

FIRST DIVISION

[G.R. No. 92999. October 11, 1990.]

REYNALDO MENDIOLA, *petitioner*, **vs. COURT OF APPEALS, REDENTOR A. MENDIOLA, FLORENTINA M. MENDIOLA, ERNESTINA A. MENDIOLA, EDGARDO M. MENDIOLA, MANUEL M. MENDIOLA, ENRICO M. MENDIOLA, RICARDO A. MENDIOLA and MARILOU M. MENDIOLA**, *respondents*.

Rodrigo Law Office for petitioner.

Antonio M. Pagsibigan for private respondents.

DECISION

GRINO-AQUINO, J. :

This is a contest between two brothers for appointment as executor of their father's estate. The petitioner assails the decision dated February 12, 1990 of the Court of Appeals in CA-G.R. SP No. 19373 affirming the orders of the Regional Trial Court of Pasig, Metro Manila in Sp. Proc. No. 10027 removing him as executor of the estate of his father, the late Carlos Mendiola, and appointing his brother, Redentor Mendiola, in his stead.^{LL.phil}

The facts, as stated in the decision of the Court of Appeals, are quoted below:

"The petitioner and private respondents are the surviving heirs of the late Carlos Mendiola who died on December 28, 1984. Florentina Mendiola is the surviving spouse while the petitioner and all the private respondents are the children of the deceased.

"A petition for probate of a will was filed by the petitioner on March 30, 1987 in the Regional Trial Court of Pasig, Metro Manila entitled 'Probate of the Will and Testament of Deceased Carlos Mendiola' Sp. Proc. No. 10027 which was set for hearing on August 18, 1987.

"On October 9, 1987, the Regional Trial Court, Branch 166 presided by Judge Eutropio Migrino rendered a decision allowing the will and issuing letters testamentary in favor of the petitioner who was declared executor of the estate of the deceased in the will. After the petitioner took his oath on October 14, 1987 letters testamentary was issued in favor of the petitioner on October 20, 1987.

"On April 28, 1989, the private respondents filed a motion for the removal of the executor and another motion on May 2, 1989 for the appointment of Redentor Mendiola of (sic) executor.

"On May 22, 1989, the respondent-Judge granted the motion and ordered the removal of the petitioner as executor and revoked the letters testamentary. On May 23, 1989, the trial court ordered the appointment of Redentor Mendiola as executor.

"A motion for reconsideration was filed by the petitioner which was opposed by the private respondents and the trial court denied the motion for reconsideration." (p. 26, Rollo.)

On Appeal, the Court of Appeals affirmed the judgment of the trial court, hence, this petition for review.

Petitioner maintains that the Court of Appeals erred in not annulling the probate court's order removing him as executor for: (a) no evidence had been adduced by the respondents in

support of their motion for his removal, and (b) that he was not given his day in court.

There is no merit in the petition. Sufficient evidence was adduced in the proceedings in the Regional Trial Court of Pasig, that petitioner failed to pay the estate tax. Petitioner's own counsel, Atty. Gregorio Ejercito, admitted in a Manifestation that his client indeed has no proof or receipt of payment of the estate tax (Annexes "C" and "L," pp. 69 & 84, Rollo, respectively). Petitioner also failed to render an accounting of the estate and settle the same according to law. Furthermore, he involved the heirs in a transaction with Villarica Pawnshop which, because of petitioner's failure to honor his part of the bargain, resulted in the filing of a suit by Villarica against the heirs (Civil Case No. 58450). The case is still pending in the Regional Trial Court of Pasig.

The removal of the petitioner is in accordance with the provisions of Section 2, Rule 82 of the [Rules of Court](#) that:

"If an executor or administrator neglects to render his account and settle the estate according to law, or to perform an order or judgment of the court, or a duty expressly provided by these rules, or absconds, or becomes insane, or otherwise incapable or unsuitable to discharge the trust, the court may remove him, or in its discretion, may permit him to resign "

"The determination of a person's suitability for the office of judicial administrator rests, to a great extent, in the sound judgment of the court exercising the power of appointment and said judgment is not to be interfered with on appeal unless the said court is clearly in error." (Abad vs. Court of Tax Appeals, 18 SCRA 371.)

"The removal of an administrator under Section 2 of Rule 82 lies within the discretion of the court appointing him." (Id.)

WHEREFORE, finding no reversible error in the questioned decision dated February 12, 1990 and the order dated April 25, 1990 of the respondent Court of Appeals, the petition for review is denied for lack of merit, with costs against the petitioner. ^{ptl.l}

SO ORDERED.

Narvasa, Cruz, Gancayco and Medialdea, JJ ., concur.