

THIRD DIVISION

[G.R. No. 78590. June 20, 1988.]

PEDRO DE GUZMAN, *petitioner*, *vs.* **THE HONORABLE JUDGE ZOSIMO Z. ANGELES, RTC BRANCH 58, MAKATI, METRO MANILA; DEPUTY SHERIFFS JOSE B. FLORA and HONORIO SANTOS; and ELAINE G. DE GUZMAN**, *respondents*.

Bautista, Picazo, Cruz, Buyco and Tan for private respondent.

Ponce Enrile, Cayetano, Bautista, Picaso and Reyes, collaborating counsel for private respondent.

DECISION

GUTIERREZ, JR., J. :

May a probate court act on and/or grant motions for the appointment of a special administrator, for the issuance of a writ of possession of alleged properties of the deceased person, and for assistance to preserve the estate in a petition for the settlement of the intestate estate even before the court has caused notice to be served upon all interested parties pursuant to section 3, Rule 79 of the [Revised Rules of Court](#)?

On May 5, 1987, private respondent Elaine G. de Guzman filed a petition for the settlement of the intestate estate of Manolito de Guzman before the Regional Trial Court of Makati, Metro Manila. The case was docketed as Special Proceedings No. M-1436.

The petition alleges that: (1) on March 22, 1987, Manolito de Guzman died in Makati, Metro Manila; (2) at the time of his death, the decedent was a resident of Makati, Metro Manila; (3) decedent left personal and real properties as part of his estate, listed in Annexes "A," "B," "C" and "D;" (4) the properties were acquired after the marriage of the petitioner to the decedent and therefore are included in their conjugal partnership; (5) the estate of the decedent has a probable net value which may be provisionally assessed at P4,000,000.00 more or less; (6) the possible creditors of the estate, who have accounts payable and existing claims against the firm — C. Santos Construction are listed in Annex "E;" (7) the compulsory heirs of the decedent are the petitioner as the surviving spouse and their two (2) minor children namely Charmane Rose de Guzman, 11 years and Peter Brian de Guzman, 9 years old; (8) after diligent search and inquiry to ascertain whether the decedent left a last will and testament, none has been found and according to the best knowledge information and belief of the petitioner, Manolito de Guzman died intestate; and (9) the petitioner as the surviving spouse of the decedent, is most qualified and entitled to the grant of letters of administration.

On May 22, 1987, the private respondent filed a motion for writ of possession over five (5) vehicles registered under the name of Manolito de Guzman, alleged to be conjugal properties of the de Guzmans but which are at present in the possession of the private respondent's father-in-law, herein petitioner Pedro de Guzman. The motion stated that as co-owner and heir, the private respondent must have the possession of said vehicles in order to preserve the assets of her late husband. On the same day, the lower court issued an order setting for hearing the motion on May 27, 1987 directing the deputy sheriff to notify petitioner Pedro de Guzman at the expense of the private respondent.

The scheduled May 27, 1987 hearing was postponed on motion of petitioner's counsel,

Atty. Ricardo Fojas. The petitioner was also given three (3) days from May 27, 1987 to give his comment on the motion for a writ of possession. The hearing was reset to June 5, 1987 at 3:00 p.m.

On May 29, 1987, the petitioner's counsel filed a notice of appearance and an "Urgent Motion For Extension of Time to File an Opposition and for Resetting of the Hearing."

The motion was granted and the petitioner was given five (5) days from receipt of the order within which to file his opposition to the motion for a writ of possession. The hearing was reset to June 15, 1987 at 2:00 in the afternoon.

In the meantime, on May 28, 1987, the private respondent filed her "Ex-Parte Motion to Appoint Petitioner as Special Administratrix of the Estate of Manolito de Guzman."

In an order dated May 28, 1987, the aforesaid motion was set for hearing on June 5, 1987. In this same order, the lower court directed that all parties in the case be notified. However, no notice of the order was given to the petitioner.

