

EUFROCINA TAMISIN, AS ADMINISTRATRIX OF THE INTESTATE ESTATE OF THE DECEASED CECILIO TAMISIN, PLAINTIFF AND APPELLANT, VS. AMBROCIO ODEJAR AND GLICERIA GIBAS, DEFENDANTS AND APP...

G.R. No. 12068. May 31, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is an appeal from a decision of the Court of First Instance of Laguna, dismissing plaintiff's complaint for the annulment of a sale at public auction and for the reconveyance of the properties involved therein.

The record shows that on February 18, 1951, the Judge Advocate General of the Armed Forces of the Philippines instituted Civil Case No. 9401 in the court below, praying that Cecilio Tamisin and his children Rufino, Teresa and Eufrocina, as well as the spouses Ambrocio Odejar and Glicería Gibas, interplead and litigate among themselves with respect to the sum of P500.00 belonging to Lt. Roberto Tamisin, who died on March 12, 1942, and that the court declare who are the legal heirs authorized by law to receive the said amount.

On being served with the summons, Ambrocio Odejar and his wife Glicería Gibas filed an answer containing a cross-claim against the Tamisins for the recovery of one-half of the sum of P11,363.42 previously awarded to the latter by the Judge Advocate General as arrears in pay due to the estate of the deceased Lt. Roberto Tamisin, it being alleged that the deceased was married to their daughter Paula Odejar who died without issue.

In their answer, Cecilio Tamisin and his children denied liability on the cross-claim and alleged that Lt. Roberto Tamisin was never married to Paula Odejar.

Pending litigation of the case, Cecilio Tamisin died and his children moved for the dismissal of the cross-claim. The court, however, denied it and suggested that proceedings for the settlement of the estate of the said deceased be commenced so that the claim against him could be filed therein. In view of the repeated neglect or refusal of the heirs or next of kin of the deceased Cecilio Tamisin to act upon the suggestion of the court, Ambrocio Odejar, on March 1, 1952, filed special proceedings No. 4492 with the same court for the settlement of the estate of the said deceased. In due time, one Ponciano Palis was appointed special administrator but for reasons not stated he failed to qualify. Meanwhile, the cross-claim as against Cecilio Tamisin was eliminated in the interpleader suit and prosecuted only as against his children.

On March 23, 1953, judgment was rendered in Civil Case No. 9401, the dispositive part of which reads:

"Wherefore, judgment is hereby rendered condemning Rufino Tamisin, Eufrocina Tamisin and Teresa Tamisin jointly and severally to pay the spouses Ambrocio Odejar and Glicería Gibas in the amount of P5,688.71, with legal interest thereon from March 6, 1951, the date of the filing of the cross-claim; and that ½ of the amount of P500.00 which was deposited at Corregidor by Lt. Tamisin are adjudged payable by the plaintiff to the spouses Ambrocio Odejar and Glicería Gibas, with costs against the defendants Tamisin."

The Tamisins moved for new trial, alleging, among other things, that they could prove that Roberto Tamisin and Paula Odejar were never married, but said motion was denied. Upon motion by Adejar, who alleged that Rufino Tamisin was disposing of his properties, the court issued an order for the execution of the judgment.

No appeal having been taken from the judgment, the same became final and pursuant to the writ of execution issued therein, the provincial sheriff of Laguna levied upon five parcels of land (described in par. 2 of the complaint in the present action) for the satisfaction of the judgment. To enjoin the sheriff from selling the property and to have the judgment set aside and new trial ordered, the Tamisins filed with the Court of Appeals a "petition for the issuance of a writ of preliminary injunction." (CA G. R. No. 14357-R.) The appellate court issued the writ of preliminary injunction prayed for, but after hearing the case on the merits, it dismissed the same for lack of merit and dissolved the writ of preliminary injunction previously issued.

Thereafter, the sheriff proceeded with the execution and levy upon the five parcels of land already referred to. The Tamisins, apparently determined to block the enforcement of the judgment in the case, filed a motion in the proceedings for the settlement of the estate of their deceased father for the issuance of an order to suspend the sale on the ground that the properties were in custodia legis. The probate court, however, denied the motion, and on March 28, 1956, the lands were sold to the Odejar spouses for P7,798.01 in full-satisfaction of the judgment rendered in their favor.

