

**PY ENG CHONG, PETITIONER, VS. HON. A. MELENCIO HERRERA, IN  
HER CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF  
MANILA, AND JULIA SO DE CHIAT & SONS, RESPONDENTS.**

*G.R. No. L-31229. March 25, 1976*

Ponente: ANTONIO, J.

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**ANTONIO, J.:**

Certiorari to annul the orders of the respondent court in Civil Case No. 65733, Py Eng Chong, et al. vs. Eduardo Uy Chiat, et al., dated September 1, 1969, recalling the Second Alias Writ of Execution on the ground that the writ can no longer be enforced in view of the death of the judgment debtor, Eduardo Uy Chiat, and that of October 9, 1969 denying petitioner's motion for reconsideration, and reiterating that the judgment creditor should file its claim in the proceeding for the settlement of the decedent's estate pursuant to Section 5, Rule 86 of the Rules of Court.

The present proceedings stemmed from the writ of execution issued pursuant to the judgment of the Court of First Instance of Manila in Civil Case No. 65733,[1] dated June 6, 1967, wherein the defendants-spouses Eduardo Uy Chiat and Cecilia G. Uy Chiat were ordered to pay, "jointly and severally", to petitioner Py Eng Chong the sum of P23,796.00, with interest at the rate of 12% per annum, plus 10% thereof as attorney's fees, and the costs of suit. Pursuant to said judgment, petitioner secured a writ of execution dated September 28, 1967, but it was returned unsatisfied by the Provincial Sheriff of Negros Occidental. On December 9, 1967, upon motion of the petitioner, the trial court issued a First Alias Writ of Execution directing the Sheriff of the City of Manila to levy on the goods and chattels of Eduardo Uy Chiat and Cecilia G. Uy Chiat, jointly and severally, especially their participation in the general partnership of "Julia So De Chiat and Sons", but this was likewise returned unsatisfied.

Upon motion of the petitioner, on May 10, 1969, the trial court issued a Second Alias Writ of Execution directing the Sheriff of Negros Occidental to levy on the properties of Eduardo Uy Chiat and Cecilia G. Uy Chiat, jointly and severally, especially their participation in the general partnership of the respondent Julia So De Chiat & Sons. On June 23, 1969, the Provincial Sheriff of Negros Occidental levied upon the rights, interests and participation of Eduardo Uy Chiat and Cecilia G. Uy Chiat over the twelve (12) parcels of land registered in the name of respondent general partnership Julia So De Chiat & Sons, which parcels of land are covered by Transfer Certificates of Title Nos. T-22368, T-22370, T-22371, T-22372, T-22373, T-22374, T-22375, T-22376, T-22377, T-12688, T-12689, and T-49490. On July 22, 1969, respondent partnership Julia So De Chiat & Sons filed an Urgent Motion to Lift Levy on Execution alleging, inter alia that the properties levied upon by the Sheriff belong exclusively to said respondent and that judgment debtors Eduardo Uy Chiat and Cecilia G. Uy Chiat have ceased to be members of the partnership, having sold all their rights and participation therein to Julia So De Chiat, mother of judgment debtor Eduardo Uy Chiat.

On July 29, 1969, petitioner filed his opposition to said urgent motion, alleging, among others, that the deed of

sale dated June 25, 1966 adverted to in the urgent motion and allegedly executed by the judgment debtors in favor of the mother of Eduardo Uy Chiat, Julia So De Chiat, is a simulated sale "which the court has considered as such, and, therefore, is not a legal obstacle to the continuance of the levy"; and that, since Julia So De Chiat & Sons is merely a third-party claimant and is not one of the parties in the case, said respondent cannot legally intervene in the action, in consonance with the doctrine laid down in *Queblar v. Garduño*.<sup>[2]</sup>

On August 20, 1969, respondent partnership filed a motion and manifestation stating that since the judgment is only a money claim and the debtor, Eduardo Uy died "before final judgment has been rendered" in the case, the court had no jurisdiction to issue the writ of execution against said deceased defendant. This motion was opposed by petitioner who invited the attention of respondent Judge to the fact that the judgment in the case had long become final and executory before Eduardo Uy Chiat died on March 30, 1968, and that the judgment debt which is sought to be enforced by the Second Alias Writ of Execution can still be executed against the successors-in-interest of Eduardo Uy Chiat.

