

LEONCIO ESPINO ET AL., PETITIONERS, VS. HONORABLE LEOPOLDO ROVIRA ET AL., RESPONDENTS.*G.R. No. 27295. March 23, 1927*

Ponente: STREET, J.

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This is an original application for a writ of prohibition, presented in this court by Leoncio Espino, Maria Caridad Consunji, Lorenza Espino, and Fidela Enrile, the latter both in her own right and as guardian of four minor plaintiffs bearing the surname of Inton, for the purpose of restraining the respondent Gregorio Quicho, governor and ex officio sheriff of the Province of Bataan, and his deputy, Pedro Poblete, from selling certain property, alleged to belong to the plaintiffs, under an execution issued upon a judgment of the Court of First Instance of Bataan, presided over by the respondent judge, and to obtain a declaration of nullity as to said execution. The partnership, "La Germinal, " as creditor in said judgment, is named as one of the respondents, being the entity chiefly interested in the litigation. All the respondents having presented their respective answers, the cause has been submitted and is now before us for the determination of the questions thus raised.

It appears that, prior to August 27, 1926, there was pending an administration proceeding (case No. 712) in the Court of First Instance of Bataan, concerned with the testate estate of one Bonifacio Inton, deceased, in which proceeding Fidela Enrile and Lorenza Espino had been appointed administratrices (with will annexed). On the date mentioned the judge presiding in said court entered an order terminating the proceeding and placing the expediente in the archives. Meanwhile, "La Germinal," a general partnership, organized under the laws of the Philippine Islands, with domicile in the City of Manila, was engaged in prosecuting an action to recover a sum of money from the estate above-mentioned. With respect to this litigation the following facts may be noted: The claim of "La Germinal," for some reason or other, had not been presented before the original committee on claims in the Testacy of Bonifacio Inton, but On April 7, 1924, prior to the distribution of the estate, the entity named caused a motion to be presented in the proceedings mentioned (case No. 712), asking the court to renew the commission of the committee and to extend the period within which "La Germinal" might present its claim. This motion was granted by the judge then presiding in the Court of First Instance of Bataan on April 21, 1924; and the commission of the committee was renewed, with leave to "La Germinal" to present its claim within the period of one month. The administratrices protested against this action in a motion of reconsideration but without success; and the claim of "La Germinal" was duly presented. The committee disallowed the claim, with the consequence that "La Germinal" appealed and presented a complaint based on said claim in civil proceeding No. 789, entitled "La Germinal, sociedad anonima, vs. Fidela Enrile y Lorenza Espino, in their character as administratrices of the Testacy of Bonifacio Inton." The cause came to trial in the due time, and judgment was rendered by the Court of First Instance in favor of the plaintiff to recover the amount of P17,658.25, with interest and costs. The administratrices appealed the cause to the Supreme Court, where judgment was unanimously affirmed on November 24, 1926, and in due time the record was returned to the court of origin.[1]

The time having thus arrived when the successful creditor might be supposed to realize upon its judgment, an

obstacle presented itself in the fact noted at the beginning of this opinion, namely, that the assets of the estate had already been distributed and the administration terminated. In connection with this distribution and closure of proceedings the following facts are noteworthy, namely, that on March 18, 1924, the administratrices had presented a project in civil case No. 712 for the division, liquidation, and adjudication of the assets pertaining to the estate of Bonifacio Inton, accompanied by the conformity of the widow, Fidela E. de Inton, as well as that of the guardian ad litem appointed by the court to look after the interest of the minors. Said project having been found to be in due form and in all respects in accordance with law and the dispositions of the will of the testator, the court approved the same and ordered the delivery of the portions indicated therein to the respective distributees, effective as soon as payment of the inheritance tax should be proved. The project of division and distribution shows that the widow was entitled to P8,973.44 and the four minor children to P2,000.86 each, while Lorenza Espino, as legatee, was to receive money and property, amounting in value to the sum of P600, Leoncio Espino a carabao of the value of P170, and Maria Caridad Consunji the sum of P200 in money. It is not disputed that the widow and other distributees mentioned in the project have received what is therein assigned to them; and it was in view of the previous distribution and payment of the inheritance tax that the court made its order of August 27, 1926, terminating the proceedings and ordering the expediente to be placed in the archives.

By comparing dates it will be noted that the motion of "La Germinal," asking for the renewal of the committee on claims, was presented a little more than two weeks after the order of March 20, 1924, for the distribution of the assets, and the motion for the renewal of the committee was granted by the court more than two years before the order terminating the administration proceedings was entered. It will be further noted that the order approving the distribution of the assets of the estate and terminating the proceedings was obtained while "La Germinal" was occupied with the litigation against the administratrices over its claim. It requires but little discernment to see, in the sequence of the proceedings above mentioned, a design on the part of the persons concerned in the administration of the estate, so to engineer matters as to get the assets distributed and beyond the reach of creditors before the litigation over "La Germinal's" claim could reach finality.

