

IN RE GUARDIANSHIP OF THE MINOR MARIA EXALTACION CASTILLO. COSME U. CASTILLO, PETITIONER AND APPELLANT, VS. POTENCIANO BUSTAMANTE, GUARDIAN AND APPELLEE.

G. R. No. 44466. September 30, 1937

Ponente: AVANCENA, C.J.

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AVANCENA, C.J.:

Cosme U. Castillo and Serapia de Gala were married in the year 1889 and had several children of whom Maria Exaltacion Castillo, who was born in 1915, is the only survivor. On May 29, 1933, Serapia de Gala instituted a civil action against her husband Cosme U. Castillo, praying for the legal separation of both, as spouses, and for the division of the property acquired by them during their marriage. They compromised said suit on October 18, 1933, and agreed that each spouse should possess and dispose for his or her exclusive benefit of his or her respective paraphernal or private property together with the fruits or income thereof, and that both shall assign to their daughter Maria Exaltacion the conjugal property described in the deed of compromise, with the onerous conditions specified therein. On November 1, 1933, the court rendered its decision in accordance with the terms of the compromise, the dispositive part of which reads as follows:

"Wherefore, and upon petition of the parties, said deed of compromise is approved in each and every one of its clauses, paragraphs, conditions and stipulations, and it is declared that both parties are mutually bound to comply with said conditions, terms or stipulations."

On October 18, 1933, the spouses, in compliance with the compromise and with the above-quoted dispositive part of the court's decision, executed the donation of the conjugal property to their daughter Maria Exaltacion, to become effective after the acceptance thereof by the donee through her duly authorized guardian. Potenciano Bustamante, who was appointed guardian of the then minor Maria Exaltacion Castillo, accepted the donation in such capacity on June 27, 1935.

On July 15th, the guardian filed a petition in court praying that the property belonging to the guardianship be delivered to him by Cosme U. Castillo who retains it in his possession. The court, acting favorably upon his petition, ordered Cosme U. Castillo, under threat of contempt of court, to turn over to and place the guardian Potenciano Bustamante, within thirty days from the time he is notified of said order, in possession of all the property described in the deed of compromise and donated later to Maria Exaltacion Castillo. To cure any defect in the acceptance of the donation by the guardian, the court, in this same order, directed the guardian to execute the necessary deed to this effect and to notify the donors Cosme U. Castillo and Serapia de Gala thereof. The appeal now under consideration was taken from this resolution.

Inasmuch as the property had been donated and the donation later accepted by the donee's guardian, the ownership thereof became vested in the donee. Maria Exaltacion's guardian, who is under obligation to administer her property, is entitled, as prayed by him and as provided by the court in its appealed order, to take possession of this property and recover it from Cosme U. Castillo who retains it.

The appellant alleges against the appealed order that the donation is of no effect, having been revoked before it was accepted. It is true that it was revoked but this defense is without merit. The donation was made by virtue of a compromise which, having been made to terminate a suit between the appellant and his wife, has the authority of *res judicata*. Furthermore, it has such authority because it is the decision rendered by the court in said civil case, pursuant to the terms of the compromise (art. 1816 of the Civil Code). The appellant, by himself alone, cannot revoke said donation having such requisites.

Furthermore, the court, under section 573 of the Code of Civil Procedure, had jurisdiction to enter the appealed order issued by it in these guardianship proceedings. (*Mercader vs. Wislizenus*, 34 Phil, 846).

The order appealed from is affirmed, with the costs to the appellant. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

Order affirmed.

RESOLUTION ON MOTION FOR RECONSIDERATION

December 17, 1937

AVANCENA, C. J.:

In his motion for reconsideration of the decisions rendered in these two cases,¹ the appellant insists that the guardianship court had no jurisdiction to issue its order of July 26, 1935, directing him to turn over to the guardian Potenciano Bustamante all the properties donated by him to the minor Maria Exaltacion Castillo, together with all the documents, titles and deeds relative thereto.

