G.R. No. L-9675

[G.R. No. L-9675. September 28, 1957]

COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. ROBERTA FLORES VDA. DE CODIÑERA, WENCESLAO CODIÑERA, PIO CODIÑERA AND COURT OF TAX APPEALS, RESPONDENTS.

D E C I S I O N

CONCEPCION, J.:

This is an appeal from a decision of the Court of Tax Appeals, the dispositive part of which reads:

> "FOR ALL THE FOREGOING, we are of the opinion and so hold that the government is barred by the statute of limitations from collecting from petitioners the alleged deficiency specific tax in the amount of P2,681.28, and pursuant to section 14, Republic Act 1125, let the same be considered that there is no deficiency and the corresponding tax assessment revoked. Furthermore, the warrant of distraint and levy of March 7, 1955, issued by the respondent Collector upon the properties of the petitioners, should be as it is hereby ordered lifted and withdrawn,"

As stipulated by the parties, the facts ares:

> "2. Petitioners are the only heirs of Restituto Codiñera a resident of Cebu City who died at the City of Cebu, on August 28, 1953, (Testimony of Atty. N. Estenzo and Certified Copies hereto attached);
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> "3. On December 22, 1947 at Guiwan, Samar, Restituto Codiñera, then living, purchased thirty-sight (38) boxes playing cards (poker) of 144 packs to a box belonging to the Philippine Government, specifically belonging to the Surplus

Property Commission, Guiwan Base, per invoice No. 0-1144, paying 10% compensating tax therefore in the amount of P54.72;

"4. That the amount of P2,681.28, as deficiency specific tax, plus a penalty of'P50.00, or a total of P2,731.28, were assessed and demanded by Bibiano L. Meer, the incumbent Collector of Internal Revenue, from Restituto Codiñera on August 7, 1948, pursuant to the applicable provisions of the Internal Revenue Code. The said deficiency specific tax is computed as follows:

5,472 packs of playing cards at P0.50 per pack	P2,736.00
Less: Tax paid under O.R. No. A-251477 dated Jan. 6, 1948	54.72
Amount still due and collectible	P2,681.28

"5. On November 23, 1948, the Collector of Internal Revenue sent to the City Treasurer of Cebu, a warrant of distraint and levy against the properties of the late Restituto Codiñera, for collection of P2,681.28, as deficiency specific tax on the 38 boxes of playing cards (poker) of 144 packs to a box, belonging to the Philippine Government, specifically belonging to the Surplus Property Commission, Guiwan Base, Guiwan, Samar;

"6. On January 27, 1949, the City Treasurer reported to the respondent, Collector of Internal Revenue, that the warrant of levy and distraint, dated November 26, 1988, for the Collection of a deficiency tax of P2,681.28 against the properties of the late Restituto Codiñera could not be effected in view of the levy on attachment in Civil Case No. 4862 of the Court of First Instance of Manila, entitled Heraclio Abistado vs. Montano Buaya and Restituto Codinera;

"7. No third party claim or proof of debt has been filed by the respondent with the Court of First Instance of Manila in said Civil Case No. 4862;

"8. On the 7th day of March, 1955 at the City of Manila, the respondent Acting Collector of Internal Revenue, issued a warrant of distraint and levy addressed to the City Treasurer of Cebu City commanding the latter to distrain the goods, chattels, or effects, and other personal property of whatever character, and levy upon the real property and interest in or rights to real property of the late

> Restituto Codiñera, to satisfy the allege deficiency specific tax on the amount of P2,681.28;
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> "9. The City Treasurer of Cebu on April 22, 1955 pursuant to the said warrant of distraint and levy issued by the respondent on March 7, 1955, issued a notice of levy which was received by the herein petitioners on April 25, 1955, a certified copy of which notice of levy is hereto attached."

