

**CIRILO MODESTO, PETITIONER, VS. JESUS MODESTO, ET AL., ETC.,
RESPONDENTS.***G.R. No. L-11801. June 30, 1959*

Ponente: MONTEMAYOR, J.

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This is a petition for certiorari and for a writ of preliminary injunction filed by Cirilo Modesto to set aside the order of the Court of First Instance of Leyte dated March 8, 1954, the writ of execution dated April 27, 1954 as well as the alias writ of execution dated November 10, 1955.

The facts in this case are not in dispute. It would appear that Bruno Modesto died leaving several heirs, among them, Cirilo Modesto and Jesus Modesto. In the course of the intestate proceedings, Jesus Modesto, acting as administrator of the estate of Bruno, filed on November 7, 1953, in the Court of First Instance of Tacloban, Leyte, a motion to cite and examine under oath several persons, especially Cirilo Modesto, regarding properties concealed, embezzled or fraudulently conveyed. On December 7, 1953 the court issued an order appointing the Provincial Sheriff of Leyte and the Chief of Police of Tanawan, Leyte, as joint commissioners, to verify and ascertain persons who were holding, claiming or possessing properties belonging to the estate of the deceased Bruno Modesto. In said motion of Jesus Modesto he listed said properties supposed to belong to the estate, classified as follows: jewels under items 1, 2 and 3; furniture and other personal properties under items 4-10; the 11th item is supposed to be cash taken from a deposit in the Office of the Chief of Police of Tanawan, Leyte, after taking funeral and other expenses, in the amount of P1,700; and real properties under items 12-26.

On January 12, 1954, the joint commissioners submitted their report. On March 1, 1954 Jesus Modesto, administrator, filed a motion in court to require Cirilo Modesto to turn over to him as administrator the personal properties belonging to the intestate supposed to be in Cirilo's possession. Pursuant to said motion, the trial court, on March 8, 1954, issued an order requiring Cirilo Modesto to deliver to the administrator personal properties listed in the order, such as one narra aparador, 1 desk, 1 looking glass 5x3 ft., 1 trunk containing clothes, 1 bicycle, 11 pieces of steel matting and money said to have been taken from a deposit made with the Chief of Police in the amount of P1,700.00. Thereafter, on April 27, 1954, a writ of execution was issued and on May 10, 1955 an alias writ, of execution was also issued by the trial court. By virtue of said writ of execution the Provincial Sheriff issued a Notice of Attachment against the real property described in Certificate of Title No. 30167 of the Register of Deeds of Leyte and under Tax Assessment in the name of Cirilo Modesto,

On June 2, 1955 Cirilo Modesto filed an Urgent Motion to Set Aside the Writ of Execution and for a Writ of Preliminary Injunction, which motion was opposed by Jesus. On June 4, 1955 the Provincial Sheriff sold at public auction the real property above-mentioned to the highest and only bidder Jesus Modesto for P2,454.92 and on June 6, 1956, the Provincial Sheriff issued a Sheriffs Certificate of Final Sale in favor of Jesus. On June 29, 1956 Jesus Modesto filed a Motion for a writ of Possession. On July 11, 1956 Cirilo filed his Motion for Reconsideration of the order dated June 4 which the trial court denied. On August 3, 1956, in pursuance of the motion for a Writ of Possession, the Provincial Sheriff issued a notification to Cirilo placing Jesus in possession

of the real property sold to him. Cirilo then filed the present petition for certiorari to annul the proceedings had before the Court of First Instance of Leyte.

The trial court, in issuing its order of March 8, 1954 requiring Cirilo to deliver the properties listed therein to Jesus as administrator, supposedly acted under the provisions of Section 6, Rule 88 of the Rules of Court which reads as follows:

"Sec. 6. Proceedings when property concealed, embezzled, or fraudulently conveyed.—If an executor or administrator, heir, legatee, creditor, or other individual interested in the estate of the deceased, complains to the court having jurisdiction of the estate that a person is suspected of having concealed, embezzled, or conveyed away any of the money, goods or chattels of the deceased, or that such person has in his possession or has knowledge of any deed, conveyance, bond, contract, or other writing which contains evidence of or tends to disclose the right, title, interest, or claim of the deceased to real or personal estate, or the last will and testament of the deceased, the court may cite such suspected person to appear before it and may examine him on oath on the matter of such complaint; and if the person so cited refused to appear, or to answer on such examination or such interrogatories as are put to him, the court may punish him for contempt, and may commit him to prison until he submits to the order to the court. The interrogatories put to any such person, and his answers thereto, shall be in writing and shall be filed in the clerk's office."

In this the trial court committed error because the purpose of the section above-reproduced, which section was taken from Section 709 of Act 190, is merely to elicit information or to secure evidence from those persons suspected of having possessed or having knowledge of the properties left by a deceased person, or of having concealed, embezzled or conveyed any of the said properties of the deceased. In such proceedings the trial court has no authority to decide whether or not said properties, real or personal, belong to the estate or to the persons examined. If, after such examination there is good reason to believe that said person or persons examined are keeping properties belonging to the estate, then the next step to be taken should be for the administrator to file an ordinary action in court to recover the same (*Alafriz vs. Mina*, 28 Phil., 137; *Cui vs. Piccio*, 91 Phil., 713; 48 Off. Gaz. [7] 2769; *Changco vs. Madrelejos*, 12 Phil., 543; *Guanco vs. PNB*, 54 Phil., 244, cited in *Moran's Rules of Court*, Vol. 2 1957 Edition, pp. 443-444).

The order requiring Cirilo to deliver the properties and cash stated in the order, as belonging to the estate, said that Cirilo was supposed to have admitted having received or taken possession of said properties after the death of Bruno. This statement or findings of the lower court is not supported by the evidence on record. As a matter of fact, in the answer of Cirilo to the motion of the administrator, he claimed that although he held the aparador mentioned in Item 4 in the list of properties, nevertheless, said furniture belonged to their parents and so Bruno Modesto had only 1/6 share; that he, Cirilo, did not have the looking glass mentioned in the motion because the same had been taken by Jesus himself, neither did he have the desk in question; that though he held a trunk, it was empty and only contained clothes which were torn; that the bicycle in question was in the possession of Mauricio Modesto, the nephew of Bruno; that he, Cirilo, did not keep the 11 pieces of steel matting; neither did he ever receive the amount of P1,700.00 supposed to have been deposited in the office of the Chief of Police. But, even if Cirilo had admitted possession of the properties which he was required by the court to deliver to Jesus, still it was necessary for the ordinary courts, not the probate court, to determine the title and ownership of said properties.

In view of the foregoing, the petition for certiorari is hereby granted and the order of the trial court of March 8, 1954, the Writ of Execution of April 27, 1954 and the alias Writ of Execution of May 10, 1955, and of course the sale made by the Sheriff of the real property covered by Certificate of Title No. 30167 are set aside. Respondent Jesus Modesto will pay the costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Concepcion, Endencia, and Barrera, JJ., concur.

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