

ANGELINA PUENTEVELLA ECHAUS, IN HER OWN BEHALF AND AS ADMINISTRATRIX OF THE ESTATE OF LUIS PUENTEVELLA, ASSISTED BY HER HUSBAND, RENE ECHAUS, PETITIONER, VS. HON. RAMON BLANCO, ...

G.R. No. L-30453. December 04, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for mandamus seeking to compel respondent presiding judge of the then Court of First Instance of Iloilo (now Regional Trial Court) in Special Proceedings No. 1672 to issue an order directing respondent Philippine Commercial and Industrial Bank (PCIB) as administrator of the estate of the late Charles Newton Hodges (C.N. Hodges) to pay herein petitioner the amount of eight hundred fifty-one thousand four hundred seventy-two pesos and eighty- three centavos (P851,472.83) with legal interest, adjudged in Civil Case No. 6628.

The antecedent facts of the instant case are as follows:

Herein petitioner Angelina Puentevella Echaus, in her own behalf and as Administratrix of the intestate estate of her deceased father Luis Puentevella, assisted by her husband, Rene Echaus, filed a complaint on May 30, 1962 against Charles Newton Hodges (C. N. Hodges) praying for an accounting of the business covering the Ba-Ta Subdivision, the recovery of her share in the profits and remaining assets of their business and the payment of expenses and moral and exemplary damages (p. 10, Rollo). The complaint was docketed as Civil Case No. 6628 of the Court of First Instance of Negros Occidental.

On July 20, 1962, C. N. Hodges, through counsel, filed his Answer (p. 10, Rollo).

Trial on the merits commenced on December 7, 1962, with the testimony of Angelina Echaus (p. 12, Rollo). Sometime thereafter, counsel for C. N. Hodges manifested that defendant C. N. Hodges died on December 25, 1962. No motion to dismiss was filed by C. N. Hodges' counsel. On February 14, 1964, the trial court ordered the substitution of the Philippine Commercial and Industrial Bank (PCIB), as administrator of the estate of deceased C. N. Hodges, as party defendant. No objection to the order was interposed by PCIB.

A petition for the settlement of the estate of C. N. Hodges was instituted before the Court of First Instance of Iloilo, the date of which does not appear in the records, and docketed as Special Proceedings No. 1672. A notice to creditors was published in "Yuhum" a newspaper of general circulation in its issues of March 13, 20 and 27, 1963 (p. 190, Rollo).

On November 12, 1966, the parties in Civil Case No. 6628 submitted a stipulation of facts and submitted the case for decision on the basis of said stipulation of facts (p. 12, Rollo). The parties also agreed in the stipulation of facts that:

"1. The parties, being duly represented in the panel of Commissioners constituted by this Honorable Court,

shall be bound by the Commissioners' findings on the questions of facts presented to them for determination, if such findings are accepted by this Honorable Court in its Decision.

"2. With a view to the speedy settlement and termination not only of the Estate of C. N. Hodges (Special Proceedings 1672 of the Court of First Instance of Iloilo pending since 1962) but also of the estate of Luis Puentevella (Special Proceedings 1968 of the Court of First Instance of Negros Occidental pending since 1951), in accordance with the letter and spirit of the Rules of Court, and relying upon the wisdom and impartiality of the Presiding Judge of this Honorable Court who is now on the point of closing a brilliant and exemplary career on the Bench, the parties shall accept its Decision herein as final.

"x x x." (p. 20, Rollo)

On December 5, 1966, judgment was rendered by the trial court in favor of plaintiff Angelina F. Echaus, the dispositive portion of which states:

"IN VIEW OF ALL THE FOREGOING, the defendant, in its capacity as Administrator of the Estate of Charles Newton Hodges is hereby ordered to pay the plaintiffs the sum of EIGHT(Y) HUNDRED FIFTY-ONE THOUSAND FOUR HUNDRED SEVENTY-TWO PESOS and EIGHTY THREE CENTAVOS (P851,472.83) with legal interest thereon from date of judgment until paid. All other claims arising from the counterclaim, and third-party complaint, not otherwise adjudicated, are hereby dismissed, with costs against the defendant.

"IT IS SO ORDERED."

"Bacolod City, Philippines, December 5, 1966.

