

HEIRS OF PEDRO REGANON, JOVENCIA REGANON, MENCIAS REGANON, JOSEFA REGANON, VIOLETA REGANON AND FLORA REGANON, PLAINTIFFS-APPELLEES, VS. RUFINO IMPERIAL, DEFENDANT-APPELLANT.

G.R. No. L-24434. January 17, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

This is an appeal from the orders dated June 9, 1964, July 14 1964 and August 11, 1964, respectively, of the Court of First Instance of Zamboanga del Norte (Dipolog, Branch II).

The facts of the case are admitted by both parties.

On February 22, 1963, the heirs of Pedro Reganon filed a complaint for recovery of ownership and possession of about one-hectare portion of a parcel of land (Lot No. 1 or Lot No. 4952, situated at Miasi, Polanco, Zamboanga del Norte, covered by O.T.C. No. 1447, with an area of 7.9954 hectares), with damages, against Rufino Imperial.

Defendant not having filed an answer within the reglementary period, the plaintiffs on April 8, 1963 filed a motion to declare the former in default. The trial court granted the motion in its order dated April 10, 1963.

On April 23, 1963, the plaintiffs presented their evidence ex parte before the Clerk of Court acting as Commissioner.

The court a quo on May 6, 1963, rendered a decision declaring the plaintiffs lawful owners of the land in question and entitled to it peaceful possession and enjoyment; ordering defendant immediately to vacate the portion occupied by him and to restore the peaceful possession thereof to plaintiffs; and sentencing defendant to pay plaintiffs the amount of P1,929.20 and the costs.

On November 29, 1963, the plaintiffs filed a motion for issuance of a writ of execution. This was granted by the trial court in its order of December 9, 1963.

The Deputy Provincial Sheriff submitted on February 8, 1964 a sheriff's return of proceedings reporting the garnishment and sale of a carabao and goat belonging to defendant for P153.00, and the attachment and sale of defendant's parcel of land covered by Tax Declaration No. 4694, situated in Sictet, Polanco, Zamboanga del Norte, for P500.00 - both sales having been made to the only bidder, plaintiffs' counsel Atty. Vic T. Lacaya.

On March 13, 1964, the Philippine National Bank deposited in the Philippine National Bank-Dipolog Branch the residuary estate of its former ward, Eulogio Imperial, in the sum of P10,303.80, pursuant to an order of Branch I of the Court of First Instance of Zamboanga del Norte in Sp. Proc. No. R-145.

On May 25, 1964, the heirs of said Eulogio Imperial, one of whom is defendant, executed a Deed of Extrajudicial Partition of the residuary estate, wherein was apportioned P1,471.97 as defendant Rufino Imperial's share.

Informed of this development, the plaintiffs filed on June 5, 1964 an ex parte motion for issuance of an alias writ of execution and of an order directing the manager, or the representative, of the Philippine National Bank-Dipolog Branch, to hold the share of defendant and deliver the same to the provincial sheriff of the province to be applied to the satisfaction of the balance of the money judgment. This was granted by the trial court (Branch II) in its order dated June 9, 1964.

On June 17, 1964, the Deputy Provincial Sheriff issued a sheriff's notification for levy addressed to defendant, giving notice of the garnishments of the rights, interests, shares and participation that defendant may have over the residuary estate of the late Eulogio Imperial, consisting of the money deposited in the Philippine National Bank-Dipolog Branch.

Defendant, through counsel, appearing for the first time before the trial court, on June 24, 1964 filed a motion for reconsideration of the order dated June 9, 1964, and to quash the alias writ of execution issued pursuant to it, to which plaintiffs filed their opposition on July 6, 1964. On July 14, 1964, the trial court denied defendant's aforesaid motion.

Defendant's second motion for reconsideration likewise having been denied by the trial court in its order of August 11, 1964, defendant appealed to Us, raising the following issues:

(1) Upon the death of a ward, is the money accumulated in his guardianship proceedings and deposited in a bank, still considered in custodia legis and therefore not subject to attachment?

(2) Is the residuary estate of a U.S. veteran, which consists in the aggregate accumulated sum from the monthly allowances given him by the United States Veterans Administration (USVA) during his lifetime, exempt from execution?

Defendant-appellant argues that the property of an incompetent under guardianship is in custodia legis and therefore can not be attached.

It is true that in a former case^[1] it was held that property under custodia legis can not be attached. But this was under the old Rules of Court. The new Rules of Court^[2] now specifically provides for the procedure to be followed in case what is attached is in custodia legis.^[3] The clear import of this new provision is that property under custodia legis is now attachable, subject to the mode set forth in said rule.

