

**JUAN DE BORJA, MARCELA DE BORJA, SATURNINA DE BORJA,
EUFRACIA DE BORJA, JACOB A DE BORJA AND OLIMPIA DE BORJA,
PETITIONERS, VS. HON. EULOGIO MENC IAS, JUDGE OF THE COURT
OF FIRST ...**

G.R. No. L-20609. September 29, 1966

Ponente: DIZON, J.

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DIZON, J.:

Original petition filed by Juan, Marcela, Saturnina, Eufracia, Jacoba and Olimpia, all surnamed De Borja, to set aside the order of May 19, 1962 of the Hon. Eulogio Mencias, Judge of the Court of First Instance of Rizal, in Civil Case No. 2414 entitled "Intestate Estate of the Deceased Marcelo de Borja, Crisanto de Borja, Administrator, etc.", as well as his order denying their motion for reconsideration, and to compel him to cause the sale of the properties levied upon to satisfy the final judgment rendered by the Court of First Instance of Rizal in Civil Case No. 2414.

The record discloses that a money judgment involving the sum of P46,210.78, plus interests, was rendered in favor of petitioners against respondent Crisanto de Borja in Civil Case No. 2414 of the Court of First Instance of Rizal. Said decision having become final, a writ of execution was issued and pursuant thereto, the respondent Provincial Sheriff of Rizal levied on the rights, interest and participation which Crisanto de Borja had in certain real properties in the province of Rizal, as an heir of the decedents Josefa Tangco and Francisco de Borja, whose estates were then pending settlement in Special Proceedings Nos. F-7866 and 1955 of the aforementioned court, respectively.

Thereafter, respondent Jose de Borja, as administrator of the estate of Josefa Tangco, filed with the respondent sheriff a third-party claim alleging that the properties levied upon were in custodia legis in connection with the settlement of the estate involved in Special Proceedings No. 7866 mentioned heretofore. Acting upon this claim, the sheriff required petitioners to post an indemnity bond in the amount of P2,500,000.00.

Contending that it was not their duty to file such bond, petitioners filed a motion praying that the court order the sale of the properties levied upon, without the need of their filing such bond.

On October 17, 1958 the respondent judge issued an order whose dispositive part reads as follows:

"WHEREFORE, this Court hereby holds that whatever interest, claim or right which Crisanto de Borja may have in the testate estate of Josefa Tangco and in the intestate estate of Francisco de Borja are subject to attachment and execution for the purpose of satisfying the money judgment rendered against the said heir; that said interest, claim or right have been legally levied upon and consequently can be sold by the Provincial Sheriff of Rizal for the satisfaction of the judgment rendered in favor of the petitioners herein, the filing of the so-called third-party claim notwithstanding. It further holds that there is no sufficient reason for requiring the judgment creditors to file an indemnity bond. As a consequence, the Court hereby directs the Provincial Sheriff of Rizal to proceed with the sale of the rights, interests and claim of Crisanto de Borja in the aforementioned

estates upon compliance with the requirements of the Rules of Court."

His motion for reconsideration of the above order having been denied, respondent-administrator Jose de Borja appealed to Us (G. R. No. L-14851), and on August 31, 1961, We rendered judgment affirming the appealed order. Said decision having become final and executory, petitioners filed with the respondent judge a motion for the issuance of an alias writ of execution, which motion was granted in an order dated February 26, 1962, of the following tenor:

"Wherefore, the Court hereby orders the Provincial Sheriff of Rizal to continue with his proceedings in the first writ of execution which had already been issued. Let another writ of execution with respect to the costs adjudged in the last decision of the Supreme Court issue."

Upon motions for reconsideration filed by respondents Crisanto de Borja and Jose de Borja, in their capacities as administrators of the intestate estate of the deceased Francisco de Borja (CFI-Rizal, 1955) and the testate estate of Josefa Tangco (CFI-Rizal, 7866), respectively, on the ground that the rights and interest of the judgment debtor (Crisanto de Borja) in the aforesaid estates could be sold only after final settlement of the latter, pursuant to Section 9, Rule 59 of the Rules of Court (Section 9 of Rule 57 of the New Rules of Court), and praying that the sheriff be directed to proceed with the execution accordingly, the respondent judge issued, on May 19, 1962, the amendatory order subject-matter of this action, which reads as follows:

"Considering the two motions for reconsiderations dated March 23, and March 20, 1962, filed by Crisanto de Borja and Jose de Borja, respectively, to be well-taken and notwithstanding the opposition filed thereto, the same are hereby granted, and the order of the Court dated February 26, 1962, is hereby amended in the sense that the Provincial Sheriff of Rizal be ordered to garnish whatever share or interests the judgment debtor may or might have by way of share or inheritance in the estate of the deceased Jose Tangco subject of Special Proceedings No. 7866 of this Court and in the estate of the deceased Francisco de Borja subject of Special Proceedings No. 1955 also of this Court, in accordance with the provision of Section 9, Rule 59 of the Rules of Court and in conformity with the doctrine laid down in the case of *Litonjua vs. Montilla*, G. G. No. L-4170, promulgated on January 31, 1962."

Their motion for reconsideration of the above-quoted order having been denied, petitioners filed the present petition claiming that respondent judge's order of May 19, 1961 illegally modified the final judgment of the Supreme Court in G. R. No. L-14851 which directed the sale of the properties levied upon for the satisfaction of the judgment rendered in favor of petitioners in Civil Case No. 2414.

It is a fact that whatever rights, interest and participation Crisanto de Borja has in certain real properties under judicial administration in Special Proceedings Nos. F-7866 and 1955 of the Court of First Instance of Rizal, were properly levied upon pursuant to the writ of execution issued by said court in Civil Case No. 2414. On the other hand, it is beyond question that such rights, interest and participation are subject to attachment and/or levy in execution in accordance with Section 9, Rule 57 of the Rules of Court. The question to be resolved here is whether or not, after the attachment or levy in execution, the rights, interest and participation of Crisanto de Borja in the estate left by decedents Josefa Tangco and Francisco de Borja may be sold at public auction to satisfy the money judgment rendered against him.

The above question, in our opinion, must be answered in the affirmative, provided it is understood that the sale shall be only of whatever rights, interest and participation may be adjudicated to said heir as a result of the final settlement of the estates, and that delivery thereof to the judgment creditor or to the purchaser at the public sale thereof shall be made only after the final settlement of the estates and in the manner provided by the legal provision mentioned above.

WHEREFORE, modifying and/or clarifying the appealed order in the manner stated in the next preceding paragraph, judgment is hereby rendered directing the respondent court to proceed accordingly. Without costs.

Concepcion, C.J., Reyes, J.B.L., Barrera, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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