On September 1, 1969, respondent Judge, after hearing, issued an Order granting the motion to lift the levy on execution filed by the respondent partnership by ordering the recall of the Second Alias Writ of Execution, stating that "Eduardo Uy Chiat died on March 30, 1968, hence, a writ of execution against him can no longer be enforced."<sup>[3]</sup> It also mentioned that the judgment against the defendants Eduardo Uy Chiat and Cecilia G. Uy Chiat, is "really against the conjugal partnership of the defendant-spouses." On September 16, 1969, petitioner filed a motion for reconsideration of the afore-mentioned order, questioning the procedure adopted by said respondent and alleging that the respondent Julia So De Chiat & Sons is merely a third-party claimant and should avail of the remedies provided for in Section 17, Rule 39 of the Revised Rules of Court, and that the order of September 1, 1969 is null and void ab initio because it modified the final judgment of said court. This motion for reconsideration was denied in the order issued by respondent Judge on October 9, 1969.

Petitioner, therefore, instituted the present petition for certiorari, seeking the nullification of the orders dated September 1, 1969 and October 9, 1969, afore-mentioned. On January 15, 1970, this Court issued a Writ of Preliminary Injunction restraining respondent Judge, respondent Julia So De Chiat & Sons and the Provincial Sheriff of Negros Occidental from enforcing the order dated September 1, 1969.

Petitioner now contends that the court a quo erred because (a) respondent partnership should have filed a third-party claim and/or an independent action pursuant to Section 17, Rule 39 of the Rules of Court and not "a motion to recall writ of execution"; (b) respondent Judge had "no legal authority to interpret and/or construe the final judgment of the court since the terms thereof are definite and unequivocal"; and (c) the judgment creditor is not under obligation to file his claim with the estate of the deceased where no proceedings have been instituted for the settlement of the estate of said deceased.

We find no merit in the petition.

Whether or not the motion of the third-party claimant to recall the writ of execution was in substantial compliance with the requirements of Section 17, Rule 39 of the Rules of Court and whether the statement of the respondent court in its order that the judgment "is against the conjugal property \* \* \*" is an amendment or modification of a final judgment are issues of minor import. The basic reason of the respondent court in recalling the writ of execution was that the judgment being for money and the judgment debtor having died prior to the levy, the judgment creditor should file his claim in the proceedings for the settlement of the estate of said deceased pursuant to Section 5 of Rule 86.

The respondent court was correct in recalling the Second Alias Writ of Execution. Defendant Eduardo Uy Chiat having died on March 30, 1968, prior to the levy which was made by the Provincial Sheriff of Negros Occidental

on June 23, 1969, the judgment in favor of petitioner, being one for a sum of money, may no longer be enforced by means of the said writ of execution, but must be filed in the proper estate proceedings.[3a] This is in consonance with the rule laid down in Section 5 of Rule 86 of the Rules of Court, as follows:

"SEC. 5. Claims which must be filed under the notice. If not filed, barred; exceptions. - 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; 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. \* \* \*." (Italics supplied. See also *Agnes v. Lemos*, 5 SCRA 959 where the court held that judgments for money are abated by the debtor's death.)

The above-quoted provision is mandatory. This requirement is for the purpose of protecting the estate of the deceased by informing the executor or administrator of the claims against it, thus enabling him to examine each claim and to determine whether it is a proper one which should be allowed.[4] The plain and obvious design of the rule is the speedy settlement of the affairs of the deceased and the early delivery of the property to the distributees, legatees, or heirs. "The law strictly requires the prompt presentation and disposition of claims against the decedent's estate in order to settle the affairs of the estate as soon as possible, pay off its debts and distribute the residue." [5]

Had the levy been made before the death of the judgment debtor, the sale on execution could have been carried to completion in accordance with Section 7(c) of Rule 39 which provides that in case the judgment debtor dies after execution is actually levied upon any of his property, the same may be sold for the satisfaction of the judgment. However, as observed by respondent court, such is not the case here.

Petitioner, however, contends that he could not present his claim in the proper estate proceedings because no such proceedings for the settlement of the estate of the deceased Eduardo Uy Chiat have been instituted. The infirmity of this argument is evident from the fact that the Rules of Court amply provides remedy for petitioner. He may initiate proceedings under Section 1 of Rule 76 of the Rules of Court[6] if Eduardo Uy Chiat died testate, or under Section 6(b) of Rule 78[7] if he died intestate.