(SGD) EDUARDO D. ENRIQUEZ

Judge"

(p. 41, Rollo)

On January 21, 1967, the same trial court issued an order granting plaintiff's motion for the issuance of a writ of execution (p. 43, Rollo) against PCIB. However, the writ was not enforced as plaintiff opted to file a motion dated February 20, 1967 (pp. 44-46, Rollo) in Special Proceedings No. 1672 (estate proceedings of deceased C. N. Hodges) for the payment of the judgment. Herein respondent Avelina A. Magno, as administratrix of the estate of the deceased Linnie Jane Hodges (wife of C. N. Hodges) opposed the motion (p. 3, Rollo). Meanwhile, in Civil Case No. 6628, Avelina Magno, filed a petition for relief from judgment on March 27, 1967 and a motion to intervene dated April 24, 1967 (p. 57, Rollo). On June 6, 1967, the heirs of C. N. Hodges filed a motion to intervene in the same Civil Case No. 6628. On July 20, 1967, respondent Judge Ramon Blanco, presiding judge of the Court of First Instance of Iloilo City, Branch V, taking cognizance of Special Proceedings No. 1672, issued an Order (pp. 52-56, Rollo) holding in abeyance the resolution of the motion of Angelina Echaus for payment of the judgment rendered in her favor in Civil Case No. 6628, until after the resolution of the "Petition for Relief from Judgment" filed by Administratrix Magno before the Court of First Instance of Negros Occidental in Civil Case No. 6628.

On November 23, 1967, the petition for relief from judgment was denied on the ground that Magno, as administratrix of the estate of Linnie Jane Hodges was not a party to the case (p. 58, Rollo). The twin motions to intervene filed by the heirs of C. N. Hodges and Evelina Magno, as administratrix of the estate of Linnie Jane Hodges were likewise denied on the ground that pleadings in intervention are allowed only before or during the trial and not when a final and executory judgment had already been rendered (p. 61, Rollo).

In a motion (pp. 66-68, Rollo) dated November 25, 1968, Angelina P. Echaus prayed for the resolution of her

previous motion to direct payment of the judgment credit which was held in abeyance, stating that the petition for relief from judgment filed in Civil Case No. 6628 was dismissed by the trial court which dismissal has become final and executory in view of the failure of Avelina Magno to file a record on appeal on time.

On February 26, 1969, respondent Judge Ramon Blanco issued an Order (pp. 72-74, Rollo) reiterating his position that the motion to direct payment of the judgment credit cannot yet be resolved and holding in abeyance the resolution thereof in view of the writ of preliminary injunction issued by the Supreme Court in G.R. Nos. L-27860 and L-27896, (PCIB v. Blanco), enjoining respondent judge from hearing Special Proceedings Nos. 1307 and 1672, entitled "Testate Estate of the late Linnie Jane Hodges" and "Testate Estate of Charles N. Hodges," respectively. It is noted that in the same Order, respondent judge mentioned that the writ of preliminary injunction issued by the Supreme Court was clarified in another resolution dated October 4, 1967 to the effect that he (respondent judge) is not restrained from approving final deeds of sale executed by the Administrator PCIB covering properties of the respective estates and that he can act on such other routinary administrative matters necessary for the gathering and preservation of the estate (pp. 73-74, Rollo).

The pertinent portion of said Order states:

"In G.R. Nos. L-27860 and L-27896, PCIB vs. Blanco, the Supreme Court on August 12, 1967 issued a writ of preliminary injunction restraining the presiding judge of this Branch V from hearing Sp. Proc. 1307 and 1672 of the Court of First Instance of Iloilo entitled 'Testate Estate of the late Linnie Jane Hodges and Testate Estate of C. N. Hodges' which writ of preliminary injunction was clarified by the Supreme Court in its resolution of October 4, 1967 to the effect that the presiding judge of this Branch V is not restrained from approving final deeds of sale executed by the administrator PCIB covering properties of the said estate and that the presiding judge of this Branch can act on such other routinary administration matters necessary for the gathering and preservation of the estate.

