

[G.R. No. L-6422. August 25, 1954]

CRISANTO DE BORJA, PETITIONER, VS. HON. BIENVENIDO A. TAN, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, SEVERO ABELLERA, PROVINCIAL SHERIFF OF RIZAL, RICARDO L. CASTELO, PROVINCIAL SHERIFF OF NUEVA ECIJA, MARCELA, JUAN, SATURNINA, EUFRACIA, JACOBA AND OLIMPIA, ALL SURNAMED DE BORJA, RESPONDENTS.

D E C I S I O N

LABRADOR, J.:

This is a petition for certiorari against an order of the Court of First Instance of Rizal, the Honorable Demetrio B. Encarnacion presiding, directing the execution of a judgment for the sum of P83,337.31, entered in the intestate proceedings of Marcelo de Borja, Special Proceedings No. R-2414 of said court, in favor of oppositors Juan, Marcela, Saturnina, Eufracia, Jacoba, and Olimpia, all surnamed Borja, and against the petitioner herein Crisanto de Borja, administrator of the intestate. The special reasons mentioned in the order are (a) that there is no bond for the stay of the execution in accordance with section 2, Rule 39, of the Rules, because the bond given by the administrator for the amount of P20,000 can not be made to respond for the said judgment; and (b) that the petitioner is guilty of fraud and maladministration in the management of the estate. It is alleged in support of the petition for certiorari that the property levied upon by virtue of the execution is his share in the inheritance left by the intestate valued at P114,000, and that its sale on execution thereof will unduly multiply the issues and would cause irreparable damage to petitioner, as sales on execution do not render the real or true value of the property sold, and that, on the other hand, the judgment creditors have not put up any bond to respond for such damages if the judgment will later be reversed.

It is to be noted that the right to execution arises, not upon rendition of judgment, but upon entry thereof after judgment has become final. So execution before the judgment becomes final is granted only for special reasons in the discretion of the court. (Section 2, Rule 39,

Rules of Court.) It has been pointed out that the damages which arise from immediate execution can not sometimes be fully compensated by the provisions for restitution and, accordingly, immediate execution should be decreed only if superior circumstances demanding urgency clearly outweigh the above considerations. (Aguilos vs. Barrios, et al., 72 Phil., 285, 287.)

The fact that defendant has offered no bond to stay execution is no ground for immediate execution. The bond is required to stay an immediate execution, after the special reasons for granting it have been found to exist; it can not be the special cause or reason for granting execution which it purports to stay. Neither is fraud in contracting an obligation a ground by itself to justify immediate execution; for this source or cause of obligations, the rules provide a different remedy, i.e., attachment. (Section 1, paragraph (d), Rule 59, Rules of Court.) In the case at bar, there is the additional circumstance that the property levied on is the still undetermined share of the defendant-petitioner in an inheritance left by a decedent, now actually under judicial administration and under a probate court's immediate control. Certainly, the alleged reasons given in the order are insufficient, nor can they outweigh the probable irreparable damage to be caused, if the violent and radical expedient of immediate execution is resorted to.

We, therefore, find that the respondent court abused its discretion in issuing the order complained of. The writ is hereby granted and the order annulled, with costs against the respondents Marcela, Juan, Saturnina, Eufracia, Jacoba, and Olimpia, all surnamed Borja.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion and Reyes, J. B. L., JJ., concur.