

CONCEPCION P. VIUDA DE PADILLA, PETITIONER, VS. FERNANDO JUGO, JUDGE OF THE SECOND BRANCH OF THE COURT OF FIRST INSTANCE OF MANILA, AND ISABEL BIBBY YLUDA DE PADILLA, RESPONDENTS.

G. R. No. 45617. October 29, 1937

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is a petition instituted by the petitioner to set aside the orders of the respondent judge, dated June 15 and 28, 1937, removing her from her post as special administratrix and appointing the Philippine Trust Company in her place, and denying her motion for reconsideration, respectively.

The petitioner is the widow of the deceased Dr. Narciso Padilla, who died in the City of Manila on February 12, 1934, leaving two wills dated December 12 and 17, 1932, respectively. In the first will, the petitioner was appointed residuary legatee of the estate left by the testator, while in the second will the respondent, the mother of the testator, was instituted universal heir of his entire estate, without prejudice to the widow's share due the petitioner. Both wills were presented for probate thereby instituting special proceedings Nos. 46058 and 46063 of the Court of First Instance of Manila. The court, in its decision of March 30, 1935, admitted to probate the will of December 17, 1932, and appointed said respondent as executrix thereof. The petitioner appealed from said decision and she was appointed special administratrix during the appeal now pending in this court.

The two cases in question were heard jointly and the decision admitting the second will to probate was rendered for both. The petitioner, as special administratrix, filed her first inventory of properties, dated November 19, 1934, and in it she included only one immovable property. This gave rise to a strong protest on the part of the respondent who impugned the inventory as inexact, alleged that the deceased had left 16 immovable properties and asked that the petitioner be compelled to include said properties therein. By an order of December 18, 1934, the petitioner was required to file an additional inventory. In the additional inventory filed by her on July 12, 1935, she included only 12 immovable properties. This was again impugned by the respondent and after several discussions conducted orally and in writing, the petitioner, on February 15, 1936, filed another additional inventory including the 4 immovable properties, reserving the right to prove that they were her exclusive paraphernal properties. In this additional inventory, the petitioner likewise included a certain credit and other movable properties enumerated in the respondent's motion of January 9, 1936.

On January 30, 1935, the petitioner rendered her first account as special administratrix. In it she mentioned only the income of the only immovable property included in the first inventory filed by her. On December 19, 1935, the respondent filed a motion praying that the petitioner be required to submit another account including all the income derived from all the properties as well as the lawful expenses incurred by the administration. On January 13, 1936, the court issued an order requiring the petitioner to file a complete account within thirty days. On February 15, 1936, the petitioner submitted her second account which was impugned by the respondent in her

opposition thereto dated April 14, 1936. The respondent alleged that the second account did not include all the income of the properties and that some of the expenses were unlawful because they were not chargeable to the administration. The court appointed the assistant clerk of court as commissioner to receive the evidence presented by the parties. Said commissioner, submitted his report on August 6, 1936. In its order of November 28, 1936, the court ordered the petitioner to include the income of P4,180.03 which did not appear in her account in question, and rejected several items of expenses amounting to P318.56, which the special administratrix unduly included therein. On March 8, 1937, the petitioner submitted another account which was again opposed by the respondent on April 21, 1937, on the ground that the expenses were excessive' and the items of income were incomplete, thus revealing maladministration. This last account of the petitioner and the opposition thereto are still pending hearing in the court.

On April 21, 1937, the respondent filed a motion of even date, praying for the removal of the petitioner as special administratrix, and for the appointment of a banking institution in her place. The motion was based on the irregularities committed by the petitioner in filing incomplete inventories and inexact, accounts, which gave rise to oppositions filed by the respondent. Such irregularities showed the petitioner's incompetence and justified her removal for the benefit of the administration. In the oral argument granted the attorneys for both parties, the attorney for the respondent emphasized the continuous conflicts between the respondent and the petitioner, which redounded to the detriment of the administration and forced the parties to unnecessarily incur attorney's expenses. On June 15, 1937, the court issued an order removing the petitioner from her post and appointing the Philippine Trust Company thereto. The petitioner asked for the reconsideration of said order but the motion was denied in another order of the 28th of said month.

- The court, in removing the petitioner from her post, did not base its decision directly on the irregularities committed by her in filing inaccurate inventories and accounts, but on the continuous conflicts and disputes often arising between said parties, which, in its opinion, redounded to the detriment of the properties under administration. For this reason the petitioner instituted this proceeding, alleging that the court abused its discretion in removing her for causes different from those stated in the motion filed by the respondent on April 21, 1937.

The Code of Civil Procedure contains no express provision relative to the removal of a special administrator. However, section 653 thereof, which provides for the removal of a regular administrator and of an executor, is applicable to the case of a special administrator. Said section reads:

"SEC. 653. The court may remove or accept resignation of executor or administrator.—If an executor or administrator neglects, after notice by the court, to render his account and settle the estate according to law, or to perform an order or decree of such court, or absconds or becomes insane, or otherwise incapable or unsuitable to discharge the trust, the court may, in its discretion, remove him, and may allow an executor/or administrator to resign."

According to the foregoing provision, the power to remove an administrator falls entirely under the sound discretion of the court, and the latter may remove him from his post, not only when he fails to comply with his duty or disobeys a legitimate order, but also when it is shown that he is incapable to continue discharging the functions inherent therein, and his removal is beneficial to the interests of good administration.

- It is true that in the present case the court did not base the removal of the petitioner on any of the causes specified in the respondent's motion for said relief, but on the conflicts and misunderstandings that have continuously existed between them. It is undeniable, however, that said conflicts have really existed from the inception of the administration and have redounded to the detriment of the interests of the administration. Due to such conflicts and to the lack of good harmony between the petitioner and the respondent, the former showed incompetence in the fulfillment of her duties, which gave rise to the filing of inaccurate inventories and accounts

which, in turn, required the filing of oppositions thereto, the hearings of which absorbed the attention of the court for quite a long time. These facts, which cannot be denied because they appear of record and are admitted by the parties, necessarily denote irregularities in the exercise of the administration and, in view thereof, this court cannot hold that the respondent judge abused the sound discretion entrusted to him by the law, or that he exceeded the exercise thereof (23 C. J., 1124; *In re Healy*, 137 Cal., 474; *In re Bell*, 135 Cal., 194; *Deck vs. Gherke*, 6 Cal., 666; *In re Newell*, 18 Cal. A., 258; *Odlin vs. Nichols*, 81 Vt., 219). In the administration of the estates of deceased persons and in the selection of the officers to help the court in the settlement, liquidation and distribution thereof, the judges enjoy ample discretionary powers and the appellate courts should not interfere with or attempt to replace the action taken by them, unless it be shown that there has been a positive abuse of discretion.

For the foregoing considerations, the remedy applied for is denied, and the writ of preliminary injunction issued is set aside, with costs to the petitioner. So ordered.

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

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