"In view therefore of the said writ of preliminary injunction, it is the considered opinion of the undersigned presiding judge that he cannot act, meanwhile, on the motion or motions and the oppositions thereto taking into account that the said motions involve substantive and mandatory procedural requirements considering that the decision of the Court of First Instance of Negros Occidental in Civil Case 6628 is being questioned by the oppositors as a money claim and as such should have been prosecuted in the probate court.

"WHEREFORE, unless allowed by the Supreme Court to resolve the instant motions and oppositions thereto thus, further clarifying the writ of preliminary injunction which was issued on August 12, 1967, the resolution on the said motions and oppositions thereto is hereby held in abeyance.

"SO ORDERED."

In a manifestation (pp. 69-71, Rollo, Annex "H" of Petition) dated February 28, 1969, petitioner manifested that private respondent Avelina Magno's petition for certiorari and mandamus (G.R. L-30013) filed before this Court questioning the validity of the decision in Civil Case No. 6628 was dismissed for lack of merit on January 15, 1969 (p. 109, Rollo). Still, petitioner failed to obtain an affirmative response to their motion.

Petitioner then filed the instant petition for mandamus dated April 21, 1969 seeking: a) to set aside respondent judge's order of February 26, 1969; and b) to order PCIB to pay the judgment credit in Civil Case No. 6628.

It is the contention of petitioner that the judgment in Civil Case No. 6628 is now final and executory and the execution thereof becomes a matter of right under Rule 39, Section 1 of the Rules of Court. The duty to order the execution of a final and executory judgment is ministerial and the failure of respondent judge to issue such order is a proper case for mandamus.

On the other hand, private respondents contend that the judgment rendered in Civil Case No. 6628 is null and void

for having been rendered without jurisdiction. Money claims against a defendant who dies without a judgment having been rendered in the Regional Trial Court shall be dismissed and prosecuted as a claim in the estate proceedings as laid down under Section 21, Rule 3 of the Rules of Court. This procedure was not followed in Civil Case No. 6628. Also, even if it is assumed that the judgment in the said civil case is valid, the claim presented in the estate proceedings is already barred by the statute of non-claims.

It must be noted that Civil Case No. 6628 which is a money claim, was instituted during the lifetime of C. N. Hodges. During its pendency and before a decision could be rendered by the Regional Trial Court hearing the case, C. N. Hodges died. Upon his death, he was substituted by PCIB as administrator of his estate. Being a money claim, said civil case should have been dismissed and instituted as a money claim in the intestate estate of C. N. Hodges (Sp. Proc. No. 1627) in accordance with Section 21 of Rule 3 of the Revised Rules of Court, which provides:

"Sec. 21. Where claim does not survive. -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."

However, this is not to suggest that because the claim of petitioner was pursued to its conclusion in Civil Case No. 6682 instead of being dismissed and filed as a money claim in Special Proceedings No. 1672, the judgment rendered therein is null and void. The case of *Ignacio v. Pampanga Bus Co., Inc.* L-18936, May 23, 1967, 20 SCRA 126, is in point. In the said case, Pampanga Bus Co., Inc., (Pambusco) filed a suit to collect P105,000.00 against defendants Valentin Fernando and Encarnacion Elchico Vda. de Fernando. The latter died during the pendency of the case. On Pambusco's motion, the court ordered Jose Nicolas, then Administrator, to substitute for deceased Encarnacion Elchico Vda. de Fernando as one of the defendants. No objection to the order was registered. A judgment was rendered therein which became final. Pambusco then moved in the intestate proceedings of the deceased for the payment of the judgment credit. The administratrices opposed. Pambusco's motion was granted. This order admitting Pambusco's claim was brought to Us. We ruled therein that:

"1. x x x

"The philosophy behind the rule which provides for the dismissal of the civil case is that, upon the death of a defendant, all money claims should be filed in the testate or intestate proceedings 'to avoid useless duplicity of procedure.' Obviously, the legal precept just quoted is procedural in nature. It outlines the method by which an action for recovery of money, debt or interest may continue, upon the terms therein prescribed. Whether the original suit for the recovery of money -- as here -- proceeds to its conclusion, or is dismissed and the claim covered thereby filed with the probate court, one thing is certain: no substantial rights of the parties are prejudiced.

