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**[ G.R. No. 111074, July 14, 2000 ]**

**EMILIO O. OROLA, PETITIONER, VS. HON. JOSE O. ALOVERA IN HIS CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT, ROXAS CITY (BRANCH 17), AND MANUEL LASERNA OROLA, RESPONDENTS.**

**D E C I S I O N**

**PARDO, J.:**

The case before the Court is an appeal from the decision of the Court of Appeals affirming an order of the Regional Trial Court, Roxas City, Branch 17 that denied petitioner's motion for inhibition of respondent Judge Jose O. Alovera and motion to cancel documents.

The facts, as found by the Court of Appeals, are as follows:

"On 16 July 1969, Trinidad Laserna Orola died intestate leaving behind as legal heirs her husband, petitioner Emilio Q. Orola, and their six (6) legitimate children who were all then minors, namely Josephine, Myrna, Angeline, Manuel, Antonio and Althea.

"Shortly thereafter, petitioner was, on his application in Special Proceeding No. V-3526, appointed the legal guardian of his children and their estate.

"On 9 November 1973, petitioner filed the subject petition for the issuance in his favor of letters of administration over the intestate estate of his deceased wife. The petition, docketed as Sp. Proc. No. V-3639, was originally filed in Branch 4 of the Regional Trial Court of Roxas City but was subsequently transferred to Branch 18, and later to Branch 17. Petitioner was thereafter appointed administrator of the intestate estate of the deceased on 23 January 1974, the letters of Administration being subsequently issued on 4 March 1974.

"Among the assets belonging to the estate were certain properties (identified as lots 1050, 1051, 1070, 1071, 1074, 1075, and 1088 of the Cadastral Survey of Pontevedra in the Municipality of Pontevedra, Capiz) originally owned by Manuel Laserna, the father of the deceased Trinidad Laserna Orola, On 25 January 1968 Manuel Laserna had executed a Deed of Adjudication, Sale and Waiver over those seven (7) lots, among others, in favor of his children, namely, Emiliana, Pedro, Dolores, Trinidad and Jesus.

"On February 1968, Emiliana and Pedro executed separate Deeds of Sale conveying their shares in the above-mentioned lots together with Jesus

and Dolores.

"On 26 October 1976, petitioner, acting for himself as co-owner and as judicial administrator for the estate of Trinidad Laserna Orola, entered into a partition agreement for the subdivision of the above-mentioned properties.

"On the same date petitioner executed a document entitled WAIVER OF RIGHTS where for and in consideration of his love, affection and mutual agreements, he waived and relinquished all his shares, interests and participations in Lots Nos. 1070, 1071, 1074, 1075, 1088, 1050 and 1051 all of Pontevedra Cadastre, in favor of his six (6) children of the first marriage; namely, Josephine, Myrna, Angeline, Manuel, Antonio and Althea. The WAIVER provides that –

"x x x Upon the registration of the Project of partition which the co-owners will present, that the shares and participation of the undersigned shall be consolidated in the names of the children mentioned above in equal right and participation (p. 47, Rollo).

"On September 22, 1987 petitioners children executed and filed an ACCEPTANCE OF WAIVER OR DONATION (Annex E, Petition, p. 48, Rollo).

"The relationship between petitioner who had remarried and his children of the first marriage became somehow strained -- respondent Judge in his order of November 19, 1992, observed –

"Tracing the history of the record of this case, there was a similar motion for the removal and change of the administrator dated March 31, 1980 (pages 129 to 134). Among the grounds shown in this earlier motion were that belated inventory was made where the administrator failed to mention many real properties; that no accounting was ever filed; no support was given to oppositors; that the estate was already 13 years old at that time yet, there had been no settlement or distribution of the estate of the decedent.

"This motion aforementioned was opposed by the administrator on June 20, 1980 (pages 146 to 153) citing among others that some of the oppositors were still minors and not yet capable of personally managing their properties and were still studying in Manila and that not less than one-half (1/2) of the estate belonged to him. As can be expected in any normal family home, filial relationship has always been close. Thus, the later manifestation made by the oppositors to dismiss their motion for their father's removal as administrator was not a surprise.

"Since the time until the present, the relationship that exists between the administrator and oppositors has been anything but cordial, the last straw that finally broke the camel's back was the filing of the Motion to Cancel Documents not Submitted for Approval to the Probate Court dated June 14, 1990 attaching thereto Waiver of Rights, Annex "A", (page 201, record). Acceptance of Waiver or Donation, Annex "B", (page 202, record), and Contract of Lease, Annex "C", (page 204 to 205, record).

