

**ROWENA F. CORONA, PETITIONER, VS. THE COURT OF APPEALS,
ROMARICO G. VITUG, AVELINO L. CASTILLO, NICANOR CASTILLO,
KATHLEEN D. LUCHANGCO, GUILLERMO LUCHANGCO, JR.
ANTONIO LUCHANG...**

G.R. No. 59821. August 30, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A Petition to review on Certiorari the judgment of the Court of Appeals[1] (CA-G.R. No. 12404-SP) of August 11, 1981, upholding the appointment by the Court of First Instance of Rizal, Pasig, Branch VI, of respondent Romarico G. Vitug, as Special Administrator, although in the Will of his deceased wife, she had disinherited him, as well as the Appellate Court's Resolution of February 17, 1982 denying reconsideration.

On November 10, 1980, Dolores Luchangco Vitug died in New York, U.S.A., leaving two Wills: one, a holographic Will dated October 3, 1980, which excluded her husband, respondent Romarico G. Vitug, as one of her heirs, and the other, a formal Will sworn to on October 24, 1980, or about three weeks thereafter, which expressly disinherited her husband Romarico "for reason of his improper and immoral conduct amounting to concubinage, which is a ground for legal separation under Philippine Law"; bequeathed her properties in equal shares to her sisters Exaltacion L. Allarde, Vicenta L. Faustino and Gloria L. Teoxon, and her nieces Rowena F. Corona and Jennifer F. Way; and appointed Rowena F. Corona, herein petitioner, as her Executrix.

On November 21, 1980, Rowena filed a petition for the probate of the Wills before the Court of First Instance of Rizal, Branch VI (Spec. Procs. No. 9398), and for the appointment of Nenita P. Alonte as Administrator because she (Rowena) is presently employed in the United Nations in New York City.

On December 2, 1980, upon Rowena's urgent Motion, the Probate Court appointed Nenita P. Alonte as Special Administratrix, upon a P100,000.00 bond.

On December 12, 1980, the surviving husband, Romarico Vitug, filed an "Opposition and Motion" and prayed that the Petition for Probate be denied and that the two Wills be disallowed on the ground that they were procured through undue and improper pressure and influence, having been executed at a time when the decedent was seriously ill and under the medical care of Dr. Antonio P. Corona, petitioner's husband, and that the holographic Will impaired his legitime. Romarico further prayed for his appointment as Special Administrator because the Special Administratrix appointed is not related to the heirs and has no interest to be protected, besides, the surviving spouse is qualified to administer.

Oppositions to probate with almost identical arguments and prayers were also filed by respondent (1) Avelino L. Castillo and Nicanor Castillo, legitimate children of Constanca Luchangco, full blood sister of the decedent; (2) Guillermo Luchangco, full blood brother of the decedent; (3) Rodolfo Torres, Reynaldo Torres, and Purisima Torres Polintan, all legitimate children of the deceased Lourdes Luchangco Torres, full blood sister of the

decedent.

On December 18, 1980, Nenita P. Alonte posted her bond and took her oath of office before a Notary Public.

On February 6, 1981, the Probate Court set aside its Order of December 2, 1980 appointing Nenita as Special Administratrix, and appointed instead the surviving husband, Romarico, as Special Administrator with a bond of P200,000.00, essentially for the reasons that under Section 6, Rule 78, of the Rules of Court, the surviving spouse is first in the order of preference for appointment as Administrator as he has an interest in the estate; that the disinheritorship of the surviving spouse is not among the grounds of disqualification for appointment as Administrator; that the next of kin is appointed only where the surviving spouse is not competent or is unwilling to serve besides the fact that the Executrix appointed, is not the next of kin but merely a niece, and that the decedent's estate is nothing more than half of the unliquidated conjugal partnership property.

Petitioner moved for reconsideration with an alternate Motion for the appointment of co-Special Administrators to which private respondents filed their Opposition. Reconsideration having been denied, petitioner resorted to a Petition for Certiorari before the Court of Appeals to annul, for having been issued with grave abuse of discretion, the Order setting aside the appointment of Nenita as Special Administratrix and appointing in her stead the surviving spouse Romarico.

On August 11, 1981, the Court of Appeals found no grave abuse of discretion on the part of the Probate Court and dismissed the Petition stating that the Probate Court strictly observed the order of preference established by the Rules; that petitioner though named Executrix in the alleged Will, declined the trust and instead nominated a stranger as Special Administrator; that the surviving husband has legitimate interests to protect which are not adverse to the decedent's estate which is merely part of the conjugal property; and that disinheritance is not a disqualification to appointment as Special Administrator besides the fact that the legality of the disinheritance would involve a determination of the intrinsic validity of the Will which is decidedly premature at this stage.

On March 24, 1982, petitioner elevated the case to this Court for review on Certiorari after her Motion for Reconsideration was turned down by the Court of Appeals.

Petitioner stresses that the order of preference laid down in the Rules should not be followed where the surviving spouse is expressly disinherited, opposes probate, and clearly possesses an adverse interest to the estate which would disqualify him from the trust.

The three sets of Oppositors, all respondents herein, in the Comments which they respectively filed, essentially claimed lack of grave abuse of discretion on the part of the Appellate Court in upholding the appointment of the surviving husband as Special Administrator; that Certiorari is improper and unavailing as the appointment of a Special Administrator is discretionary with the Court and is unappealable; that co-administrators are impractical and unsound and as between the surviving husband, who was responsible for the accumulation of the estate by his acumen and who must be deemed to have a beneficial interest in the entire estate, and a stranger, respondent Court had made the correct choice; and that the legality of the disinheritance made by the decedent cannot affect the appointment of a Special Administrator.

This Court, in resolving to give due course to the Petition taking into account the allegations, arguments and issues raised by the parties, is of the considered opinion that petitioner's nominee, Nenita F. Alonte, should be appointed as co-Special Administrator. The executrix's choice of Special Administrator, considering her own inability to serve and the wide latitude of discretion given her by the testatrix in her Will (Annex "A-1"), is entitled to the highest consideration. Objections to Nenita's appointment on grounds of impracticality and lack of kinship are overshadowed by the fact that justice and equity demand that the side of the deceased wife and the faction of

the surviving husband be represented in the management of the decedent's estate.[2]

En passant, it is apropos to remind the Special Administrators that while they may have respective interests to protect, they are officers of the Court subject to the supervision and control of the Probate Court and are expected to work for the best interests of the entire estate, its smooth administration, and its earliest settlement.

WHEREFORE, modifying the judgment under review, the Court of First Instance of Rizal, Branch VI, is hereby ordered, in Special Proceedings No. 9398 pending before it, to appoint Nenita F. Alonte as co-Special Administrator, properly bonded, who shall act as such jointly with the other Special Administrator on all matters affecting the estate.

No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Plana, Vasquez, and Relova, JJ., concur.
Gutierrez, Jr., J., no part.

[1] Penned by Justice Mama D. Busran and concurred in by Justices Guillermo P. Villasor and Jose A. R. Melo.

[2] Matias vs. Gonzales, 101 Phil. 853 (1957).

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