"2. x x x. Now that the judgment has become final, the estate cannot be heard to say that said judgment --reached after a full dress trial on the merits -- will now go for naught. The estate has thus waived its right to have Pambusco's claim re-litigated in the estate proceedings. For, though presentment of probate claims is imperative, it is generally understood that it may be waived by the estate's representative. And, waiver is to be determined from the administrator's 'acts and conduct.' Certainly, the administrator's failure to plead the statute of non-claims, his active participation, and resistance to plaintiff's claim, in the civil suit, amount to such waiver.

"3. Courts are loathe' to overturn a final judgment. Judicial proceedings are entitled to respect. Non quita movere. Plaintiff's claim has passed the test in three courts of justice: the Court of First Instance, the Court of Appeals and this Court. The judgment in plaintiff's favor should be enforced. Appellant's technical objection -- after judgment had become final in the civil case -- that plaintiff's claim should have been litigated in the probate court does not impair the validity of said judgment. For, such objection does not go into the court's

jurisdiction over the subject matter."

Moreover, when PCIB as administrator of the estate of C. N. Hodges was ordered to be substituted as defendant, it registered no objection to the order. Thus, even if We admit for the sake of argument that the trial court, after the death of C. N. Hodges has no jurisdiction to render a judgment therein, the argument must fail. PCIB, participated actively in the said case. It did not appeal the decision rendered therein, neither did it raise the issue of jurisdiction at any stage. It has been consistently held by this court that while lack of jurisdiction may be assailed at any stage, a party's active participation in the proceedings before the court without jurisdiction will estop such party from assailing such lack of jurisdiction (*Tajonera v. Lamaroza*, (1981), 110 SCRA 438; *Nieta v. Manila Banking Corp.*, (1983), 124 SCRA 455; cited in *Sps. Antonio Martinez and Benedicta Balatbat v. The Hon. Judge de la Merced, et al.*, G.R. No. 82039, June 20, 1989).

Of more importance is the fact that the validity of the decision in Civil Case No. 6628 had been passed upon by Us with finality in G.R. No. L-30013 (*PCIB v. Blanco*). In that case, the estate of C. N. Hodges and Linnie Jane Hodges questioned the decision of the trial court dismissing the petition for relief from judgment. We dismissed the petition for lack of merit on January 15, 1969 (p. 109, Rollo).

Private respondent Avelina Magno, in her memorandum in lieu of oral argument, alleged that the judgment sought to be enforced is barred under the Rules of Court (p.180, Rollo). The proceedings for the settlement of the estate of C. N. Hodges was opened in 1962 and the notice to creditors was published in "Yuhum," a newspaper of general circulation in its issues of March 12, 10, and 27, 1963. Under Section 2, Rule 27 of the Rules of Court, the time provided for filing claims against the estate shall be stated by the court in the notice, which shall not be more than twelve (12) months nor less than six (6) months after the date of its first publication. Since petitioner filed her motion to direct payment only on February 20, 1967, which is more than four years from the publication of the notice then, it is already barred.

The above argument of private respondent is not correct. The Rules of Court allows a creditor to file his claim after the period set by the court in the notice to creditors, provided the conditions stated in the rules are present. The rule provides:

"Sec. 2. Time within which claims shall be filed. - XXX. However, at any time before an order of distribution is entered, on application of a creditor who has failed to file his claim within the time previously limited, the court may, for cause shown and on such terms as are equitable, allow such claim to be filed within a time not exceeding one (1) month." (Rule 86)

It is clear from the foregoing (Section 2 of Rule Rule 87 [now Rule 86]) that the period prescribed in the notice to creditors is not exclusive; that money claims against the estate may be allowed any time before an order of distribution is entered, at the discretion of the court for cause and upon such terms as are equitable (*Quisumbing v. Guison*, 76 Phil. 730; *Edmands v. Phil. Trust Co.*, G.R. No. L-2670, September 29, 1950, 48 O.G. 139; *Paulin v. Aquino*, G.R. No. L-11267, March 20, 1958; *Afan v. de Guzman*, G.R. No. L-14715, April 28, 1960). At the time petitioner's motion to direct payment of the judgment credit was filed, no order of distribution was issued yet. Also, it is worthy to cite herein a situation, similar to the case at bar, which was considered by this court as a good excuse for the late filing of a claim against the decedent:

"Here, the claim was filed in the probate court on February 25, 1959, while the defendants in the civil case were still perfecting their appeal therein. The record does not show that the administrator objected thereto upon the ground that it was filed out of time. The pendency of that case, we are persuaded to say is a good excuse for tardiness in the filing of the claim. (In *pari materia*: *De Rama v. Palileo*, L-18935, Feb. 26, 1965). And the order of the final distribution is still to be given." (*Ignacio v. Pambusco*, *supra*.)