Roberta Flores Vda. de Codiñera, Wenceslao Codiñera and Pio Codiñera – the widow and heirs of Restituto Codiñera – Instituted this case in the Court of Tax Appeals on April 27, 1955. Their petition contained the following prayer:

> "WHEREFORE, this Honorable Court is most respectfully prayed to order the respondent to certify to this Honorable Court all records and assessment made by the respondents against the estate of the deceased Restituto Codiñera and after trial on the ; merits to reverse the assessment on the deficiency specific tax of P2,681.28 made by the' respondent and to exempt the petitioners from the payment of said deficiency specific taxes; that pending appeal, a.writ of preliminary injunction be issued by this Honorable Court to restrain the respondent from collecting the amounts demanded thru summary administrative method, and to declare null and void, and of no legal force and effect the warrant of distraint and levy which the respondent has issued on March 7, 1955 on the real and personal properties of the estate of the deceased Restituto Codiñera.
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> "Petitioners further pray for any other relief or remedy which this Honorable Court may deem proper, just and equitable in the premises."

After appropriate proceedings, said Court rendered the aforementioned decision in favor of the petitioners. The case is now before Us on petition for review filed by the Collector of Internal Revenue.

It appears that the playing cards involved in this case were purchased by Restituto Codiñera on December 22, 1947; that on August 7, 1948, the Collector of Internal Revenue assessed .and demanded from him the payment of P2,681.28 as deficiency specific tax on said playing cards, plus a penalty of P50.00, or a total of P2,731.28, of which only the sum of P54.72 had baen paid, thus leaving a balance of P2,676.56, which, up to the present, has not been

satisfied; and that the warrant of distraint complained of was issued on March 7, 1955, or more than five (5) years after the aforementioned assessment. For this reason, appellees herein maintain and the Court of Tax Appeals held that the right of the Government to collect the taxes in question is barred by the statute of limitations, for sections 331 and 332 of the National Internal Revenue Code, provide:

> "Sec. 331. Period of limitation upon assessment and collection. Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return is filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, that this limitation shall not apply to cases already investigated prior to the approval of this Code."
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> "Sec. 332. Exceptions as to, period of limitation of assessment and collection of taxes.-
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> > "(c) Where the assessment of any internal , revenue tax has been made within the period of limitation above prescribed such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Collector of Internal Revenue and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

Upon the other hand, it is urged by appellant herein that the running of said statute of limitations had been suspended pursuant to section 333 of said national Internal Revenue Code which we quote:

> "The running of the statute of limitations provided in Section 331 or 332 on the making of assessments and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Collector of Internal Revenue is prohibited from making the assessment or beginning distraint or levy or a proceeding in court, and for sixty days there-after."

In this connection, it is not disputed that, shortly after the assessment made on August 7, 1948, or, to be exact, on November 23, 1946, appellant sent to the City Treasurer of Cebu a warrant of distraint and levy against the properties of the late Restituto Codiñera, and that on January 27, 1949, the city treasurer reported to appellant herein that said warrant could not be enforced, said properties having been attached in Civil Case No. 4862 of the Court of First Instance of Manila, entitled "Heraclio Abistado vs. Montano Buaya and Restituto Codiñera." Appellant argues that, in consequence of said attachment,' the properties of Codiñera were placed in custodia legis and could not be subjected by the Government to distraint and levy, until the dissolution of said attachment, which took place on November 1, 1951, when the decision dismissing the said Civil Case No. 4862 became final; that said period from January 27, 1949 to November 1, 1951, plus – pursuant to the above-quoted section 333 – sixty (60) days, or up to January 30, 1952 – or an aggregate of three (3) years and three (3) days – should be deducted from the period of six (6) years and eight (8) months from August 7, 1948 to March 7, 1955, when the last warrant of distraint was issued; and that, for legal purposes, less than five (5) years have elapsed, therefore, from the assessment in question to the levy of the last warrant of distraint. Thus, the case at bar hinges on whether the attachment levied upon in Civil Case No. 4862 barred the enforcement of the warrant of distraint issued by the Collector of Internal Revenue on or about November 23, 1949.

