record the following facts appear;

First. That on the 13th day of October, 1902, Isidro Raagas died in the pueblo of Maasin, in the Province of Leyte, and left surviving him his wife, Ruperta Orais, and a daughter, Antonia Raagas.

Second. That on the 16th day of February, 1905, the said Ruperta Orais presented a petition in the Court of First Instance of the Province of Leyte to be appointed as administratrix of the estate of her husband, Isidro Raagas.

Third. That this petition was granted on the 28th day of February, 1905, and she was duly appointed as administratrix of said estate and on the 1st day of March, 1905, executed and delivered her bond and entered upon the performance of the duties of such administratrix.

Fourth. Nothing further seems to have been done in the administration of the said estate until on or about the 17th of September, 1905, when the said administratrix presented a petition in the Court of First Instance, alleging that the estate was indebted to one Jacinta Escano in the sum of P496; that there belonged to the said estate a house of strong materials and the piece of land upon which the same stood, situated in the pueblo of Maasin of the said Province of Leyte, and asked permission to sell said house and lot to the said Jacinta Escano.

Fifth. On the 22d day of September, 1905, Charles H. Burritt, then acting as judge in said province, granted the petition of the said administratrix, giving her permission to sell the said house and lot.

Sixth. On the 19th day of October, 1905, the Hon. Charles S. Lobingier, then acting as judge of the Court of First Instance of said province, appointed commissioners to appraise the property and to consider claims against the said estate. The record does not disclose why these commissioners were not appointed in accordance with the provisions of the law on the 28th of February, 1905, at the time the said Ruperta Orais was appointed as administratrix of the said estate. The court appointed three commissioners who, upon the 31st of October, 1905 after having considered some of the claims presented against the estate, made their report.

Seventh. On, the 8th day of November, 1905, Januario Miel, who had presented a claim against the estate and which was partially denied, appealed from the findings of the said commissioners to the Court of First Instance of the said province.

Eighth. On the 28th day of May, 1907, the administratrix and the said Januario Miel entered into an agreement by which the claim of the said Miel against the said estate should be submitted to arbitrators. Later (the exact date does not appear of record), the said arbitrators made their report, finding that the said estate owed to the said Januario Miel the sum of P591.65.

Ninth. On the 5th day of June, 1907, the said Januario Miel presented a motion in the Court of First Instance of the Province of Leyte, praying that the order of the Hon. Charles H. Burritt of the 22d of September, 1905, authorizing the administratrix to sell the house and lot belonging to the said estate to Jacinta Escaño, be annulled, and that the said administratrix be directed to pay the claim of P591.65, the amount allowed by the said arbitrators, to the said petitioner, Januario Miel.

Tenth. On the 24th day of June, 1907, the Hon. W. F. Norris, then acting as judge of the Court of First Instance of said province, upon a consideration of the petition to set aside or annul the order of the 22d of September, 1905, granted the same and did annul and set it aside. From this order of the Hon. W. F. Norris, Jacinta Escaño appealed to this court, giving a bond in conformity with the requirements of law.

The only assignment of error made by the appellant, Jacinta Escaño, is that the Hon. W. F. Norris committed an error in setting aside the order of the Hon. Charles H. Burritt authorizing the administratrix to sell the said house and lot.

The Code of Procedure in Civil Actions points out the method for the settlement of the estates of deceased persons. Section 669 provides that the court, at the time of granting letters testamentary or of administration, etc., shall appoint a committee of two or more disinterested persons to appraise the estate of the deceased and allow claims against the estate, and the executor or administrator shall cause an inventory of the estate to be made.

An examination of the record in the present case shows that nearly two years after the appointment of the said administratrix the same judge appointed the committee provided for in this section. The record shows that the committee considered claims against the estate, but does not show that the said committee ever appraised the estate of the deceased. From the record it appears that the commission to appraise the property of the estate and to consider claims against the same was appointed on the 19th day of October, 1905, and that they made their report on the 31st day of October, 1905; in other words, that they made their report eleven days after their appointment.

Section 687 of the Code of Procedure in Civil Actions provides, among other things that they shall publish for three weeks successively, in a newspaper of general circulation in the province, the times and places of their meetings. Nothing in the record shows that they complied with this provision of law.

The Code of Procedure in Civil Actions also provides the method by which administrators, etc., of estates may sell both the real and personal property. (See secs. 714, 716, 718.) Said code also prescribes the condition under which administrators may sell and disburse the real and personal property of estates of a deceased person. (See sec. 722.) The lower court held that a compliance with the provisions of said section 722 was jurisdictional, and that unless the provisions of this section had been complied with, a sale by an administrator of the property of an estate was null and void. There is nothing in the record to show that the administratrix in the present case, in her petition for permission to sell the house and lot in question, had complied with the provisions of said section 722. The appellant argues that the purchaser of said property was a purchaser in good faith and that the sale and purchase were made in pursuance of an order of the court, and therefore his interest should not now be disturbed.

It is not shown that the purchaser of the property, Jacinta Escaño, had received any notice of the motion to set aside the sale. Nearly two years had elapsed between the sale and the motion. The sale was made under an order of the court. The purchaser had a right to believe that the court had complied with the law and that she had, therefore, obtained a good title. Whether she had obtained a good title or not she certainly was entitled to notice before any action was taken by the court by which she should be deprived of her little. Judges of coordinate jurisdiction, acting within the same jurisdiction, should not annul or set aside orders made by other judges of equal jurisdiction, until some new fact or condition is presented. The parties should be compelled to take their exception and wait for a final decision and if not then corrected, to appeal from alleged illegal orders. As a general

rule a judge has no power to review, on the same facts, the decision of a coordinate judge, the remedy being by appeal. (23 Cyclopaedia of Law and Procedure, 540; see also *Platt vs. N. Y., etc., Ry. Co.*, 170 N. Y., 451; *Harris vs. Clark*, 10 Howard's Practice (N. Y.), 415.)

In our opinion the order of the Hon. W. F. Norris, nullifying the order of the Hon. Charles H. Burritt, was improper, and therefore should be set aside, and it is so ordered.

It is further ordered that the case be remanded to the lower court for such further action as may be necessary in the administration and settlement of the said estate. Without any finding as to costs, it is so ordered.

Arellano, C. J., Torres and Moreland, JJ., concur.

CONCURRING

CARSON, J.,

I concur in the result, not basing my conclusions, however, on the theory that the judges who took part in these proceedings were "judges of coordinate jurisdiction acting within the same jurisdiction," so that the exercise of jurisdiction by one in some way limited or restricted that of the other; for it appears that the judge who issued the annulling order succeeded the judge who issued the original order as presiding judge of the court wherein the administration proceedings were pending, and therefore had precisely the same authority and jurisdiction with regard to those proceedings as his predecessor would have had, in the event that he had continued as presiding judge until the motion praying the issuance of the annulling order was submitted.

The revocation by this court of the annulling order in the court below rests strictly, in my opinion, upon the proposition that, upon the facts set out in the majority opinion, neither the judge who actually issued the annulling order nor the judge who issued the original order, had he continued as presiding judge of the court wherein the proceedings were pending until the motion for the issuance of the annulling order was submitted, had lawful authority to issue the annulling order at the time and under the circumstances existing when it was in fact issued.

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