Brought to the fore again, are grounds opposing the motion of the administrator adding therein the oppositors' motion to change him as administrator are those grounds mentioned in the oppositors' earlier motion for a change of administrator. (pp. 39-40, Rollo)

"On 2 February 1988 the Court issued an Order calling the Administrator's attention on his failure to file a true and complete inventory of the estate of the deceased Trinidad Orola despite its order of February 11, 1988 and directed the Administrator to comply therewith (order reproduced in Comment of private Respondents pp. 140-142, Rollo).

"Upon the other hand, since 1980 Myrna has allegedly held on to the fishponds on Lots 1050 and 1051 adversely to the petitioner and the estate, while on 29 March 1989 Josephine and Antonio executed a contract of lease with a third party over seven (7) hectares of prawnponds covered by judicial administration; and on 20 March 1990 Josephine, Manuel and Antonio signed a lease contract with a third party over ten (10) hectares of riceland identified as Lot 1076 also covered by Judicial Administration, all without prior approval by the Probate Court. A motion For Approval, however, of the contract for the riceland was filed in Court.

"On 14 June 1990 petitioner filed a Motion To Cancel Documents not submitted for approval to the Probate Court (Annex J, Petition). The documents pertained to the Waiver of Rights, Acceptance of Waiver, and the lease contract dated March 29, 1989. This was what triggered the motion to remove petitioner as Administrator.

"On July 3, 1992 respondent Judge issued the following order:

"When this case was called for the hearing of the incident in question, referring to the motion for approval of proposed contract of lease with attachments found on pages 369 through 375, this court asked the opposing counsel Atty. Villaruz as to whether or not he would react in writing to the motion. He stated he would file a written reaction to the motion within 10 days from today. The court further asked both counsel whether any of them would still present testimonial evidence on the incident in question and both of them manifested before this court that it is not anymore necessary. This case therefore, shall be deemed submitted for resolution as soon as Atty. Villaruz filed before this Court such written reaction with copy furnished to Atty. Azagra. (p. 63, Rollo, Annex K).

"On 19 October 1992 petitioner's children thru Atty. Villaruz filed an opposition to the Motion To Cancel Documents accompanied by a Motion To Change Petitioner as Administrator (Annex L. Petition) – on the following grounds:

"(a) The present administrator had repeatedly violated the Rules of Court concerning loans and mortgages that encumbered the properties under administration without Court approval. Aside from the parcels of land

which were involved in the Decision in Civil Case NO. V-5452 mentioned above, the administrator also mortgaged without Court approval Lot No. 1074 part, Lot No. 1088, and Lot No. 1070-A in a Real Estate Mortgage dated 29 October 1980. The said mortgage has been foreclosed and the property encumbered without Court approval (Lot No. 1070-A) was sold at a public auction on 9 October 1991.

"(b) The administrator had failed to make the proper accounting of the products of the properties in question. He also failed to make a liquidation of the estate and its obligations.

"(c) By the illegal acts and failures, including the present motion for the cancellation of the Deed of Waiver, the administrator has clearly assumed the position which is adverse and hostile to those immediately interested in the estate (the children of Trinidad Laserna Orola). In line with the ruling in Sioca vs. Garcia, 44 Phil. 711 and in Arevalo vs. Bustamante, 69 Phil. 656, to allow the present administrator to continue as such is highly inadvisable.

"WHEREFORE, it is respectfully prayed that the administrator's Motion dated 14 June 1990 be denied for lack of merit, and that the present administrator be dismissed and in his place one of the children of the late Trinidad Laserna Orola in the person of Manuel Laserna Orola be issued Letter of Administration.

"It is likewise prayed that the present administrator be ordered to forthwith turn over to Manuel Laserna Orola all the properties under administration and to cease and desist from making any kind of interference in the administration of the latter. (pp. 68-69, Rollo).

"The motion was set for hearing on October 23, 1992 at 8:30 o'clock in the morning.

"Petitioner on 21 October 1992 prayed for a period of twenty (20) days within which to file his comments on the pleading filed by his children (Annex M, Petition p. 71 Rollo) but was granted only a period of seven (7) days from October 23, 1992 "Considering the fact that this Court is so concerned with the estate in question because of the seriousness of the pleading filed by them through counsel x x x" (Annex N, Petition p. 72 Rollo).

"After moving for an extension of ten (10) days, petitioner filed an Opposition To Motion To Change Administrator dated November 23, 1992 (Annex O pp. 73-75) admitting that he obtained loans without court approval, but it was the mortgagee bank who took it upon themselves to secure such approval; that the loan contracts which were nullified without ordering any restitution of the benefits of the loan; that he has not made an accounting only in recent years, as he was prevented from doing so because of the actuation of the movants who took possession of eleven (11) hectares of prawnponds without his consent and against his will and appropriated the produce thereof for their own exclusive benefit without making an accounting therefore making it difficult for him to render an