



INTERIOR BOARD OF INDIAN APPEALS

Estate of Herman Coando

5 IBIA 140 (06/22/1976)

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# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

## ESTATE OF HERMAN COANDO

IBIA 76-39

Decided June 22, 1976

Petition to Reopen.

Granted And Remanded.

1. Indian Probate: Wills: Construction of

It is incumbent upon the Administrative Law Judge under existing regulations in testate cases to construe the provisions of a will.

APPEARANCES: Billings Field Solicitor, for Billings Area Director; Wind River Legal Services, Inc., for Tinnie N. Coando and children, Clayton, Virgil and Trudi Coando.

### OPINION BY ADMINISTRATIVE JUDGE WILSON

This matter comes before this Board on a Petition to Reopen filed by John R. White, Acting Assistant Area Director, Billings, Montana,

on January 21, 1975. The Petition was not forwarded to this Board by Administrative Law Judge Garry Fisher until May 7, 1976, for the reason that the parties felt the matter could be resolved by means other than reopening the estate.

Briefly stated, the facts are as follows:

Herman Coando, hereinafter referred to as decedent, died on January 8, 1971, without changing the Last Will and Testament he executed on April 2, 1964.

At the time of the making of his will, the decedent owned an undivided five-twelfths interest in the allotment of Eunice Basil, Wind River No. 29, hereinafter referred to as WR-29, described as SW 1/4 SW 1/4, Sec. 14, Township 1 South, Range 1 West and NW 1/4 NW 1/4, Sec. 23, Township, 1 South, Range 1 West, containing 80 acres. Only the foregoing described allotment is involved in the petition herein and any reference to an interest in an allotment refers to WR-29.

In paragraph SECOND of his will, the decedent devised WR-29, along with other allotments not involved herein, in the following language:

I give, devise, and bequeath to my children: Clayton Coando, U-5653, born 6-28-55; Virgil Randall

Coando, U-09565, born 8-22-62; Trudi Ann Coando U-09742, born 12-3-63; each an undivided 1/3 interest in all my inherited interests in the following allotments: \* \* \*.

On November 8, 1967, Isaac Coando, also owner of a five-twelfths interest in WR-29 conveyed his five-twelfths interest in the NW 1/4 NW 1/4, Sec. 23, Township 1 South, Range 1 West to the decedent thereby increasing decedent's share therein to five-sixths. On November 9, 1967, the decedent conveyed his five-twelfths interest in the SW 1/4 SW 1/4, Sec. 14, Township 1 South, Range 1 West to Isaac Coando thereby increasing Isaac's share therein to five-sixths. Each grantor in the foregoing conveyances reserved all minerals including oil and gas.

Upon decedent's death, a hearing was held on July 6, 1971, for the purpose of ascertaining the heirs of law of decedent and inquiring into the facts and circumstances surrounding the making of his purported Last Will and Testament, dated April 2, 1964; Thereafter, on October 22, 1971, an Order Approving Will and Decree of Distribution was entered in the matter by Hearing Examiner William E. Hammett.

On page 2 of said Order, the Examiner ordered distribution of WR-29 and other allotments not involved herein, to Clayton, Virgil and Trudi Coando in the following language:

In equal undivided shares all of testator's inherited interest in the following allotments: \* \* \*.

On page 3 of the said Order, the Examiner ordered distribution to Isaac Coando, "The rest and residue of decedent's estate, real, personal and mixed."

In carrying out the Decree of Distribution, the Wind River Agency interpreted the Examiner's order to mean that only five-twelfths of decedent's interest in the entire 80 acres of WR-29 passed under the Will to the three devisees hereinabove named and that the decedent's other five-twelfths interest in WR-29 received through the conveyance hereinabove described passed to the residuary devisee, Isaac Coando.

Apparently relying on the foregoing interpretation, Isaac Coando, on August 7, 1974, conveyed the five-twelfths interest received through the decedent's Will in that part of WR-29, described as NW 1/4 NW 1/4, Sec. 23, Township 1 South, Range 1 West, to decedent's widow, Tinnie Coando, for a consideration of \$3,729.16.

The grantee, Tinnie Coando, under the deed of August 7, 1974, now apparently is claiming that her children, Clayton, Virgil and Trudi Coando received the decedent's five-sixths interest therein through the decedent's Last Will and Testament; so consequently,

Isaac Coando had nothing to convey and it was due to the Wind River Agency's purported erroneous interpretation of the Examiner's Decree of Distribution that she purchased the five-twelfths interest in the NW 1/4 NW 1/4, Sec. 23, Township 1 South, Range 1 West from Isaac Coando. Although it is not clear from the record, it would appear that she now is seeking to recover the consideration paid to Isaac Coando for the above-described tract.

A review of the record clearly indicates the need for a comprehensive construction of the wording of paragraph SECOND of the decedent's Last Will and Testament and the Examiner's Decree of Distribution concerning the same so as to resolve the issue of whether or not Isaac Coando, as residual devisee of decedent's Will, took any part of WR-29 thereunder.

[1] 25 CFR 15.15 (1971) in effect at the time of the Examiner's order (now 43 CFR 4.240(2)) makes it incumbent upon the Administrative Law Judge to construe the provisions of wills. This apparently was overlooked by Hearing Examiner Hammett in his decision of October 22, 1971. Accordingly, the estate should be reopened and the matter remanded to the Judge for construction of the disputed portion of the decedent's Will and for clarifying that part of the Examiner's Decree of Distribution concerning the same.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR

4.1, the estate herein is REOPENED and the matter is REMANDED to Administrative Law Judge William E. Hammett for the sole purpose of construing paragraph SECOND of the decedent's Last Will and Testament of April 2, 1964, and clarifying that part of the Order Approving Will and Decree of Distribution concerning the distribution to the devisees thereunder and for the issuance of an order consistent therewith. The order as issued by the Judge shall be final unless an appeal is taken to this Board within 60 days of the issuing date thereof.

This decision is final for the Department.

Done at Arlington, Virginia.

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//original signed  
Alexander H. Wilson  
Administrative Judge

I concur:

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//original signed  
Wm. Philip Horton  
Board Member