

**CRISANTO DE BORJA, IN HIS CAPACITY AS ADMINISTRATOR OF THE
INTESTATE ESTATE OF MARCELO DE BORJA, PETITIONER, VS.
DEMETRIO B. ENCARNACION, JUDGE OF THE COURT OF FIRST
INSTANCE OF...**

G. R. No. L-4179. May 30, 1951

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for certiorari to review an order of execution of another order, which had been or was. to be appealed, directing the herein petitioner, Crisanto de Borja, in his capacity as administrator of the intestate estate of Marcelo de Borja pending in the Court of; First Instance of Rizal, "to deliver the properties assigned in the project of partition to the heirs, Marcela, Saturnina, Juan, Eufrasia, Jacoba and Olimpia, all surnamed De Borja, within five days."

The main controversy: turns upon the soundness of the order execution of which is contested. Decision on this issue will unavoidably deal with the merits of his appeal from the main order. Sufficiency of the reasons for execution, as we see it, occupies a minor and secondary role in the petitioner's pleadings and memorandum. For sure, this latter phase of the petition for certiorari offers less vulnerability to attack.

A brief sketch of the background of the two orders may not be amiss.

Marcelo de Borja had. left upon his death considerable property consisting mostly of lands, and the. proceedings for the settlement of his estate were commenced in the Court of First Instance of Rizal about thirty years ago and are still pending.

Quintan de Borja, now deceased, was a son and heir of Marcelo de Borja, and the herein respondents are his only children. Crisanto de Borja, the petitioner, is one of Marcelo's several surviving children and direct heirs as well as an, administrator of Marcelo's estate.

As long ago as February, 1940, the probate court approved a, project of partition, which is now final. That project of partition allotted to the estate, of Quintin de Borja, then already deceased, certain properties as his share in the inheritance with this proviso: that "before delivery of the properties adjudicated to the testate estate of Quintin de Borja, the administrator of his estate (shall) execute the corresponding document of transfer in favor of the intestate estate of Marcelo de Borja, of all the rights, interests,, and participations that said Quintin de Borja has in civil case No. 6190 in the Court of First Instance of Nueva Ecija entitled 'Quintin de Borja versus Feliciano Mariana.'" The Nueva Ecija litigation referred to involved real properties registered in Quintin de Borja's name but claimed to be a part of Marcelo de Borja's estate; and. to, pave the way for the partition, which Quintin de Borja's, children keenly desired, the latter agreed to transfer those properties, to Marcelo de Borja's intestate estate.

In pursuance of the terms of the partition,. Marcela de Borja Vda. de Torres, as special administratrix of the estate

of Quintin de Borja, on July 6, 1950 made a deed deaominated "Cession of Rights," the pertinent part of which "sets and transfers absolutely and irrevocably unto Crisanto de Borja in his capacity as administrator, of the estate of. Marcelo de Borja (special proceedings No, 2414 Court of First Instance, of. Rizal) all of the rights, interests, and participations of the estate of Quintin. de Borja, in civil case No. 6190 of the Court of First Instance, of Nueva Ecija, entitled 'Quintin de Borja versus Feliciano Mariano,' excepting therefrom the house of Feliciano Mariano declared under tax No. 10300 which is assigned, to. the heirs of Quintin. de Borja under the Project of Partition."

It was on the strength of this cession of rights that the court issued the order whose execution Crisanto de Borja, the petitioner, wanted to stop.

Many matters have been injected into the pleadings, including charges and countercharges of maladministration, but, stripped of verbiage and irrelevancies, the parties' contentions settle down to the single proposition of whether the so-called cession of rights complies with the condition imposed in the project of partition as a prerequisite to the delivery to Quintin de Borja's estate of the properties assigned to Quintin de Borja.

Chief ground of objection to the sufficiency of the deed of conveyance is that this document is unregistrable because it does not contain either the description of the lands to which it refers or the number of the transfer certificate of title to those parcels.

No copy of the project of partition as approved is on the record, but the petitioner's application for certiorari quotes the portion of the partition which contains the description of the properties. The description says "all the rights, interests and participations that said Quintin de Borja has in civil case No. 6190 of the Court of First Instance of Nueva Ecija entitled 'Quintin de Borja versus Feliciano Mariano'." This description tallies with the description in the instrument which Quintin de Borja's children have executed, except in one respect which is the subject of another objection. And it is not denied, and in the circumstances it is to be presumed, that this description covers the entire rights or properties which the respondents, as Quintin de Borja's heirs, bound themselves to grant to Marcelo de Borja's estate. Hence, with that description the exact identity of the properties and the corresponding certificate of title can be determined with certainty by simply consulting the record of civil case No. 6190 of the Court of First Instance of Nueva Ecija.