In this connection, it is well settled that when personal property is seized on attachment or execution by one officer, or it is taken into his custody and control constructively by some of the means known to the law, it is in custody of law and can not thereafter be seized on execution or attachment by another officer, whether the writs issued from the same or different courts (Robinson vs. Ensign, 6 Gray /Mass./ 300; Watson v. Toffd, 5 Mass. 271; Barrell v. Childs, 46 Ohio St. 557; Odiorne v, Colley, 2 H.H. 66; Burrell v. Letson, 1 Strob. L.[S.C.] 239; Crane v. Freese, 16 N.J.L. 30?; Gonover v. Ruckman, 32 N.J. Eq. 685; West River Bank v. Gorham, 38 Vt. 649; Goffrin v. Smith, 51 Vt. 140; Corning v. Dreyfus, 20 Fed. Rep. 426; Blair v. Cantey, 2 Speer L. [S.C.] 34). Nevertheless, successive liens may be

created in favor of subsequent attaching creditors. The officer is frequently proceeded against as a garnishee (Locke v. Butler, 19 Ohio St. 587;' Bailey v. Childs, h6 Ohio St. 557; Odiorne v. Colley, 2 N.H. 66). But the most general rule requires that all subsequent writs, to be levied on personal property, whether issuing from the same or different courts, shall be placed in the hands of the officer making the first attachment, to be by him served by making a return thereon in the order in which they are delivered to him, in which order successively they take effect as liens upon the residue of the personal property (or proceeds thereof), after satisfying the earlier writ or writs by him served (Simon v. Adler-Goldman Com. Co., 56 Ark. 292, 19.S.W. Rep. 921; Weaver v. Wood, 49 Gal. 297).

> "This view is generally taken that while property in the custody of an officer under process is hot liable to the levy of an attachment or garnishment by another, officer, nevertheless? successive levies may be made on the property by the same officer, and he can be summoned and charged as garnishee with respect to such property, the garnishment binding the property from the time of service of the writ on the officer, subject, of course, to prior levies or garnishments. Furthermore, the United States Supreme Court has ruled that property seized on process by a United States Marshall is subject to constructive levy on an attachment issuing from a state court, subject to the prior right and possession of the Marshall, by giving him the appropriate notice to hold him as garnishee as to any surplus remaining after, the satisfaction of the claim on which he seized the property. By such a constructive levy the attaching creditor obtains the right, after establishing his claim by judgment in the state court and presenting proper proof there of, to appear in the Federal Court as an intervenor arid secure his right to share in the proceeds of the sale of the attached property in his proper order." (4 Am. Jur., p. 799; underscoring ours.)

At any rate, the properties levied upon in said Civil. Case NO. 4862 – and upon which the last warrant of distraint was sought to be levied – consist of real estate of the deceased Restituto Codiñera and the rule regarding successive attachments on immovable property is founded on an altogether different principle than that regarding attachment on personal property. This is because the officer making an attachment upon real estate takes no posession or right of possession of the land, but simply fixes a lien thereon of record (Rule 59, section 7, Rules of Court). Successive attachments may thereafter be placed upon it by the same or another officer, subject, however, to the equity of all prior attachments. But a

prior attachment on land must have been properly made, or it will not prevail against a subsequent valid attachment (Oldham v. Scrivener, 3 3. Mon. [ky.] 579; Kittredge v. Bellows, 7 N.H. 399; Norton v. Babcock, 2 Mete. [Mass.] 510).

Again, property levied upon by order of a competent court, may, with the consent thereof, be subsequently distrained, subject to the prior lien of the attachment creditor. The attachment merely deprives the Collector of Internal Revenue or his agents of the power to divest the Court of its jurisdiction over said property. It does not impair such rights as the Government may have for the collection of taxes. In the language of the Supreme Court of the United States

> "x x x while the lien for taxes must be recognized and enforced, the orderly administration of justice requires this to be done by and under the sanction of the court. It is the duty of the court to see to it that this is done; and a seizure of the property against its will can only be predicated upon the assumption that the court will fail in the discharge of its duty, an assumption carrying a contempt upon its face." (Ex-Parte Tyler, 37 L. Ed. 695; underscoring ours.)

In view of the foregoing, we hold that appellant herein is not entitled to the benefits of the suspension provided for in section 333 of the National Internal Revenue Code and that the decision of the Court of Tax Appeals must be, as it is hereby, affirmed, therefore, without special pronouncement as to costs.

IT IS SO ORDERED.

Paras, C.J. Bengzon Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J.B.L., Endencia, and *Felix, JJ.,* concur

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