In an order dated June 5, 1987, the lower court granted the private respondent's motion to be appointed as special administratrix, to wit:

"Finding the motion for appointment of special administratrix, on the ground alleged therein to be well-founded, and finding further that it is to be the best interest of the Estate of Manolito de Guzman that petitioner-movant Elaine G. de Guzman, be appointed as Special Administratrix in this case, said motion is granted.

"WHEREFORE, Elaine G. de Guzman, petitioner-movant, is hereby appointed as Special Administratrix of the Estate of the deceased Manolito de Guzman, pending appointment of a regular administrator. The bond for the said special administrator is hereby fixed in the amount of P200,000.00." (Rollo, p. 40).

On June 8, 1987, the lower court issued another order, to wit:

"Acting on the Urgent Ex-Parte Motion for Assistance' filed by Petitioner-Special Administratrix Elaine de Guzman for appointment of Deputy Sheriffs Honorio Santos and Jose B. Flora together with some militarymen and/or policemen to assist her in preserving the estate of Manolito de Guzman, the motion is granted and the Deputy Sheriffs Honorio Santos and Jose B. Flora are hereby appointed for that purpose, provided that the subject matter of the motion for writ of possession pending before this Court shall not be affected." (Rollo, p. 41).

Trouble ensued when the respondents tried to enforce the above order. The petitioner resisted when Deputy Sheriffs Jose B. Flora and Honorio Santos tried to take the subject vehicles on the ground that they were his personal properties. According to the petitioner, this resulted in a "near shoot-out between members of the Makati Police, who were to maintain peace and order, and the CAPCOM soldiers who were ostensibly aiding respondent sheriffs and Elaine G. de Guzman" and that "the timely arrival of Mayor Jejomar Binay of Makati defused the very volatile situation which resulted in an agreement between the parties that the bulldozer, sought to be taken, be temporarily placed in the custody of Mayor Binay, while the parties seek clarification of the order from respondent Judge Zosimo Angeles the next day, June 9, 1981 at 10:30 a.m."

In the conference held before the respondent court attended by the counsels for both parties, the June 8, 1987 order was clarified to the effect that the order "must be merely to take and preserve assets admittedly belonging to the estate, but not properties, the ownership of which is claimed by third persons."

The petitioner then filed a manifestation listing properties which he claimed to be his own.

Thereafter, the instant petition was filed to annul the lower court's orders dated June 5, 1987 and June 8, 1987.

In a resolution dated June 10, 1987, we issued a temporary restraining order enjoining the respondent court from enforcing the two questioned orders. In another resolution dated October 28, 1987, we gave due course to the petition.

The petitioner contends that the June 5, 1987 order is a patent nullity, the respondent court not having acquired jurisdiction to appoint a special administratrix because the petition for the settlement of the estate of Manolito de Guzman was not yet set for hearing and published for three consecutive weeks, as mandated by the [Rules of Court](#). The petitioner also stresses that the appointment of a special administratrix constitutes an abuse of discretion for having been made without giving petitioner and other parties an opportunity to oppose said appointment.

Anent the June 8, 1987 order, the petitioner alleges that the immediate grant of the motion praying for the court's assistance in the preservation of the estate of the deceased, "without notice to the petitioner Pedro de Guzman, and its *immediate* implementation on the very same day by respondent Elaine G. de Guzman with the assistance of respondents deputy sheriffs, at no other place but at the home of the petitioner Pedro de Guzman, are eloquent proofs that all the antecedent events were intended solely to deprive petitioner de Guzman of his property without due process of law." He also prays that the respondent Judge be disqualified from further continuing the case.

As stated earlier, the pivotal issue in the instant petition hinges on whether or not a probate court may appoint a special administratrix and issue a writ of possession of alleged properties of a decedent for the preservation of the estate in a petition for the settlement of the intestate estate of the said deceased person even before the probate court causes notice to be served upon all interested parties pursuant to section 3, Rule 79 of the [Revised Rules of Court](#).

