

**SEVERINO PAREDES, AND VICTORIO G. IGNACIO, PETITIONERS VS.
THE HON. JOSE L. MOYA, JUDGE OF THE COURT OF FIRST INSTANCE
OF MANILA, BRANCH IX AND CARMENCITA NAVARRO —
ADMINISTRATR...**

G.R. No. L-38051. December 26, 1974

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for certiorari impugning the legality of the order of the respondent court dated November 2, 1973, nullifying its order of execution issued on August 18, 1973 pursuant to the judgment that has become final and executory on June 28, 1973, and the corresponding levy on execution on August 22, 1973 and the public auction sale held on October 2, 1973.

The background facts and circumstances of the instant case are as follows:

Petitioner Severino Paredes commenced a suit on January 4, 1964 in CFI-Manila, docketed as Civil Case No. 55880,[1] for the collection of separation and overtime pays against his employer, August Kuntze. On March 5, 1971, a decision was rendered against the defendant August Kuntze, from which judgment, he appealed to the Court of Appeals. While the case was pending appeal in the said Court, August Kuntze died on June 19, 1972. Accordingly, plaintiff Paredes (now petitioner) was duly notified.[2] Thereafter, Carmencita D. Navarro--Kuntze,[3] administratrix of the estate of the deceased, was substituted in his place as party in the appealed case. On June 5, 1973 the Court of Appeals dismissed the appeal in said Civil Case No. 55880 for appellant's failure to file the printed record on appeal, and so the record of the case was ordered remanded to respondent court.[4]

A motion for execution was filed by plaintiff-appellee (petitioner Paredes). On August 22, 1973 the provincial Sheriff of Rizal levied on the properties of defendant-appellant (now substituted by the Administratrix of the estate of the Deceased, consisting of two (2) lots covered by TCT No. 45089 issued by the Register of Deeds of the Province of Rizal.[5] In the auction sale conducted by the Sheriff of Rizal on October 2, 1973, plaintiff-appellee (petitioner Paredes) being the highest bidder, acquired said lot for the total sum of P17,296.16, as per certificate of sale which was duly annotated in the back of TCT No. 45089.[6]

However, in spite of a Motion to Quash the Writ of Execution filed by respondent-appellant (Administratrix) on September 6, 1973 and still pending resolution, petitioner Paredes (plaintiff-appellee, below) sold the property he acquired in the execution sale in favor of his co-petitioner, Victorio Ignacio on October 10, 1973.[7]

Notwithstanding the vigorous opposition to the Motion to Quash the Writ of Execution, respondent Court, on November 2, 1973, issued an order setting aside the Writ of Execution of August 22, 1973, and the Sheriff's Sale and Public Auction of the property covered by TCT No. 45089, without prejudice to the filing of the judgment as a claim in the proceedings for settlement of the estate of the deceased.[8]

Various questions have been raised by the parties. We shall now rule on them.

We hold that in the case of a money claim, where the defendant dies during the pendency of his appeal from the judgment rendered against him, the appeal should not be dismissed; it should continue, but the deceased defendant should be substituted by his legal representative, namely, the executor or administrator of the estate. If the judgment of the lower court is affirmed, the plaintiff must afterwards go to the probate court for an order directing the executor or administrator to satisfy the judgment. The Court of First Instance that originally rendered the judgment has no power to order its execution and a levy on the properties of the deceased because the same are already in custodia legis in the probate court where administration proceedings for the settlement of the estate of the deceased defendant are already pending.

Section 21, Rule 3 of the Rules of Court, provides:

"When the action is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided in these rules."

Conversely, if the defendant dies after final judgment has been rendered by the CFI, as in the case at bar the action survives. And as already above stated, the appeal should proceed with the deceased defendant being substituted by his representative. This would prevent a useless repetition of presenting (anew) before the probate court the evidence already presented in the Court of First Instance on the validity of the claim. Consequently, contrary to respondents' claim, the judgment against the deceased Kuntze became final and executory; it was not arrested by his death on July 19, 1973.

But it was error on the part of the plaintiff Paredes, now one of the petitioners, to have the money judgment in his favor executed against the properties of the deceased Kuntze.

The proper remedy of plaintiff Paredes should have been to file his claim in the administration proceedings of the estate of the deceased defendant Kuntze where private respondent is the administratrix, because:

"All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; (to the creditors) x x x"

Judgment for money against the decedent, must be filed at the time limited in the notice (to creditors) before the court where the administration proceeding involving the estate of the deceased Kuntze are pending. Section 5, Rule 86 of the Rules of Court provides:

"All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed (before the probate court) within the time limited in the notice (to the creditors); otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants." (1st sentence, Section 5 Rule 86 of the Rules of Court) (Italics supplied)

Consequently, the respondent court, in the challenged order of November 2, 1973, correctly nullified its order of execution issued on August 18, 1973 pursuant to the judgment which became final and executory on June 28, 1973 and the corresponding levy on execution on August 22, 1973 and the public auction sale held on October 2, 1973.