Supposing that the cession of rights suffers defects, the defects are at best not fundamental, and at the worst not so serious as to be beyond easy cure. If the parties were imbued with good will and honest intentions, they could, with the aid of the court if the court's intervention be invoked, iron out differences so trifling. The respondents have expressed willingness to do what might be needed to put the conveyance in proper shape. The administrator could or should make a concrete suggestion regarding the form of the deed which would satisfy him if he were eager to reciprocate and cooperate in the efforts to close a protracted administration that has eaten up a goodly portion of the estate's assets.

No possible detriment to the estate or other heirs is likely to result from immediate approval of the deed of conveyance executed by the respondents. The bond filed by the latter is adequate protection to Marcelo de Borja's estate against any adverse contingencies that might arise from whatever infirmity the deed may have, pending reformation of that deed. Judge Encarnacion's order is not final to the extent of preventing the court from modifying it or supplementing the same with a new disposition conducive to the complete fulfillment by the respondents of their part of the agreement.

The agreement of partition obligates the administrator to turn Quintin de Borja's share in the inheritance to Quintin de Borja's testate estate, but the court's order, the petitioner complains, decrees the delivery made to Joaquin de Borja's children instead. In justification for this deviation it is pointed out that these children have been declared as their father's sole heirs in Quintin de Borja's testate proceeding in the Nueva Ecija court.

As far as we can see, the petitioner has no cause to fuss over the change or departure he complains of. Delivery to the estate or to the heirs directly ought to make no difference to him. It has been seen that the respondents make up all the heirs that have been declared entitled to inherit from their father; what is more, one of them is the administratrix of Quintin de Borja's estate. In the remote possibility that other heirs or some creditors of Quintin de Borja should emerge and protest, the respondents and- not the petitioner would be called to account. At any rate, he is sufficiently, protected by the court's order.

The last objection, made in the petitioner's reply to respondents' answer, to the effect that turning Quintin de Borja's share directly over to his children and heirs instead of to Quintin de Borja's personal representative would exempt the properties from the payment of inheritance tax,, violate section 107 of the Internal Revenue Law (Commonwealth Act No. 466) and would subject the petitioner to penal liability, is not well taken. In the first place, tax evasion is the court's and the tax collector's worry, and in the second place, the court's order should shield the petitioner from any possible criminal prosecution—admitting, without deciding, that prosecution would lie. No prosecutor would institute criminal proceeding, against a judicial administrator, and no court would convict one, for doing no more than obey a competent court's directive issued against his will and over his protest.

The special reasons given for the immediate execution of the order of July 18, 1950, are set forth, in the subsequent order transcribed, in the petition. Says the court:

* * * * *

"This, intestate proceedings, has been pending in this court for almost 29. years now. The. Court can not in justice continue to withhold from the heirs this, estate the possession and enjoyment of the properties assigned to them in. the Project of Partition. As a necessary precaution, however, the court required the heirs to post adequate and sufficient bond to respond for any lawful obligation that may be adjudged against them, if any, later on.

"It will, be observed that this; court has made similar orders for the delivery of the inheritance assigned to the other heirs of this estate. No appeal has been interposed against any of them. The court therefore understands that the other heirs have already received:from the administrator the properties adjudicated to them, or that the same is in process. It is repugnant to all' sense of fairness and justice to withhold from one group of: heirs the inheritance due them when the others have already received theirs, or are about to do so. Even if all «f the heirs are not similarly placed, the fact remains that the administrator or any other party is duly protected and can 'find relief, if he is entitled to any, against the bonds that the heirs have posted.

"It is the desire of this court to close this proceedings as promptly as practicable. The court expects co-operation from all the parties, principally the administrator and admonishes them to refrain from taking any step tending to delay the speedy settlement of this estate,"

Quite apart from the reasons just specified, it is alleged and not denied that the lands assigned to Quintin deTJorja's estate are the only properties that still remain in petitioner's hands as administrator of Marcelo de Borja's estate, so that all the administration expenses and the administrator's fees are being borne by Quintin de Borja's children. Aggravating this injustice are allegations that speak none too highly of the administrator's management.

In conclusion, the grounds alleged in support of the opposition to the execution decreed by the respondent judge are trivial or unmeritorious. So far from exceeding his jurisdiction or abusing his discretion, His Honor made, in our opinion, a wise and commendable decision. In view of all the circumstances, nothing short of insurmountable obstacles should deprive the respondents much longer of the possession and enjoyment of the properties which are theirs by final adjudication and which they of right are entitled to work personally and store efficiently at less cost. Supersedeas bond would hardly be an adequate measure to prevent the unfairness of further putting off the

carrying out of the order of partition.

The petition is therefore denied with costs, which shall not be paid out of any income from the properties herein involved nor charged to the administration of said properties by the petitioner.

Paras, C. J., Feria, Pablo, Begzon, Montemayor, Jugo and Bautista, Angtfo, JJ., concur.

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