

“CONSULTA” NO. 1013 OP THE REGISTER OF DEEDS OF TAYABAS. GOTAUCO & CO., APPLICANT AND APPELLANT, VS. THE REGISTER OF DEEDS OF TAYABAS, OPPOSITOR AND APPELLEE.

G. R. No. 39596. March 23, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Fourth Branch of the Court of First Instance of Manila in a submitted by the register of deeds of Tayabas.

Our decision upon this appeal has been facilitated because both the appellant and the appellee, the latter being represented by the Solicitor-General, agreed that the judgment should be reversed.

On August 12, 1932, when Exhibits A and B were presented to the register, by which a levy of execution against the judgment debtor, Rafael Vilar was made on fifteen tracts of land described in Exhibit B and registered in the name of Florentino Vilar, the register properly denied the inscription of said levy of execution because the title to the lands was in the name of Florentino Vilar and no evidence was submitted that Rafael Vilar had any present or possible future interest in the land. On September 17, 1932, there was presented to him a copy of a petition filed in the Court of First Instance of the province, entitled, "Intestado del Finado Florentino Vilar", from which he could properly infer that Florentino Vilar was dead and that the judgment debtor Rafael Vilar is one of the heirs of the deceased Florentino Vilar. Although the value of the participation of Rafael Vilar in the estate of Florentino Vilar was indeterminable before the final liquidation of the estate, nevertheless, the right of participation in the estate and the lands thereof may be attached and sold. The real test was laid down by this court in the case of *Reyes vs. Grey* (21 Phil., 73, 76), namely: Does the judgment debtor hold such a beneficial interest in the property that he can sell or otherwise dispose of it for value? Nothing appears in this record to indicate that Rafael Vilar being sui juris could not dispose of his interest or share as heir in the estate of Florentino Vilar. Having this right, he could by a conveyance defeat pro tanto the provisions of section 450 of the Code of Civil Procedure and thus deprive the judgment creditor of the benefit of a lawful execution. (See also Consulta No. 441 de los Abogados de Smith, Bell & Co., 48 Phil., 656, 664, 665.)

On October 12, 1932, with the knowledge which he then had, the register should have accepted and inscribed Exhibits A, B and D.

The judgment in this is reversed without special pronouncement as to costs.

Street, Abad Santos, Goddard, and Diaz, JJ., concur.

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