

IN RE ESTATE OF THE DECEASED MONS. JUAN BAUTISTA PERFECTO GORORDO. FATHER EMILIANO MERCADO, PETITIONER AND APPELLEE, VS. MARIA GORORDO VIUDA DE JAEN, TELESFORA JAEN, AND CESAREA...

G. R. No. 43594. February 08, 1937

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DIAZ, J.:

Monsignor Juan Bautista Perfecto Gorordo, retired Bishop of Cebu, died in Cebu on December 20, 1934. He left a will instituting his sister, Maria Gorordo Viuda de Jaen, as the universal heir to his estate, and in case of her death, his nieces Telesfora Jaen and Cesarea Gorordo Revillas. He bequeathed part of his estate to the various persons and entities mentioned in his will, and named Father Emiliano Mercado, parish priest of San Nicolas, Cebu, as executor, and in the absence of the latter Father Alejandro Espina, parish priest of the Cebu Cathedral. The will of the deceased bishop was probated without opposition and consequently the Court of First Instance of Cebu confirmed the appointment of Father Emiliano Mercado as executor after the latter filed a bond of P5,000 fully in accordance with law.

The heirs Maria Gorordo Viuda de Jaen, Telesfora Jaen and Cesarea Gorordo de Revillas instituted in the will, however, excepted to the order of February 15, 1935, appointing Father Emiliano Mereado as the executor, and in order to insist upon their opposition to the appointment of said executor, the three heirs, in their motion of February 23, 1935, prayed for the suspension of said appointment and for the ad interim designation of Father Alejandro Espina as special executor, pending decision of the appeal which they expected to take from the order in question. The lower court denied their motion in an order of March 4, 1935, which they appealed from as well as from the order of February 15th of said year on the following grounds:

"I. The lower court erred in overruling the opposition of the heirs of the deceased to the appointment of the executor.

"II. The lower court erred in not holding that the executor's confirmation was unnecessary, since there were no debts and their heirs were all of age and willing to pay or secure the payment of the legacies.

"III. The court below erred in overruling the appellants' objections to the appearance of Attorneys Veloso and Alo as counsel for the executor and the estate.

"IV. The court below erred in denying the appellants' motion to suspend the appointment of the executor pending the appeal."

The appellants' opposition to the appointment of Father Mereado was based on his alleged unfitness and incapacity to discharge the duties of executor for the following reasons: (1) That notwithstanding the appellants' opposition, he contracted the services of Attorneys Hipolito Alo and Gabino R. Veloso to represent him in these proceedings for the sole purpose of repaying the obligations he owed said Attorney Alo; (2) that he cannot be impartial as executor because the church of Sacn Nicolas of which he is parish priest is one of the legatees named

in the will. It being natural that as such parish priest he would favor the interests of his parish to those of the heirs and the other legatees, and above all, he is related to some of the legatees; (3) that as the estate has no debts and the heirs instituted in the will are all of age and are willing, according to them, to secure payment of all the legacies, there is no necessity of making the estate incur such unnecessary expenses as the executor's fees and expenses and his attorneys' fees; (4) that the appellants are better able to protect the interests of the estate; and (5) that Attorney Margarito E. Revillas, married to the heir Cesarea Gorordo, is willing to render professional services to the estate free of charge.

The reasons advanced by the appellants do not seem to carry sufficient weight to warrant the reversal of the appealed orders. When the retired bishop Monsignor Juan Bautista Perfecto Gorordo chose Father Emiliano Mercado as executor and administrator of his estate after his death, he must have had good and sufficient reasons therefor, and his will must be respected. The evidence shows that when the deceased bishop made his will naming said priest in preference to anybody else, he was in the full enjoyment of his intellectual faculties. Under the circumstances, it is not only just but also right to fully comply with his last will; and this is precisely what the lower court did in confirming the appointment of Father Mercado as executor herein. As a matter of fact, section 641 of Act No. 190 provides that when a will has been probated and allowed, the court is bound to issue letters testamentary thereon to the person named as executor therein provided he accepts the trust and gives the bond as required by law, which Father Emiliano Mercado certainly did willingly before assuming his trust. While it is true, as the appellants contend, that this provision of the law should not be strictly interpreted because the court would be deprived of its power not to appoint, in certain cases, one who is unworthy of the trust, notwithstanding the fact that he was named as such by the testator (sec. 653, Act No. 190); it is also true that in order to do this, the unworthiness, incapacity, ineptitude and unfitness of such person must be manifest and real and not merely imaginary.