It is also petitioner's contention that properties under custodia legis may be reached for the satisfaction of a judgment, citing the case of *Reganon v. Imperial*, G.R. No. 24434, January 17, 1968; *Fores v. Santos*, G.R. No. L-24538, May 4, 1968 and *De Borja, et al. v. De Borja, et al.*, L-14951, August 31, 1961. A cursory reading of the text of the above-cited cases will reveal that what is involved therein is the attachment for purposes of execution of the interest of an heir (to answer for claims against such heir) in the estate of the decedent which is allowed by the Rules; and not the attachment of the estate itself nor any property therein for the satisfaction of a claim against the decedent:

"Sec. 7. Attachment of real and personal property; recording thereof. - Properties shall be attached by the officer executing the order in the following manner:

"x x x

"(f) The interest of the party against whom attachment is issued in property belonging to the estate of the decedent, whether as heir, legatee or devisee, by serving the executor or administrator or other personal representative of the decedent with a copy of the order and notice that said interest is attached. x x x." (Rule 57, Rules of Court)

While the judgment in Civil Case No. 6628 has become final and executory, execution is not the proper remedy to enforce payment thereof. The ordinary procedure by which to settle claims of indebtedness against the estate of a deceased person, x x x, 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 (*Domingo v. Garlitos*, L-18994, June 29, 1963). This was the procedure correctly chosen by petitioner. In *Aldamiz v. Judge of the Court of First Instance of Mindoro*, L-2360, December 29, 1949, We held:

"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."

"x x x.

And in the case of *Domingo v. Garlitos*, p. 446, *supra*:

"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 case of a 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."

Nevertheless, while We hold that the judgment credit should be admitted as a claim against the estate of C.N. Hodges, the question of whether an order to direct payment thereof is compellable by mandamus is doubtful. At the time the second motion for payment was filed by petitioner, respondent judge's hands were "tied" by an existing writ of preliminary injunction issued by Us in G.R. Nos. L-27860 and L-27896 (*PCIB v. Blanco*) restraining him from hearing Special Proceedings Nos. 1307 (Testate Estate of Linnie Jane Hodges) and No. 1672 (Testate Estate of C. N. Hodges where the motion to direct payment was filed). While this writ was clarified by a subsequent resolution issued on October 4, 1967 to the effect that respondent judge is not restrained from

approving final deeds of sale executed by the administrator PCIB covering properties of the estate and from acting on such other routinary administration matters necessary for the gathering and preservation of the estate, it is clear that an order to direct payment is not embraced under the clarificatory resolution. Even if petitioners' judgment credit were allowed as a claim against the estate, immediate payment thereof by the administrator of the estate, is not a matter of right. A judgment against the executor or administrator shall be that he pay, in due course of administration, the amount ascertained to be due, and it shall not create a lien upon the property of the estate, or give the judgment creditor any priority in payment (Sec. 13, Rule 86, Revised Rules). The time for paying debts (and legacies) is to be fixed by the probate court having jurisdiction over the estate of the deceased (Sec. 15, Rule 18). In the absence of any showing that respondent judge who is taking cognizance of the estate proceedings had already allowed the administrator to dispose of the estate and to pay the debts and legacies of the deceased, a writ of mandamus will not issue to compel him to order payment of petitioner's claim.

It is essential to the issuance of the writ of mandamus that the (plaintiffs) should have a clear legal right to the thing demanded and it must be the imperative duty of the defendant to perform the act required (Province of Pangasinan v. Reparations Commission, 80 SCRA 376).

ACCORDINGLY, the petition for the writ of mandamus is DISMISSED for lack of merit.

SO ORDERED.

Narvasa, (Chairman), Gancayco, and Griño-Aquino, JJ., concur.

Cruz, J. on leave.

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