

**JUAN DE BORJA, MARCELA DE BORJA, SATURNINA DE BORJA,  
EUFRACIA DE BORJA, CORA DE BORJA, AND OLIMPIA DE BORJA,  
PETITIONERS, VS. HON. EULOGIO MENCINAS, JUDGE OF FIRST  
INSTANCE OF RI...**

*G.R. No. L-20609. November 29, 1967*

Ponente: DIZON, J.

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**DIZON, J.:**

Before Us is a motion for reconsideration filed by respondent Crisanto de Borja praying that our decision rendered in this case "be reconsidered and modified such that the sale of whatever rights, interest and participation of respondent CRISANTO DE BORJA which may be adjudicated to him as a result of the final settlement of the estates, be made only after orders for distribution in both special proceedings shall have been issued, and that delivery thereof be effected in the manner provided by Section 9, Rule 57 of the Rules of Court".

The pertinent portions of our decision read as follows:

"It is a fact that whatever rights, interest and participation Crisanto de Borja has in certain real properties under judicial administration in Special Proceedings Nos. F-7866 and 1955 of the Court of First Instance of Rizal, were properly levied upon pursuant to the writ of execution issued by said court in Civil Case No. 2414. On the other hand, it is beyond question that such rights, interest and participation are subject to attachment and/or levy in execution in accordance with Section 9, Rule 57 of the Rules of Court. The question to be resolved here is whether or not, after the attachment or levy in execution, the rights, interest and participation of Crisanto de Borja in the estate left by decedents Josefa Tangco and Francisco de Borja may be sold at public auction to satisfy the money judgment rendered against him.

"The above question, in our opinion, must be answered in the affirmative, provided it is understood that the sale shall be only of whatever rights, interest and participation may be adjudicated to said heir as a result of the final settlement of the estates, and that delivery thereof to the judgment creditor or to the purchaser at the public sale thereof shall be made only after the final settlement of the estates in the manner provided by the legal provision mentioned above.

"WHEREFORE, modifying and/or clarifying the appealed order in the manner stated in the next preceding paragraph, judgment is hereby rendered directing the respondent court to proceed accordingly. Without costs."

Respondent's contention that the sale of whatever rights, interest and participation he might have in the estates under judicial administration in Special Proceedings Nos. 7866 and 1955 of the Court of First Instance of Rizal may be made only after orders for distribution in both special proceedings shall have been issued is untenable.

In *Gotuaco and Co., vs. Register of Deeds of Tayabas*, 59 Phil. 756, We held that the participation of an heir in an estate under judicial administration, albeit indeterminate before the final liquidation of the estate, may be attached and sold.

In *Jacosalem vs. Rafols et al.*, 73 Phil. 628, We likewise held that while ordinary execution of property in custodia legis is prohibited in order to avoid interference with the possession by the court, yet, the sale made by an heir of his share in an inheritance, subject to the result of the pending administration, in no wise stands in the way of such administration and is, there-fore, valid, with the understanding, however, that it would be effective only as to the portion to be adjudicated to the vendor upon the partition of the property under administration.

From the foregoing it is clear that whatever rights, interest and participation belong to respondent Crisanto de Borja in the real properties under judicial administration in the special proceedings mentioned heretofore - which have been properly levied upon pursuant to a writ of execution issued in Civil Case No. 2414 - may be sold in accordance with law, with the understanding that the sale is not of any definite and fixed share in any particular property, but only of what might be adjudicated to said respondent upon the final liquidation of the estates already mentioned. The sale, once made, shall be submitted to the probate court with jurisdiction over the aforesaid special proceedings for proper consideration upon the final liquidation of said estates.

WHEREFORE, the motion for reconsideration is denied.

Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.  
Concepcion, C.J., and Reyes, J., on official leave absence.

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