The judgment for money against the deceased stands in the same footing as:

"All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent," (1st sentence, Sec. 5, Rule 86 of the Rules of Court).

although the validity of the money claim covered by a judgment against the decedent which has already become final and executory can no longer be litigated in the court where administration proceedings for the settlement of the properties of the deceased are still pending, unlike the other money claims whose validity may yet be challenged by the executor or administrator.

In the case of *Aldamiz vs. Judge of the Court of First Instance of Mindoro*, promulgated on December 29, 1949 (85 Phil. 228), We already held that the writ of execution was not the proper procedure for the payment of debts and expenses of the administration. The proper procedure is for the court to order the administratrix to make the payment; and if there is no sufficient cash on hand, to order the sale of the properties and out of the proceeds to pay the debts and expenses of the administration. We followed the same ruling in the case of *Domingo vs. Garlitos*, June 29, 1963, 8 SCRA 443, with respect to the payment of estate and inheritance taxes.

"The petition to set aside the above orders of the court below and for the execution of the claim of the Government against the estate must be denied for lack of merit. The ordinary procedure by which to settle claims of indebtedness against the estate of a deceased person, as an inheritance tax, is for the claimant to present a claim before the probate court so that said court may order the administrator to pay the amount thereof. To such effect is the decision of this Court in *Aldamiz vs. Judge of the Court of First Instance of Mindoro*, G.R. No. L-2360, Dec. 29, 1949, thus:

'x x x a writ of execution is not the proper procedure allowed by the Rules of Court for the payment of debts and expenses of administration. The proper procedure is for the court to order the sale of personal estate or the sale or mortgage of real property of the deceased and all debts or expenses of administration should be paid out of the proceeds of the sale or mortgage. The order for the sale or mortgage should be issued upon motion of the administrator and with the written notice to all the heirs, legatees and devisees residing in the Philippines, according to Rule 89, section 3, and Rule 90, section 2. And when sale or mortgage of real estate is to be made, the regulations contained in Rule 90, section 7, should be complied with.

'Execution may issue only where the devisees, legatees or heirs have entered into possession of their respective portions in the estate prior to settlement and payment of the debts and expenses of administration and if it is later ascertained that there are such debts and expenses to be paid, in which case the court having jurisdiction of the estate may by order for that purpose, after hearing settle the amount of their several liabilities, and order how much and in what manner each person shall contribute, and may issue execution if circumstances require' (Rule 39, section 6; see also Rule 74, section 4; *Italics supplied*). And this is not the instant case.'

We hold that the same rule must be applied in connection with money judgments against the deceased that have already become final, such as the money judgment in favor of petitioner Paredes. No writ of execution should issue against the properties of the deceased. The claim for satisfaction of the money judgment should be presented in the probate court for payment by the administrator.

"The legal basis for such a procedure is the fact that in the testate or intestate proceedings to settle the estate of a deceased person, the properties belonging to the estate are under the jurisdiction of the court and such jurisdiction continues until said properties have been distributed among the heirs entitled thereto. During the pendency of the proceedings all the estate is in custodia legis and the proper procedure is not to allow the sheriff, in the case of court judgment, to seize the properties but to ask the court for an order to require the administrator to pay the amount due from the estate and required to be paid." (*Domingo vs. Garlitos, et al.*, June 29, 1963, 8 SCRA, 443, 446)

In this jurisdiction, a void judgment or order is in legal effect no judgment or order. By it no rights are divested.

From it no rights can be obtained. Being worthless, it neither binds nor bars anyone. All acts performed under it and all claims flowing from it are void. (Chavez vs. Court of Appeals, et al., L-29169, August 19, 1968, 24 SCRA 663).

Our decision in this case against the petitioner Paredes binds his co-petitioner Victorio G. Ignacio not only because the order of execution and the public auction sale in question are null and void, but also because petitioner Ignacio cannot be considered as a purchaser in good faith, for Ignacio purchased the "Right of Execution Sale" of Paredes over the property in question on October 10, 1973 when, at that time, the respondent administratrix of the estate of Kuntze had already filed on September 6, 1973 a motion to quash the Writ of Execution and auction sale; as a matter of fact the validity of said writ of execution was still up for respondent court's resolution on October 14, 1973 after the parties shall have submitted memoranda on the question raised in the aforesaid motion as required by the respondent court in its order of September 29, 1973.

IN VIEW OF THE FOREGOING, the order of the Lower Court nullifying its Order of Execution of August 18, 1973, the levy on execution dated August 22, 1973, and the auction sale of October 2, 1973, is hereby affirmed and the petition for certiorari is hereby dismissed, "without prejudice to the filing of the judgment (in favor of Paredes) as a claim in the proceedings for the settlement of the estate of the deceased (Kuntze)." Without costs.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Aquino, JJ., concur.

[1] Record, p. 2.

[2] Record, pp. 70-71.

[3] Ibid, p. 70.

[4] Ibid, p. 70.

[5] Ibid, p. 3.

[6] Ibid, p. 4.

[7] Ibid, p. 4.

[8] Ibid, pp. 4-5.

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