On June 15, 1956, Eufrocina Tamisin was appointed the administratrix of the estate of her deceased father Cecilio Tamisin. After her qualification, she asked Odejar and his wife to reconvey to the estate under her administration the properties acquired by them at the auction sale. As the latter refused, Eufrocina Tamisin, in her capacity as administratrix, filed the present action praying that the sale at public auction of the .five parcels of land be declared null and void and that defendants be ordered to reconvey them to her.

Defendants, in their answer, alleged that the properties in question at the time of the levy and execution sale were not in custodia legis; that plaintiff is estopped by res judicata to bring the suit, the issues raised having been squarely decided by the Court of Appeals in CA G. R. No. 14357, entitled "Rufino Tamisin, Teresa Tamisin and Eufrocina Tamisin, petitioners, vs. The Judge of Court of First Instance of Laguna et al., respondents."

After trial, the lower court, holding that the properties in dispute at the time of the levy and execution sale were not in custodia legis, rendered judgment on November 29, 1956, dismissing the complaint and sentencing plaintiff iii her personal capacity to pay defendants the sum of P500.00 as attorney's fees, plus costs, the action being "clearly unfounded and obviously filed to harass the defendants." Reconsideration of the decision having been denied, plaintiff took the present appeal.

Plaintiff questions the validity of the judgment rendered in Civil Case No. 9401 under which the public auction sale in question was made in that since the case pertained to the recovery of a sum of money and the defendant Cecilio Tamisin died, the same should have been dismissed and prosecuted in the intestate proceedings. It will be noted, however, that the money claim was made not only against Cecilio Tamisin and that after his death the claim as against him was eliminated or dismissed and prosecuted only as against the other defendants therein. The judgment in question, moreover, has already become final. What is more, the question as to its validity has already been raised before the Court of Appeals when the defendants in the case, including herein plaintiff, filed a petition for its annulment. The appellate court, however, dismissed the petition for lack of merit and that judgment is now binding and conclusive upon us. It may not be amiss to state here that the probate court in the intestate proceedings issued, on July 12, 1956, an order stating that "there is no need of further continuing the intestate proceedings because the heirs are all of legal age, that they are in actual possession of their respective share, and that it appeared that the decedent has no outstanding obligations."

The other question raised by plaintiff is whether or not the properties in question were in custodia legis at the time of the levy and execution sale. The question, we think, was correctly answered by the court below in the negative. While it is true that proceedings for the settlement of the estate of the deceased Cecilio Tamisin was commenced sometime in 1952 at the instance, of herein appellees, the assets left by the deceased had not yet been placed under the control of the court, no one having qualified as administrator. The properties remained as they were until the qualification of herein plaintiff as administratrix in 1956, several months after the levy and execution sale. Clearly, at the time of such levy and execution sale, said properties were not yet in the custody of the court.

"A thing is in custodia legis when it is shown that it has been and is subjected to the official custody of a judicial executive officer in pursuance of his execution of a legal writ." (McFarland Carriage Co. vs. Solanes, 108 F. 532.)

"So far as concern jurisdiction over property, the actual or constructive possession, after filing of a bankruptcy petition, * * * by someone claiming beneficial interest as custodians and court officers * * * constitutes custodia legis for the purpose of assumption of jurisdiction by the bankruptcy court, and the bankruptcy court assumes jurisdiction over the property, and the property comes into its custodia legis, if, after the filing of the petition, it is in the custody or control of one of such persons." (In Re Tax Service Ass'n. of Illinois, C. C. A. 111., 95 F. 2d 373, 375.)

Plaintiff cites the case of Saturnino vs. Paulino et al. (97 Phil., 50; 51 Off. Gaz. [9] 2899) as authority for her contention that the filing of special proceedings No. 4492 vested jurisdiction upon the probate court over the properties therein involved. The contention, however, is not borne out by the case cited. This Court there merely held that the house and lot involved therein were not in custodia legis because said properties were sold almost "a month before the institution of the special proceedings." It does not necessarily follow that a decedent's property takes the character of property in custodia legis upon the mere filing or institution of the special proceedings for its settlement. For one thing, an inventory has yet to be made, which inventory can only be made by an administrator or executor. (Sec. 1, Rule 84, Rules of Court.) In the absence, therefore, of such administrator or executor, no property sought to be the subject of administration proceedings can be said to have been subjected to the jurisdiction of the court, the same not being under the custody or control of a properly appointed custodian or court officer.

In view of the foregoing, the judgment appealed from is affirmed, with costs against appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, and Barrera, JJ., concur.

Concepcion, J., concurs in the result.

Reyes, J.B.L., and Endencia, JJ., did not take part.

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