

**MELECIO R. DOMINGO, AS COMMISSIONER OF INTERNAL REVENUE,
PETITIONER, VS. HON. LORENZO C. GARLITOS, IN HIS CAPACITY AS
JUDGE OF THE COURT OF FIRST INSTANCE OF LEYTE, AND
SIMEONA ...**

G.R. No. 18994. June 29, 1963

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a petition for certiorari and mandamus against the Judge of the Court of First Instance of Leyte, Hon. Lorenzo C. Garlitos, presiding, seeking to annul certain orders of the court and for an order in this Court directing the respondent court below to execute the judgment in favor of the Government against the estate of Walter Scott Price for internal revenue taxes.

It appears that in *Melecio R. Domingo vs. Hon. Judge S. C. Moscoso*, 106 Phil., 1138, this Court declared as final and executory the order for the payment by the estate of the estate and inheritance taxes, charges and penalties amounting to P40,058.55, issued by the Court of First Instance of Leyte in special proceedings No. 14 entitled "In the Matter of the Inestate Estate of the Late Walter Scott Price." In order to enforce the claims against the estate the fiscal presented a petition dated June 21, 1961, to the court below for the execution of the judgment. The petition was, however, denied by the court which held that the execution is not justifiable as the Government is indebted to the estate under administration in the amount of P262,200. The orders of the court below dated August 20, 1960 and September 28, 1960, respectively, are as follows:

"Atty. Benedicto submitted a copy of the contract between Mrs. Simeona K. Price, Administratrix of the estate of her late husband Walter Scott Price and Director Zoilo Castrillo of the Bureau of Lands dated September 19, 1956 and acknowledged before Notary Public Salvador V. Esguerra, legal adviser in Malacañang to Executive Secretary De Leon dated December 14, 1956, the note of His Excellency, Pres. Carlos P. Garcia, to Director Castrillo dated August 2, 1958, directing the latter to pay to Mrs. Price the sum of P368,140.00, and an extract of page 765 of Republic Act No. 2700 appropriating the sum of P262,200.00 for the payment to the Leyte Cadastral Survey, Inc., represented by the administratrix Simeona K. Price, as directed in the above note of the President. Considering these facts, the Court orders that the payment of inheritance taxes in the sum of P40,058.55 due the Collector of Internal Revenue as ordered paid by this Court on July 5, 1960 in accordance With the order of the Supreme Court promulgated July 30, 1960 in 106 Phil., 1138, be deducted from the amount of P262,200.00 due and payable to the administratrix Simeona K. Price, in this estate, the balance to be paid by the Government to her without further delay." (Order of August 20, 1960).

"The Court has nothing further to add to its order dated August 20, 1960 and it orders that the payment of the claim of the Collector of Internal Revenue be deferred until the Government shall have paid its accounts to the administratrix herein amounting to P262,200.00. It may not be amiss to repeat that it is only fair for the Government, as a debtor, to pay its accounts to its citizens-creditors before it can insist in the prompt payment of the latter's account to it, specially taking into consideration that the amount due the Government draws interests while the credit due to the present estate does not accrue any interest." (Order of September 28, 1960).

The petition to set aside the above orders of the court below and for the execution of the claims of the Government against the estate must be denied for lack of merit. The ordinary procedure by which to settle claims or 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*, 85 Phil., 228, Dec. 29, 1949, thus:

"* * * 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 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 89, section 6; see also Rule 74, section 4; Italics ours.) And this is not the instant case."

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.

Another ground for denying the petition of the provincial fiscal is the fact that the court having jurisdiction of the estate had found that the claim of the estate against the Government has been recognized and an amount of P262,200 has already been appropriated for the purpose by a corresponding law (Rep. Act No. 2700). Under the above circumstances, both the claim of the Government for inheritance taxes and the claim of the intestate for services rendered have already become overdue and demandable as well as fully liquidated. Compensation, therefore, takes place by operation of law, in accordance with the provisions of Articles 1279 and 1290 of the Civil Code, and both debts are extinguished to the concurrent amount, thus:

"Art. 1290. When all the requisites mentioned in article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation."

It is clear, therefore, that the petitioner has no clear right to execute the judgment for taxes against the estate of the deceased Walter Scott Price. Furthermore, the petition for certiorari and mandamus is not the proper remedy for the petitioner. Appeal is the remedy.

The petition is, therefore, dismissed, without costs.

Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.
Reyes, J.B.L. in the result.

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