Besides, the ward having died, the guardianship proceedings no longer subsist:

"The death of the ward necessarily terminates the guardianship, and thereupon all powers and duties of the guardian cease, except the duty, which remains, to make a proper accounting and settlement in the probate court."^[4]

As a matter of fact, the guardianship proceedings was ordered conditionally closed by Branch I of the Court of First Instance of Zamboanga del Norte in which it was pending, in its order of February 8, 1964, where it stated -

"In the meantime, the guardian Philippine National Bank is hereby directed to deposit the residuary estate of said ward with its bank agency in Dipolog, this province, in the name of the estate of the deceased ward Eulogio Imperial, preparatory to the eventual distribution of the same to the heirs when the latter shall be known, and upon proof of deposit of said residuary estate, the guardian Philippine National Bank shall forthwith be relieved from any responsibility as such, and this proceedings shall be considered closed and terminated."^[5]

And the condition has long been fulfilled, because on March 13, 1964 the Philippine National Bank Manila deposited the residuary estate of the ward with the Philippine National Bank-Dipolog Branch, evidenced by a

receipt attached to the records in Sp. Proc. No. R-145.[6]

When Eulogio Imperial died on September 13, 1962, the rights to his succession - from the moment of his death - were transmitted to his heirs, one of whom is his son and heir, defendant-appellant herein.[7] This automatic transmission can not but proceed, with greater ease and certainty than in this case where the parties agree that the residuary estate is not burdened with any debt. For,

"The rights to the succession of a person are transmitted from the moment of death, and where, as in this case, the heir is of legal age and the estate is not burdened with any debts, said heir immediately succeeds, by force of law, to the dominion, ownership, and possession of the properties of his predecessor and consequently stands legally in the shoes of the latter." [8]

That the interest of an heir in the estate of a deceased person may be attached for purposes of execution, even if the estate is in the process of settlement before the courts, is already a settled matter in this jurisdiction.[9]

It is admitted that the heirs of Eulogio Imperial, including herein defendant-appellant, have on May 25, 1964 executed a Deed of Extrajudicial Partition. This instrument suffices to settle the entire estate of the decedent - provided all the requisites for its validity are fulfilled[10] - even without the approval of the court. Therefore, the estate for all practical purposes has been settled. The heirs are at full liberty to withdraw the residuary estate from the Philippine National Bank-Dipolog Branch and divide it among themselves. The only reason they have not done so is because of the alleged illegal withdrawal from said estate of the amount of P1,080.00 by one Gloria Gomez by authority of Branch I of the Court of First Instance of Zamboanga del Norte, which incident is now on appeal before the Court of Appeals. This appeal, however, does not detract any from the fact that the guardianship proceedings is closed and terminated and the residuary estate no longer under custodia legis.

Finally, it is defendant-appellant's position that the residuary estate of Eulogio Imperial, a former U.S. veteran, having been set aside from the monthly allowances given him by the United States Veterans Administration (USVA) during his lifetime, is exempt from execution.

Any pension, annuity, or gratuity granted by a Government to its officers or employees in recognition of past services rendered, is primordially aimed at tiding them over during their old age and/or disability. This is therefore a right personalissima, purely personal because founded on necessity. It requires no argument to show that where the recipient dies, the necessity motivating or underlying its grant necessarily ceases to be. Even more so in this case where the law[11] providing for the exemption is calculated to benefit U.S. veterans residing here, and is therefore merely a manifestation of comity.

Besides, as earlier stated, the heirs of Eulogio Imperial, one of whom is appellant, have already executed a Deed of Extrajudicial Partition - the end result of which is that the property is no longer the property of the estate but of the individual heirs. And it is settled that:

"When the heirs by mutual agreement have divided the estate among themselves, one of the heirs can not thereafter secure the appointment of an administrator to take charge of and administer the estate or a part thereof. The property is no longer the property of the estate, but of the individual heirs, whether it remains undivided or not." [12]

WHEREFORE, the orders appealed from are hereby affirmed, with costs against defendant-appellant.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Asia Banking Corp. v. Elser, 54 Phil. 994.

[2] Effective January 1, 1964.

[3] "If the property sought to be attached is in custodia legis, copy of the order of attachment shall be filed with the proper court and notice of the attachment served upon the custodian of such property." (Rule 57, Sec. 7, last par., new Rules of Court)

[4] 39 C.J.S. pp. 61-62; citing Armon vs. Craig, 214 N.W. 556, 203 Iowa 1338, and Greever et al. vs. Barker, et al., 289, S.W. 586, 316 Mo. 308.

[5] Pp. 82-83, Record on Appeal; underscoring Ours.

[6] Pp. 42-43, Record on Appeal.

[7] See Art. 777, New Civil Code; Butte v. Uy & Sons, L-15499, Feb. 28, 1962.

[8] Cuevas v. Abesamis, 71 Phil. 147.

[9] De Borja, et al. v. De Borja, et al., L-14851, Aug. 31, 1961.

[10] See Sec. 1, Rule 74, new Rules of Court.

[11] Republic Act No. 360, approved June 9, 1949.

[12] Alcala v. Pabalan, et al., 19 Phil. 520; underscoring Ours.

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