In *Sikat v. Vda. de Villanueva*, [8] this court stated that if a creditor, having knowledge of the death of his debtor and the fact that no administrator has been appointed, permits more than three (3) years to elapse without asking for the appointment of an administrator or instituting the intestate proceedings in the competent court for the settlement of the latter's estate, he is guilty of laches and his claim prescribes.[9] "To hold otherwise would be to permit a creditor having knowledge of the debtor's death to keep the latter's estate in suspense indefinitely, by not instituting either estate or intestate proceedings in order to present his claim, to the prejudice of the heirs and legatees." [10]

With respect to the claim of petitioner that the respondent court arbitrarily amended or modified a final and executory judgment, We note that the statement in the order of September 1, 1969 that the judgment "is really a judgment against the conjugal partnership \* \* \*" is merely an expression or opinion which cannot in any way amend or modify the final judgment in Civil Case No. 65733. It cannot be construed otherwise, as it is well-settled that a final judgment or order can no longer be altered or amended, and the court loses jurisdiction over it, save to order its execution.[11]

Finally, on petitioner's contention that the private respondent has not availed of the remedies provided for in Section 17, Rule 39 of the Revised Rules of Court, it must be noted that the aforecited rule does not require that the title of ownership of the claimant be produced, an affidavit of his title thereto being all that is necessary to be

presented with his claim. Respondent's motion was under oath, supported by two public instruments – the Deed of Sale of June 25, 1966 executed by Eduardo S. Uy Chiat as vendor, and Julio So de Chiat & Sons as vendee, duly acknowledged before Notary Public Raymundo M. Lozada, Jr., and the Amended Articles of Partnership of Julia So de Chiat & Sons, dated June 25, 1966 – stating the factual basis of private respondent's claim of title over the real properties that were being levied upon. Such requirement was undoubtedly substantially complied with by the submission of said pleading with the attached documents. In any event, as stated previously, the recall of the writ of execution was based on the fact of death of the judgment debtor before the actual levy was made. Under such circumstances, the judgment cannot be executed, the remedy being, as stated in the foregoing paragraphs, for the judgment creditor to resort to the intestate or testate proceedings for the settlement of the estate of the deceased debtor.[12]

WHEREFORE, the recall of the Second Alias Writ of Execution is declared valid and the Writ of Preliminary Injunction issued by this Court on January 15, 1970 is hereby dissolved. Costs against petitioner.

Barredo, (Acting Chairman), Aquino, and Concepcion, Jr., JJ., concur.

Fernando, J., (Chairman), is on official leave.

Martin, J., was designated to sit in the Second Division.

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[1] Entitled "Py Eng Chong, Plaintiff, versus Eduardo Uy Chiat and Cecilia G. Uy Chiat, doing business under the name and style of 'Domus Construction', and Mariano Katipunan, Defendants."

[2] 67 Phil. 316.

[3] Berhomal v. Sanchez, 88 Phil. 597.

[3a] Verhomal v. Tan and Azaola, 88 Phil. 389, 393.

**[4] 34 A.L.R. 365.**

[5] Rio y Compania v. Maslog, etc., et al., 105 Phil. 454.

[6] Section 1, Rule 76 of the Rules of Court provides:

"SEC. 1. Who may petition for the allowance of will.-- Any executor, devisee, or legatee named in a will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed, whether the same be in his possession or not, or is lost or destroyed.

\* \* \* \* \*

[7] Section 6, Rule 78 provides:

"SEC. 6. When and to whom letters of administration granted.-- If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

\* \* \* \* \*

(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin, neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other

person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

\* \* \* \* \*

[8] 57 Phil. 486.

[9] Chua Kay & Co.v. Widow and Heirs of Oh Tiong Keng, 62 Phil. 883; Intestate estate of the deceased Julio Magbanua, 72 Phil. 567.

[10] Cited in Rio y Compania v. Maslog, etc., et al., supra.

[11] Ablaza v. Sycip and Central Surety & Insurance Co., Inc., 110 Phil. 4, 7.

[12] Alo v. Nolasco, L-8899, April 28, 1956; First National City Bank of New York v. Tan, L-14234, February 28, 1962.

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