

INTESTATE ESTATE OF THE DECEASED MARCELO DE BORJA. DR. CRISANTO DE BORJA, ADMINISTRATOR. JUAN DE BORJA, ET AL., OPPOSITORS AND APPELLEES, VS. JOSE DE BORJA, ETC., THIRD-PARTY CL...

G.R. No. L-14851. August 31, 1961

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

In July 1957, this Supreme Court in G. R. No. L-6622 affirmed the decision of the Rizal Court of first instance that ordered Crisanto de Borja to pay Juan, Marcela, Saturnina, Eufracia, Jacoba and Olimpia, all surnamed Borja, but reducing the amount to P46,210.78 plus legal interest. This decision having become final, the clerk of court, at the request of the judgment-creditors issued a writ of execution. The sheriff, complying therewith, levied in April 1958 on the rights, interest or participation of Crisanto de Borja as prospective heir of the decedents Josefa Tangco and Francisco de Borja in certain specified real estate in the province of Rizal.

Thereafter, Jose de Borja as administrator of the estate of Josefa Tangco filed with the sheriff a third party claim asserting that the properties belong to the estate of the deceased Josefa Tangco under liquidation in special proceedings No. 7866 of the Court, and that, consequently, they were in custodia legis. Acting upon this opposition, the sheriff required the judgment creditors to post a bond of P2,500,000.00. The latter resorted to the Court contending it was unnecessary to do so. On the other hand, the administrator contended that the levy was improper. The issues thus raised were, after argument, decided as follows: the levy was proper, and as the oppositors did not submit to the court a copy of their third party claim, the sheriff went beyond his powers in requiring submission of a bond. Therefore, it ordered the sheriff to proceed with the execution even without a bond.

The administrator appealed.

There is no doubt 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 process of settlement before the courts. This is quite clear from a reading of section 14, Rule 39, in connection with section 7(f), Rule 59, which permits the attachment of "the interest of the defendant in property belonging to the estate of a decedent, whether as heir, legatee, etc." As stated in *Cook vs. Escobar*[1]"when a person dies and his properties are placed under judicial administration, during the pendency of such administration, the right, title, and interest which the heirs, devisees or legatees may have in the properties may be attached subject to the administration of the estate. The administrator retains control over the properties and will still have the power to sell them, if necessary, for the payment of the debts of the deceased."

"Although the value of the participation of Rafael Vilar in the estate of Florentino Vilar was indeterminable before the first liquidation of the estate, nevertheless, the right of participation in the estate and the lands thereof may be attached and sold." (*Gotauco & Co. vs. Register of Deeds of Tayabas*, 59 Phil. 756)

But, appellant argues, the fact of Crisanto's heirship is not a proper subject of inquiry in this proceeding. It is enough to explain that the attachment speaks of Crisanto de Borja as prospective heir of Josefa Tangco and Francisco de Borja, and as there is no question that he is a son of the said two spouses, now deceased, he is a "prospective" heir.

As to the bond, we also think the judgment-creditors are not required to file a bond, because this is not really a third-party claim, since the administrator does not dispute that Crisanto is an heir, or at least a "prospective" heir of Josefa Tangco. In other words, there is actually no conflict between the interest of Crisanto de Borja (which is attached) and the interest of Josefa Tangco (or of the administrator); for as already explained, the attachment is in all respects subject to the administration of the estate.

The appealed order is affirmed, with costs.

Padilla, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

Bautista Angelo, J., on leave.

Labrador, J., took no part.

[1] G. R. No. 27909, November 9, 1927 (Moran, Rules of Court Vol. II 1957 Ed. p. 31).

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