The judgment in favor of "La Germinal" is of course against Fidela Enrile and Lorenza Espino, in their capacity as administratrices of the estate of Bonifacio Inton; and after the return of the record to the lower court, the creditor caused an execution to be issued requiring the sheriff to levy upon all the right and interest which said administratrices may have in the property pertaining to the estate. The return made by the sheriff to this execution, dated January 21, 1927, shows that he has levied upon a house and five parcels of land, together with various items of personal property supposedly pertaining to the estate of Bonifacio Inton, constituting part of the property that had been distributed among the heirs, as repeatedly above stated; and it was for the purpose of prohibiting the respondent judge and the sheriff of Bataan from selling this property that the present petition has been filed in this court.

Upon the facts above presented the following propositions are either self-evident or capable of easy demonstration: First, that "La Germinal" has a judgment against the administratrices of the estate of Bonifacio Inton, which judgment should be paid out of any assets pertaining to said estate; secondly, that this judgment must take precedence over the rights of the distributees, since "the right of the creditors to collect is one which has preference over that of the heirs to inherit" (Lopez vs. Enriquez, 16 Phil., 336, 341); thirdly, that the distribution of the assets of the estate among heirs and legatees, without provision being made for the satisfaction of "La Germinal's" claim in the event that it should succeed in obtaining a judgment against the estate, was improvident and the order terminating the administration proceedings was premature; fourthly, that, although the order of approval of the distribution and closure of proceedings may have been obtained by the administratrices as the result of an imposition upon the good faith of the court, nevertheless said order was legally effective, and the administration proceedings must be considered closed, as was intended by said order; fifthly, that the creditor, "La

Germinal," has the undeniable right to maintain an action against any of the distributees severally, or all jointly, to compel them to contribute to the satisfaction of its judgment to the extent of the amount and value of the property by which such distributees may have been prematurely enriched (*Lopez vs. Enriquez*, 16 Phil., 336) ; sixthly, that the foregoing remedy is not exclusive, and the creditor may, if it prefers, procure the court of administration to reopen the proceedings and obtain the appointment of a new administrator, who will recover and reassemble the assets in order that they may be used for the satisfaction of the plaintiff's claim. The appointment of such new administrator would be analogous to the appointment of an administrator de bonis non upon discovery of unadministered assets.

This leaves for discussion the really vital question presented by the present petition and, answer, namely, whether a creditor situated as is "La Germinal" in this case has the right to proceed directly by levy of execution on the property formerly pertaining to the estate of the deceased debtor but which is now in the hands of the distributees. Upon this point we are of the opinion that the levy was irregular and beyond the legitimate powers of the court.

In a case where the right of a creditor is so undeniable, we are of course reluctant to announce a rule which interposes an obstruction, however slight, to the creditor in the realization of its judgment, but it is clear that, upon principle, the course taken by the creditor is anomalous and cannot be approved.

The judgment under which the creditor is now proceeding was obtained in an action against the administratrices of the estate of a deceased person; and while the estate was in course of administration the assets could not be taken in execution under that judgment, because nobody but an executor or administrator can sell the property pertaining to the estate of a deceased person (*Piliin vs. Jocson and Agoncilio*, 41 Phil., 26). It is difficult to see how the distribution of the assets could have converted a judgment not capable of execution into a judgment capable of execution. In fact it must be apparent that the distribution of the assets has raised an additional obstacle to the execution of the judgment upon the assets, since there is no privity between the creditor in the execution and the persons against whom it is now proposed to execute the judgment. Since the adoption of the Code of Civil Procedure in these Islands, the heirs of course do not directly succeed by universal succession to the obligations of their ancestor (*Suiliong & Co. vs. Chio-Taysan*, 12 Phil., 13); and the decisions in which this court has recognized the liability of the heir to contribute to the payment of his ancestor's debts, to the extent of assets received, proceed upon the assumption that the liability of the heir is to be made effective in some proper proceeding to which he is a party.

For the respondents it is said that the premature distribution of the assets in this case was procured by the administratrices with intent to defeat "La Germinal's" claim; and it is insisted that, under the doctrine of *Oria vs. McMicking* (21 Phil., 243), and *De Belen vs. Collector of Customs and Sheriff of Manila* (46 Phil., 241), the distribution here effected cannot operate as an obstacle to the levy of "La Germinal's" execution. But we are not now dealing with a fraudulent conveyance, effected by a debtor, but with a valid, though improvident, order of distribution made by a court. The suggestion that the order of distribution in this case should be treated as a nullity, in the same sense as a fraudulent conveyance made by a debtor, we regard as untenable. The creditor is here impaled apparently upon one or the other of the two horns of a dilemma: that is to say, if the order of distribution and closure of the administration be treated as a nullity, then the judgment cannot be directly executed, because the estate is in administration; while, if the order of distribution be considered to have been effective, then the judgment cannot be executed against the heirs, because of lack of privity on their part with the judgment.

The judgment and execution here run against *Fidela Enrile* and *Lorenza Espino* in their character as administratrices; but an administrator is merely a legal entity which has no existence apart from the order of court creating the office, and when the administration was closed and the office of administrator abolished, the

defendant in the execution became non-existent. From whatever point of view the matter be considered, we arrive at the conclusion that the levy made by the respondent sheriff upon the property which had been the subject of distribution was unauthorized.

The prayer of the petition must therefore be granted; the levy is declared a nullity; and the preliminary injunction heretofore granted by this court against the sale of the property under execution is declared permanent. So ordered, with costs against the respondent "La Germinal."

Johnson, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real JJ., concur.

[1] R.G. No. 25624, not reported.

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