The appellant invokes decisions rendered by this court on the interpretation of section 709 of the Code of Civil Procedure. This section reads:

"SEC. 709. Proceedings for the recovery of property embezzled or fraudulently conveyed.—If an executor or administrator, heir, legatee, creditor, or other person interested in the estate of a deceased person complains to the court .having jurisdiction of the estate, that a person is suspected of having concealed, embezzled, or conveyed away any of the money, goods or chattels of the deceased, or that such person has in his possession, or has knowledge of any deed, conveyance, bond,' contract, or other writing which contains evidence of, or tends to disclose the right, title, interest, or claim of the deceased to real or personal estate, or the last will and testament of the deceased, the court may cite such suspected person to appear before it, and may examine him on oath on the matter of such complaint ; if the person so cited refuses to appear and answer such examination, or to answer such interrogatories as are put to him, the court may, by warrant, commit him to the jail or prison of the province, there to remain in close custody until he submits to the order of the court; and such interrogatories and answers shall be in writing and signed by the party examined, and filed in the clerk's office."

The decisions referred to by the appellant (*Chanco vs. Madrilejos and Abreu*, 12 Phil., 543; *Alafriz vs. Mina*, 25 Phil., 137; *Guanco vs. National Bank*, 54 Phil., 244) hold that the jurisdiction granted to the court by this section is limited to examining, under oath, persons suspected of having" in their possession property belonging to the estate and causing said examination to be made by means of interrogatories and answers in¹ writing signed by the party examined and filed in the clerk's office. This section comes under the chapter on administration of estates of deceased persons.

The order of July 26, 1935, in question, was issued by the court in a guardianship proceeding by virtue of section

573, which reads as follows:

"SEC. 573. Examination of person suspected of defrauding wards or concealing property.—Upon complaint made to him by any guardian, ward, creditor, or other person interested in the estate or having a prospective interest therein, as heir or otherwise, against anyone suspected of having concealed, embezzled, or conveyed away, any money, goods, or interest, or an instrument in writing belonging to the ward or to his estate, the Court of First Instance, or the judge thereof, of the province wherein the guardian was appointed, may cite such suspected person to appear before such judge or court, and may examine him touching such money, goods, effects, or instrument, and may make such order as is necessary to secure the estate against such concealment, embezzlement, or conveyance."

In the wording of both sections there is a substantial difference indicating different purposes in the law. Section 709, after referring to the examination of the suspected person, merely provides that such examination be made by means of interrogatories and answers signed by the party examined and filed in the clerk's office. Section 573 expressly authorizes the judge or court to make such orders as are necessary to secure the estate against concealment, embezzlement, or conveyance. For this reason, notwithstanding the decisions cited by the appellant relative to the interpretation of section 709, wherein this court clearly held that the jurisdiction of the probate court is limited to the examination of the suspected person and the conservation of his statement, this same court, interpreting section 573, rendered the decision in the case of *Mercader vs. Wislizenus* (34 Phil., 846). This case involved the guardianship of the lunatic Vicenta Escio. In view of the allegation of her guardian that one Cesar Mercader had taken possession of and was engaged in secreting certain property of the incompetent, the court issued an order requiring Mercader to appear before the court to show cause why he should not deliver the property to the guardian. This court held that the judge had jurisdiction to issue said order. It is inferred therefrom that if the judge finds the cause alleged insufficient to warrant nondelivery of the possession of the property, he could, if he deems it necessary for the protection thereof, order said property delivered to the guardian. That the judge has jurisdiction to require that cause be shown why the property should not be delivered, would be entirely devoid of any purpose if, in the end, whatever the cause alleged may be, whether satisfactory or not, he could not order the delivery thereof to the guardian, as a measure of protection.

It should be borne in mind, however, that such order does not have the effect of a final declaration of rights preventing the appellant from instituting any action relative to the property in question. It being established by the facts stated in the decision that the properties have passed to the minor by donation agreed to by the appellant and ordered, upon his petition, in a final judicial decision consented to and complied with by him, it is not the attorney for the minor but the appellant who, at all events, should bring the corresponding action, if he desires to attack this title of the minor to the properties.

The reconsideration applied for is denied. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, Laurel, and Conception, JJ., concur.

[1] No. 44466 (*Castillo vs. Bustamante*) and No. 45477 (*Castillo vs. Platon*)

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