What acts committed by Father Mercado argue against his capacity? The appellants allege as one of them his having engaged the services of Attorney Alo, to whom he is under obligation, in order to be able to repay him in some way not with his own money but with the money of the estate, thereby insinuating that he lacks the interest which a good executor must have for the protection of the rights and interest of the estate entrusted to him. The evidence relative to this matter shows that Attorneys Hipolito Alo and Gabino R. Veloso were engaged by Father Bmiliano Mercado not as attorneys for the estate but as his own, in his capacity as petitioner for the probate of the will of Bishop Monsignor Juan Bautista Perfecto Gorordo. It shows further that the special agreement he had with said attorneys (Exhibit 3) was to the effect that their fees would only be that determined and fixed by the court.

On the other hand, the alleged favors owed by Father Mercado to Attorney Alo are those inferred from the following excerpt from the record:

"Q. Is it true that you owe Attorney Alo favors?

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A. Properly they are not favors, but of course, Mr. Alo has been one whom we might call the mediator (puente de plata) between the parishioners of San Nicolas and myself. Thanks to his intervention, many misunderstandings have been dissipated." (Testimony of Father Mercado, t. s. n., page 35.)

The reason which induced Father Mercado to engage the services of attorneys Alo and Veloso is, according to his own testimony, that he has confidence in them (t. s. n., page 34); and explaining why he had confidence particularly in Attorney Alo, in answer to a question propounded to him to that effect, he stated:

"A. Do you think it excessive to engage the services of a lawyer who has your full confidence? Furthermore,

speaking to Mr. Alo in private, specifying the services rendered by him, I had the occasion to consult him regarding some cases and without any hesitation he told me: 'Do not go ahead with that case because you are wrong.' Thus I have found out that he is an upright and impartial man." (T. s. n., p. 32.)

This, together with the fact that up to the present Father Mercado has not jeopardized the interests of the estate, as the lower court has yet to decide whether his attorneys' fees should be borne by him or by the estate, as well as the amount thereof, shows that the first question raised by the appellants is unfounded.

The appellants' allegation that Father Mercado cannot be impartial as executor because the church of which he is the parish priest is to receive a legacy of 10,000 under the will, is untenable. His parish is not a legatee as all that the will provides with respect to said sum of P10,000 is as follows:

"To the poor of Cebu, Opon, and San Nicolas, I bequeath ten thousand pesos (P10,000) under the administration and at the discretion of whomsoever may be the Most Reverend Bishop of the Diocese."

The foregoing provision does not give Father Mercado as executor, even the right to intervene in the distribution and disposition of the funds in question.

The appellants' proposition not to name any executor to save the estate unnecessary expenses, as the testator left no debts and his heirs on the other hand, are willing to secure payment of the legacies, is untenable. The will contains so many provisions, there are so many legacies to deliver and pay, and it is premature to assert that the estate has no obligations or debts to pay, because, on the contrary, it appears that it has debts and obligations as shown by the committee's report of August 29, 1935, that claims amounting to approximately P40,000 have been filed, that it is absolutely necessary to have an executor to take charge of the estate so as to protect the interests thereof and later enforce compliance with the will of the testator.

The appellants' last proposition that they and Attorney Margarito E. Revillas—the latter being the husband of the appellant Cesarea Gorordo—could look after the interests of the estate better than Father Mercado and attorneys Alo and Veloso, is likewise untenable. The estate in their hands would be no more immune from irregularities, and the interests of the legatees amounting to more than those of the heirs would not be better taken care of because of what may be inferred from the incident which took place during the preparation of the inventory of the estate left by the testator. Said incident may be inferred from the following excerpt from the record:

"Q. You said that you did not wish to engage the services of Attorney Revillas because as a member of the family he may not be impartial. Since when did you have such opinion?

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A. I have formed this opinion in view of the fact that when we were preparing the inventory, there appeared therein shares of the Monte de Piedad which, according to Mr. Revillas, should not be included in the inventory because they were not in the will. I said: 'Even the last pin found in the safe will appear in the inventory.' " (Testimony of Father Mercado, t. s. n., p. 32.)

For the foregoing reasons, the appellants' appeal is declared unfounded and is, therefore, dismissed, affirming the orders appealed from with costs. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur

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