

HOLLANDA A.S. EVANGELISTA, AS SPECIAL ADMINISTRATRIX OF THE ESTATE OF THE LATE MANUEL ABAD SANTOS, PETITIONER, VS. LA PROVEEDORA, INC., THE HON. ANDRES C. AGUILAR, PRESIDING JUD...

G.R. No. L-32824. March 31, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is a petition for certiorari to annul the writ of execution, and the subsequent proceedings which took place by virtue thereof, in Civil Case No. 2516 of the Court of First Instance of Pampanga, Branch II (Guagua), entitled "La Proveedora, Inc., vs. Manuel Abad Santos." None of the respondents filed an answer to the petition. The petitioner waived presentation of a memorandum in lieu of oral argument, and the case was considered submitted for decision on the basis of the petition and the supporting copies of the record in the lower court.

It appears that in the aforesaid Civil Case No. 2516 the respondent Court rendered judgment on August 23, 1969, as follows:

"IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered in favor of the plaintiff, LA PROVEEDORA, INC. and against the defendant, MANUEL ABAD SANTOS. The said defendant is ordered to pay to the plaintiff corporation the sum of P18,000.00, representing the unpaid difference in the rent of the premises from February, 1957, to January 1965, and an additional amount of P2,000.00 as reasonable attorney's fees, with legal interest from the date of this judgment and to pay the costs."

On June 2, 1970 Manuel Abad Santos, the judgment debtor died in the City of Angeles. Subsequently, or on September 30, 1970, the respondent Court issued a writ of execution, pursuant to which respondent Pro-vincial Sheriff levied on a parcel of land and on the house situated thereon, both owned by the deceased Manuel Abad Santos and covered by Transfer Certificate of Title No. 22937-M of the land records of the City of Angeles. The auction sale was scheduled for November 23, 1970.

In the meantime an intestate proceeding for the settlement of the estate of Manuel Abad Santos was filed in the Court of First Instance of Pampanga, Branch IV (Angeles City), docketed as Special Proceeding No. A-40. On November 23, 1970 the petitioner herein, Hollanda A.S. Evangelista, was appointed special adminis-tratrix of the intestate.

On November 11, 1970, even prior to her appoint-ment, having been notified of the writ of execution and the scheduled auction sale of the properties levied upon, the petitioner informed the respondent Provincial Sheriff of the death of the judgment debtor and demanded that he desist from proceeding with the sale. This was followed by an urgent motion in court that the writ of execution be recalled, but the motion was denied and the sale was carried out, wherein respondent La Proveedora, Inc. was the highest bidder.

The provisions of the Rules of Court on the matter at hand are clear. Section 7 of Rule 39 says:

"SEC. 7. Execution in case of death of party. - Where a party dies after the entry of the judgment or order, execution thereon may issue, or one already issued may be enforced in the following cases:

x x x

(c) In case of the death of the judgment debtor after execution is actually levied upon any of his property, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the corresponding executor or administrator for any surplus in his hands."

Note that the property levied upon in case the judgment debtor dies after the entry of judgment, as in this case, may be sold for the satisfaction of the judgment in case death occurs "after execution is actually levied." On the other hand, Section 5 of Rule 86 provides that a judgment for money against the decedent must be filed with the court in the proceeding for the settlement of the estate. In other words, the cut-off date is the date of actual levy of execution. If the judgment debtor dies after such levy, the property levied upon may be sold; if before, the money judgment must be presented as a claim against the estate, although of course the same need no longer be proved, the judgment itself being conclusive. But the judgment creditor will share the estate with other creditors, subject only to such preferences as are provided by law.

Since in this case the death of the deceased Manuel Abad Santos preceded the levy of execution on his properties, the judgment against him should be presented as a claim against his estate, and the sale at auction carried out by the sheriff is null and void.

WHEREFORE, the questioned writ of execution and all proceedings which took place by virtue thereof, including the sale itself and its registration, if it has been registered, are ordered set aside and cancelled. Costs against respondent Proveedora, Inc.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Dizon, J., took no part.

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