

**RIZAL SURETY AND INSURANCE COMPANY, INC., PETITIONER, VS.
BIENVENIDO A. TAN, JUDGE OF THE COURT OF FIRST INSTANCE OF
RIZAL, BIBIANO L. MEER, COLLECTOR OF INTERNAL REVENUE,
GREGO...**

G.R. No. L-1861. May 27, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

On September 19, 1947, Judge Ambrosio Santos of the Court of First Instance of Rizal rendered judgment in favor of the plaintiff and against the defendants in civil case No. 167 of said court, entitled "Rizal Surety and Insurance Company, Inc., plaintiff, vs. Gregorio Gutierrez, Sofronio S. Pasola, and Benito D. Guevara, defendants," foreclosing a real estate mortgage executed by the defendant Gregorio Gutierrez in favor of the plaintiff. On October 9, 1947, the Collector of Internal Revenue, through an assistant provincial fiscal of Rizal, filed in said case a "motion to set aside judgment and allow the Collector of Internal Revenue to intervene as party plaintiff," alleging that two of the defendants, namely, Sofronio S. Pasola and Benito D. Guevara, were indebted to the Republic of the Philippines in the amount of P15,727 as deficiency specific tax. There is no allegation in the motion that the Government had any registered lien on the property the mortgage on which was sought to be foreclosed by the plaintiff, it appearing from the complaint that the mortgagor of said property was the other defendant Gregorio Gutierrez. Over the opposition of the plaintiff, the respondent judge granted the motion of the Collector of Internal Revenue and set aside the judgment in said case "to allow the Collector of Internal Revenue to present a claim of the Government against any of the parties interested in this case."

The present petition for certiorari was filed in this court by the Rizal Surety and Insurance company, Inc., to annul said order of the respondent judge. Upon being required to answer the petition the collector of Internal Revenue, through the First Assistant Solicitor General, submitted the case for decision without filing an answer.

The petition is meritorious. No relation has been shown between the claim of the Collector of Internal Revenue for deficiency specific tax against two of the defendants and the cause of action of the plaintiff against the three defendants in said case to justify the intervention of the said Collector of Internal Revenue therein as party plaintiff. It is not explained why the Collector of Internal Revenue could not file a separate action or pursue an independent remedy against the alleged delinquent taxpayers. Sections 1 and 3 of Rule 13 of the Rules of Court provide as follows:

"SECTION 1. When proper.—A person may, at any period of a trial, be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof."

"SEC. 3. Discretion of court.—In allowing or disallowing a motion for intervention, the court, in the exercise of discretion, shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the

rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding."

The case of the Collector of Internal Revenue does not come within the purview of the above-quoted provisions of the rule he invoked in the lower court. The Government has not shown that it has "legal interest in the matter in litigation," on the one hand, and, on the other, it was apparent that the intervention would unduly delay or prejudice the adjudication of the rights of the original parties. Moreover, "the intervenor's rights may be fully protected in a separate proceeding." Furthermore, the motion for intervention was filed after the trial and decision of the original case and therefore out of time.

Hence the respondent judge acted without authority of law and in excess of his jurisdiction in granting the motion for intervention and in setting aside the judgment rendered in said civil case No. 167.

The petition is granted and the order of the respondent judge of November 21, 1947, is hereby set aside, without any finding as to costs. So ordered.

Moran, C. J., Paras, Feria, Pablo, Perfecto, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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