

**IN THE MATTER OF THE TESTATE ESTATE OF THE DECEASED
MAXIMA SANTOS VDA. DE BLAS, PONCIANO B. FLORES,
PETITIONER-APPELLANT, VS. ROSALINA SANTOS, IN HER CAPACITY
AS EXECUTRIX, ARSE...**

G.R. No. L-24538. May 04, 1968

Ponente: FERNANDO, J.

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FERNANDO, J.:

The denial, in an order of August 31, 1964, by Judge Cecilia Muñoz Palma of the Court of First Instance of Rizal, of a petition to set aside a previous order of June 15, 1964 approving a second partial project of partition filed by the executrix and the residuary heirs of the deceased, Maxima Santos Vda. de Blas, and adjudicating to the respective parties therein mentioned the properties both real and persons as therein proposed, insofar as the share of one of the heirs Marvin S. Buendia, was awarded to Arsenio S. Pascual, petitioner claiming that he had previously acquired the same in a sale by public auction, by virtue of a writ of execution issued by the Court of First Instance of Pampanga, is challenged in this appeal. For reasons to be expressed more fully the above order of August 31, 1964, denying the petition "without prejudice to any other action which [petitioner] may take on the matter as against Marvin S. Buendia," which, as noted, was not properly to be ventilated in the testate proceeding, is sustained.

In the brief of petitioner Ponciano B. Flores, as appellant, the antecedents of his petition were narrated thus: "On June 11, 1964, the executrix (one of the appellees herein) and the residuary heirs of the aforesaid deceased presented the court below a second partial project of partition * * *. In said project of partition, the hereditary rights of the heir Marvin Buendia (also an appellee herein), including his 2/80 share in the property covered by Transfer Certificate of Title No. 42372 of Rizal, were adjudicated in favor of Arsenio S. Pascual (an appellee herein) to whom the said hereditary had allegedly been sold and assigned by Marvin Buendia. The lower court approved the second partial project of partition in its order dated June 15, 1964 * * *." [1] Then came a statement of his claim: "On July 3, 1964, appellant filed a verified petition * * * to set aside the said order of June 15, 1964, alleging other things that he is the purchaser of the 2/80 share of Marvin Buendia in the property covered by Transfer Certificate of Title No. 42372 in a sale at public auction made by the Provincial Sheriff of Rizal on February 12, 1964 in pursuance of the writ of execution issued by the Court of First Instance of Pampanga in Civil Case No. 2222 entitled 'Ponciano B. Flores vs. Marvin Buendia': that he was not notified of the hearing of the second partial project of partition although the executrix had been duly informed of the aforesaid auction sale: and that the adjudication of the said 2/80 share of Marvin Buendia in favor of Arsenio S. Pascual is contrary to the provisions of Section 9, Rule 57, of the new Rules of Court." [2] He would pray, therefore, "that the order of June 15, 1964, be set aside insofar as it adjudicates to Arsenio S. Pascual the said 2/80 share in the property in question and that the same be delivered instead to the Provincial Sheriff of Rizal, subject to the right of redemption by the judgment debtor or by any redemptioner within the period provided by law." [3]

The opposition of the executrix was set forth in the brief of petitioner as appellant thus: "Under date of July 16,

1964, the executrix filed an opposition * * * claiming validity of the adjudication of the 2/80 share of Marvin Buendia in the property in favor of Arsenio S. Pascual because all tile rights, interests and participation of said heir in the estate of the deceased had already been sold and assigned to said Arsenio S. Pascual way back on December 15, 1962: that appellant Ponciano B. Flores acquired nothing by virtue of the alleged sale at public auction inasmuch as Marvin Buendia had no more right or interest in the said property when the Sheriff of Rizal attached and sold at public auction the said property; and that the said adjudication is proper, legal and justified especially so when the same was made principally upon agreement of the residuary heir Marvin Buendia and Arsenio S. Pascual." [4] After which came a reply from petitioner "stating that he is a purchaser in good faith and for value of the 2/80 share of Marvin Buendia in the property in question because at the time of the sale he had no knowledge or information concerning the assignment thereof in favor of Arsenio S. Pascual; that no third-party claim was filed with the sheriff by either Arsenio S. Pascual or the executrix; that before taking part in the auction sale, he investigated the status of Transfer of Certificate of Title No. 42372 and found the same to be free from any liens and encumbrances; and that he is not bound and cannot be prejudiced by a support prior assignment made to Arsenio S. Pascual of the rights and interests of Marvin Buendia in the property inasmuch as the sale of the same property in his favor has been duly registered and annotated at the back of the title thereof." [5]

As noted, the lower court denied, on August 31, 1964, the petition to set aside its order of June 15, 1964. Hence this appeal, in view of the controlling legal principle cannot, as already indicated, succeed.

