

FLORA DE GRACIA REGNER VDA. DE DAYRIT, PETITIONER, VS. HON. JOSE R. RAMOLETE, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, BRANCH III, ATTY. CASIMIRO R. MADARANG JR.,...

G.R. No. 59935. September 30, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This special civil action for "Certiorari, Prohibition and Mandamus" seeks mainly to nullify respondent Judge's Order, dated March 3, 1982, in Special Proceedings No. 4004-R of the Court of First Instance of Cebu, cancelling petitioner's appointment as Special Administratrix of the estate of her husband, Norberto L. Dayrit, and appointing in her stead private respondent Atty. Casimiro R. Madarang, Jr., her nephew, as Special Administrator with a bond of P10,000.00.

The background facts, only in so far as pertinent to this Petition, follow:

Petitioner married Norberto L. Dayrit in 1934. She alleged that Norberto did not bring any property into the marriage but that she brought a vast estate of paraphernal properties inherited from her parents. Her husband managed said properties by tolerance and that out of the fruits thereof they acquired some conjugal assets. Norberto abandoned her in 1972.

After 6 years of separation in fact, Norberto returned in 1978 and filed before the Juvenile and Domestic Relations Court of Cebu a "Complaint for Recovery of Administration of Conjugal Properties", which, according to petitioner included paraphernal properties administered by her during their separation. Norberto was represented by counsel, Atty. Vicente Jayme. In a Compromise Agreement submitted and approved in that case, Norberto was to administer the properties in Iligan City in addition to specified conjugal properties in Cebu City, while petitioner was to exercise full administration over her paraphernal and some conjugal properties in Cebu City except those turned over to Norberto. There was to be no accounting between the spouses.

On February 14, 1981, Norberto died leaving a Will naming herein respondent, Atty. Vicente Jayme, as executor. The latter then filed Special Proceedings No. 4004-R for probate of the Will and praying that he be appointed Executor, and before admission of the Will to probate, as Special Administrator. Petitioner and their adopted daughter, Lydia Dayrit, opposed respondent Jayme's appointment alleging that petitioner was better qualified to manage the estate. Petitioner likewise prayed for the disallowance of the Will and that the proceedings be converted to intestacy.

On March 19, 1981, petitioner was appointed by the Probate Court presided by respondent Judge, as Special Administrator, without bond.

On April 18, 1981, petitioner submitted an Inventory of Properties and prayed for its approval. Respondent Jayme opposed it principally on the ground that petitioner had merely submitted a token list of properties.

On January 19, 1982, the Court directed petitioner to render an accounting of her administration.

In the meantime, petitioner prayed the Court for authority to assign 10 shares of Club Filipino, Inc., Cebu, to Atty. Casimiro Madarang, Jr., her nephew and counsel, to act not only as her proxy but to sit in the Board of Directors. The Probate Court allowed the assignment.

On January 27, 1982, respondent Atty. Jayme presented a Petition for Change of Special Administratrix praying that Atty. Madarang, Jr., be appointed as substitute Special Administrator on the ground that petitioner had filed an inadequate inventory; that she had transferred and placed in the name of third parties certain properties worth approximately P4 million; that she had not rendered any accounting; and that she was no longer capable to discharge her duties as Special Administratrix.

Because of Atty. Jayme's petition to have Atty. Madarang appointed as substitute Special Administrator, Atty. Madarang prayed that he be allowed to inhibit himself during the hearing for change of Administrator.

As an offshoot of Atty. Jayme's aforesaid petition for Atty. Madarang's appointment, petitioner terminated Atty. Madarang's services as her counsel. Attys. Amadeo D. Seno and Regalado E. Maambong then appeared as petitioner's new counsel.

In the meantime, on February 10, 1982, Atty. Madarang filed a Petition for Guardianship in Special Proceedings No. 2090-JD before the Juvenile and Domestic Relations Court of Cebu praying that he be appointed guardian over the property of petitioner, who was already 73 years old, and that Dr. Domingo Veloso be appointed as guardian over her person. It was claimed that petitioner was afflicted with chronic diabetes causing mental lapses, forgetfulness, and diabetic coma, and that she was becoming the target of deceit and exploitation. Respondent Atty. Jayme, and two of petitioner's nearest relatives intervened in that proceeding and joined Atty. Madarang's petition for guardianship.

Back to the Probate case, on February 12, 1982, the Court directed petitioner to deposit with the Philippine National Bank in the name of the Estate all her cash receipts from conjugal properties. Petitioner prayed for reconsideration of that Order.

On February 26, 1982, the Probate Court granted an ex- parte Motion of respondent Atty. Jayme ordering that the Bank of America and the City Bank, both in the United States, be informed that the deposits in said banks being in custodia legis, no withdrawals should be allowed without Court approval. Petitioner moved for reconsideration alleging that all said deposits were her paraphernal properties.

On March 3, 1982, the Probate Court issued the disputed Order, principally challenged herein, revoking petitioner's Letters of Special Administration on the grounds that petitioner had shown interest adverse to many valuable properties of the Estate, the compelling need to preserve the estate properties from further unauthorized disbursements and other dispositions, and for the protection of creditors. Respondent Atty. Madarang was appointed in her stead, with a bond of P10,000.00.

On March 15, 1982, the Court authorized Atty. Madarang, as Special Administrator, to withdraw P30,000.00 from the deposit in the Philippine National Bank for payment of workers' salaries, and ordered petitioner to turn over the sum of P60,000.00 representing management fee charged to the Cebu Coliseum in 1981 and disbursed without Court authority.

It was the foregoing series of Orders that prompted petitioner to resort to this Petition against respondent Judge and private respondents Attys. Madarang and Jayme, claiming that Atty. Madarang's replacement of petitioner on March 3, 1982, as well as respondent Judge's Orders of January 19, 1982, February 12, 1982, February 26, 1982,

and March 15, 1982 were arbitrary, whimsical and done with grave abuse of discretion amounting to lack of jurisdiction.

In his Comment, Atty. Madarang contended that respondent Court had the duty to issue the disputed interlocutory Orders for the maintenance and pre-servation of the estate.

For his part, Atty. Jayme denied any grave abuse of discretion by respondent Judge, contending that petitioner was never denied due process of law.

We gave due course to this Petition.

Without delving into the other questions raised, which are unnecessary for the resolution of the principal issue, it is our considered opinion that inasmuch as petitioner-wife owns one-half of the conjugal properties and that she, too, is a compulsory heir of her husband, to deprive her of any hand in the administration of the estate prior to the probate of the Will would be unfair to her proprietary interests. Justice and equity also demand that opposing sides in a probate proceeding be adequately represented in the administration of the decedent's estate.[1]

And this, despite the distrust and animosity allegedly pervading the relationship between petitioner and respondent Atty. Madarang, for it is expected that the Probate Court will be on hand to resolve conflicts that may arise, the paramount consideration always being the best interests of the estate.

As in the case of *Corona vs. Court of Appeals*, G.R. No. L-59821, promulgated on August 30, 1982, the Special Administrators are reminded 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 in the best interests of the entire estate, its smooth administration, and its earliest settlement, and that whatever differences there may be between them shall be ironed out fairly and objectively for the attainment of that end.

WHEREFORE, the Court of First Instance of Cebu, Branch III, is hereby ordered, in Special Proceedings No. 4004-R pending before it, to appoint petitioner Flora de Gracia Regner Vda. de Dayrit as co-Special Administrator, without bond, who shall act as such jointly with Atty. Casimiro R. Madarang, Jr., the other Special Administrator, on all matters affecting the estate.

No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

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

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