As early as March 18, 1937, in the case of [Santos v. Castillo](#) (64 Phil. 211) we ruled that before a court may acquire jurisdiction over the case for the probate of a will and the administration of the properties left by a deceased person, the application must allege the residence of the deceased and other indispensable facts or circumstances and that the applicant is the executor named in the will or is the person who had custody of the will to be probated.

In the instant case, there is no doubt that the respondent court acquired jurisdiction over the proceedings upon the filing of a petition for the settlement of an intestate estate by the private respondent since the petition had alleged all the jurisdictional facts, the residence of the deceased person, the possible heirs and creditors and the probable value of the estate of the deceased Manolito de Guzman pursuant to Section 2, Rule 79 of the [Revised Rules of Court](#).¹¹

We must, however, differentiate between the jurisdiction of the probate court over the proceedings for the administration of an estate and its jurisdiction over the persons who are interested in the settlement of the estate of the deceased person. The court may also have jurisdiction over the "estate" of the deceased person but the determination of the properties comprising that estate must follow established rules.

Section 3, Rule 79 of the [Revised Rules of Court](#) provides:

"Court to set time for hearing. — Notice thereof — When a petition for letters of administration is filed in the court having jurisdiction, such court shall fix a time and place for hearing the petition, and shall cause notice thereof to be given to the known heirs and creditors of the decedent, and to any other persons believed to have an interest in the estate, in the manner provided in sections 3 and 4 of Rule 76."

It is very clear from this provision that the probate court must cause notice through publication of the petition after it receives the same. The purpose of this notice is to bring all the interested persons within the court's jurisdiction so that the judgment therein becomes binding on all the world. ([Manalo v. Paredes](#), 47 Phil. 938; Moran, Comment on the Rules of Court Volume 3, 1980 Edition) *Where no notice as required by Section 3, Rule 79 of the [Rules of Court](#) has been given to persons believed to have an interest in the estate of the deceased person; the proceeding for the settlement of the estate is void and should be annulled. The requirement as to notice is essential to the validity of the proceeding in order that no person may be deprived of his right to property without due process of law.* ([Eusebio v. Valmores](#), 96 Phil. 163).

Verily, notice through publication of the petition for the settlement of the estate of a deceased person is jurisdictional, the absence of which makes court orders affecting other

persons, subsequent to the petition void and subject to annulment. (See [Eusebio v. Valmores](#), *supra*).

In the instant case, no notice as mandated by section 3, Rule 79 of the [Revised Rules of Court](#) was caused to be given by the probate court before it acted on the motions of the private respondent to be appointed as special administratrix, to issue a writ of possession of alleged properties of the deceased person in the widow's favor, and to grant her motion for assistance to preserve the estate of Manolito de Guzman.

The "explanation" which we required of the respondent Judge for his apparent haste in issuing the questioned orders, states:

XXX XXX XXX

"10. In issuing the subject Orders, undersigned acted in the honest conviction that it would be to the best interest of the estate without unduly prejudicing any interested party or third person Any delay in issuing the said Orders might have prejudiced the estate for the properties may be lost, wasted or dissipated in the meantime. (Rollo, p. 86).

XXX XXX XXX

This explanation while seemingly plausible does not sufficiently explain the disregard of the Rule. If indeed, the respondent court had the welfare of both the estate and the person who have interest in the estate, then it could have caused notice to be given immediately as mandated by the [Revised Rules of Court](#). All interested persons including herein petitioner who is the biggest creditor of the estate listed in the petition (P850,240.80) could have participated in the proceedings especially so, because the respondent immediately filed a motion to have herself appointed as administratrix. A special administrator has been defined as the "representative of decedent appointed by the probate court to care for and preserve his estate until an executor or general administrator is appointed." (Jones v. Minnesota Transfer R. Co. 1965 ed., at 106 cited in [Fule v. Court of Appeals](#), 74 SCRA 189). The petitioner as creditor of the estate has a similar interest in the preservation of the estate as the private respondent who happens to be the widow of deceased Manolito de Guzman. Hence, the necessity of notice as mandated by the [Rules of Court](#). It is not clear from the records exactly what emergency would have ensued if the appointment of an administrator was deferred at least until the most interested parties were given notice of the proposed action. No unavoidable delay in the appointment of a regular administrator is apparent from the records.^{prod}