Petitioner would assail the adjudication of the rights and interests of the heir, Marvin S. Buendia, in the aforesaid 2/80 undivided portion of the property embraced in TCT No. 42372 in favor of appellee Arsenio S. Pascual as being contrary to a specific provision of the Rules of Court: "The attachment of the interest of an heir, legatee, or devisee in the property belonging to the estate of a decedent, shall not impair the powers of the executor, administrator, or other personal representative, of the decedent over such property for the purpose of administration. Such personal representative, however, shall report the attachment to the court when petition for distribution is filed, and in the order made upon such petition, distribution may be awarded to such heir, legatee, or devisee, but the property attached shall be ordered delivered to the officer making the levy, subject to the claim of such heir, legatee, or devisee, or any person claiming under him." [6]

Petitioner apparently lost sight of or even more specify provision found in an earlier section of the same Rule. Thus: "Properties shall be attached by the officer executing the order in the following manner: * * * 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. A copy of said order of attachment and of said notice shall also be filed in the office of the clerk of court in which said estate is being settled and served upon the heir, legatee or devisee concerned." The second paragraph is particularly pertinent. "If the property sought to be attached is in custodia legis, copy of the order of attachment shall be filed with the proper court and notice of the attachment served upon the custodian of such property." [7] As authoritatively commented upon by former Chief Justice Moran: "Taken from sub-section (f) of section 7 of former Rule 59, which was based on rulings laid down by the Supreme Court and was in conformity with American Jurisprudence. A further proviso has been added to the effect that if the property sought to be attached is in custodia legis, a copy of the writ shall be filed with the proper court and notice of the attachment served upon the custodian of such property." [8]

Petitioner in this case, having failed to comply with the above requirement of the Rules of Court, cannot be heard to complain if such an order of adjudication in favor of appellee Arsenio S. Pascual were made. The validity of such order by Judge Muñoz Palma cannot be successfully impugned. No reliance can be had on the writ of execution issued by another court of first instance to affect a property forming part of an estate still in custodia

legis the procedure required by law not having been followed. It cannot escape attention that in the challenged order the rights of petitioner as against the heir were safeguarded, but certainly, under the circumstances, what was done by it as a probate court cannot by this petition be undone.

The brief for petitioner as appellant assigned as the first two errors the failure of the lower court to consider him a purchaser for value of the rights and interests of Marvin S. Buendia in the property now the object of this proceeding and that au such his having "a better right * * *as against appellee Arsenio S. Pascual, who is a prior assignee thereof [but] whose assignment is not recorded in the title of the property." The last two alleged errors would find fault in the adjudication of the aforesaid share of Marvin S. Buendia in favor of appellee Arsenio S. Pascual instead of awarding it to such heir, but ordering its delivery to the Sheriff subject to the claim of petitioner. There is no need to discuss any of the above errors in view of what has been set forth, which renders clear and indisputable that, in accordance with the facts before the lower court and the procedural rules that call for application, the order assailed cannot be shown to be illegal.

WHEREFORE, the order of Judge Muñoz Palma on August 31, 1964, denying the petition of June 15, 1964, is affirmed. With costs against petitioner-appellant.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

[1] Brief for the Appellant, p. 3.

[2] Ibid, pp. 3 4.

[3] Ibid, p. 4.

[4] Ibid, pp. 4-5.

[5] Ibid, p. 5.

[6] Rule 57, Sec. 9, New Rules of Court.

[7] Rule 57, Sec. 7(f), New Rules of Court.

[8] 3 Moran, Comments on the Rules of Court, 1963 ed. pp. 31-32.

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