As argued by the petitioner:

"The position of special administrator, by the very nature of the powers granted thereby, is one of trust and confidence. It is a fiduciary position and, therefore, requires a comprehensive determination of the suitability of the applicant to such position. Hence, under Philippine jurisprudence, it has been settled that the same fundamental and legal principles governing the choice of a regular administrator should be taken in choosing the special administrator (Francisco, Vol. VB, page 46 citing the cases of Ozaeta v. Pecson, Ibid. and Roxas v. Pecson, Ibid.)

"In order to fully and correctly ascertain the suitability of the applicant to the trust, a hearing is obviously necessary wherein the applicant can prove his qualifications and at the same time affording oppositors, given notice of such hearing and application, the opportunity to oppose or contest such application.

"The requirement of a hearing and the notification to all the known heirs and other interested parties as to the date thereof is essential to the validity of the proceeding for the appointment of an administrator 'in order that no person may be deprived of his right or property without due process of law' ([Eusebio v. Valmores](#), 97 Phil. 163). Moreover, a hearing is necessary in order to fully determine the suitability of the applicant to the trust, by giving him the opportunity to prove his qualifications and affording oppositors, if any, to contest the said application. (Matute v. Court of Appeals, 26 SCRA 770).

"Since the position of special administrator is a very sensitive one which requires trust and confidence, it is essential that the suitability of the applicant be ascertained in a

hearing with due notice to all oppositors who may object precisely to the applicant's suitability to the trust." (Rollo, pp. 103-104).

If emergency situations threatening the dissipation of the assets of an estate justify a court's immediately taking some kind of temporary action even without the required notice, no such emergency is shown in this case. The need for the proper notice even for the appointment of a *special* administrator is apparent from the circumstances of this case.

The respondent Judge himself explains that the order for the preservation of the estate was limited to properties *not claimed by third parties*. If certain properties are already in the possession of the applicant for special administratrix and are not claimed by other persons, we see no need to hurry up and take special action to preserve those properties. As it is, the sheriffs took advantage of the questioned order to seize by force, properties found in the residence of the petitioner which he vehemently claims are owned by him and not by the estate of the deceased person. ^{id.phil}

The petitioner also asks that the respondent Judge be disqualified from continuing with the proceedings of the case on the ground that he is partial to the private respondent.

In view of the fact that the respondent Judge in his "Explanation" requests that he be inhibited from further acting on the case, this issue has now become academic. We accept Judge Angeles' voluntary inhibition in line with our ruling in [*Pimentel v. Salanga*](#) (21 SCRA 160). As we stated in *Query of Executive Judge Estrella T. Estrada, Regional Trial Court of Malolos, Bulacan on the conflicting views of Regional Trial Court - Judges Manalo and Elisaga Re: Criminal Case No. 4954-M Administrative Matter No. 87-9-3918-RTC*, October 26, 1987:

xxx xxx xxx

". . . A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved thereon. On the result of his decisions to sit or not sit may depend to a great extent that all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice."

Considering the foregoing, we find no need to discuss the other issues raised in the petition.

WHEREFORE, the instant petition is GRANTED. The questioned orders of the Regional Trial Court, Branch 58 of Makati are hereby set aside. The case is ordered remanded to the lower court for the hearing of the petition with previous notice to all interested parties as required by law. In view of the voluntary inhibition of the respondent Judge, the Executive Judge of the Regional Trial Court, Makati is directed to reraffle the case to another branch of the court. The Temporary Restraining Order dated June 10, 1987 is made permanent. No costs.

SO ORDERED.

Fernan, Feliciano, Bidin and Cortes, JJ., concur.