

APOLINAR VELEZ, PETITIONER, VS. FELIX MARTINEZ, JUDGE OF THE COURT OF FIRST, INSTANCE OF ORIENTAL MISAMIS, AND RAMON CHACON, RESPONDENTS.

G. R. No. 44447. July 31, 1936

Ponente: DIAZ, J.

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DIAZ, J.:

This is a petition filed to seek the annulment not only of a certain order of the Court of First Instance of Oriental Misamis issued by the respondent judge in civil case No. 4282, on June 29, 1935 (Exhibit D), but also the effects thereof and the proceedings had for its enforcement. The petition is based upon the allegation that the respondent judge acted in excess of his jurisdiction and abused his discretion in issuing said order, because the person against whom he rendered it was an entire stranger to the case, having had no interest therein except as judicial administrator of an estate.

The order in question directed the issuance of an alias writ for the execution of the judgment of February 15, 1935 (Exhibit B), rendered in said civil case No. 4282, after the return of the original writ issued on March 18, 1935 (Exhibit 1), "which had been only partially carried out. The alias writ of execution was issued on July 5, 1935 (Exhibit 7), and was carried out in accordance with its terms, attaching and selling at public auction, on August 29, 1935, with the petitioner's opposition, a house and lot belonging exclusively to him. Filomeno Neri having been the highest bidder, took possession of said properties, paying therefor the sum of P4,100 (Exhibit 10-Chacon). From this amount, the sum of P1,326.54, for the collection of which said alias writ of execution had been issued, was paid to Ramon Chacon and on August 31, 1935, the sum of P474 was paid with the petitioner's consent to his mortgage creditor Gotiaco Hermanos, leaving in the hands of the sheriff a balance of P2,299.46 less the execution fees which said officer is supposed to have already collected and the interest at 6 per cent per annum from March 30, 1930, to August 29, 1935, the date of the execution, to which the respondent Ramon Chacon was entitled under the judgment rendered in his favor and which is supposed to have been paid to him at the same time as said sum of P1,326.54.

Case No. 4282 of Oriental Misamis was between Ramon Chacon, as plaintiff and Apolinar Velez as administrator of the estate of the deceased Ramona Rasines. The judgment rendered therein literally reads as follows:

"In view of the foregoing, it is hereby ordered that the herein defendant give to the herein plaintiff Ramon Chacon the possession of the land described in the complaint heading this case and to turn over, furthermore, to the said plaintiff the amount of P1,326.54 with interest at 6 per cent per annum from March 30, 1930, until fully paid; without costs. It is so ordered."

Relying on the terms of the judgment, the respondent judge and the other respondent named Ramon Chacon contend that the payment of the sum of P1,326.54 was the petitioner's personal obligation; that if such had not been the purpose of the judgment it would have expressly stated that it was the petitioner's obligation as administrator, or at least that the sum in question was to be paid by the estate of which he was administrator. Such

contention seems to us untenable because the judgment authorizing the issuance of a valid writ of execution must not be read separately but in connection with the other portions of the decision of which it forms part. If the judgment expressly says that it is against the defendant it must be understood that it was he upon whom summons was served, who defended himself as such at the trial, and who, had said judgment been favorable, would personally receive the benefit, and no one else.

The judgment in question formed part of a decision the title of which clearly states that the defendant is "Apolinar Velez as administrator of the testate estate of the deceased Dra. Ramona Rasines." It appears from the very complaint which gave rise to civil case No. 4282 (Exhibit A) and from all the pleadings presented therein by the petitioner, as evidenced by the data of record, that his intervention therein was only that of a mere administrator. A complaint was filed against him expressly as such by the petitioner Ramon Chacon; and it appears from the title of the alias writ of execution (Exhibit 7) that he had theretofore been considered in said capacity; all of which shows that as he neither brought the suit nor caused the institution thereof because he harbored the desire to appropriate the land for himself, he was not personally, that is as Apolinar Velez, an interested party in said case.

Consequently, inasmuch as the alias writ of execution (Exhibit 7), as well as the order of June 29, 1935 (Exhibit D or 6), under which the former was issued, was not based on the judgment rendered in civil case No. 4282, it could not and cannot prejudice the petitioner personally because he was not a party to the case and he could not for precisely the same reason be prejudiced by the judgment in question in the same manner that he could not have been benefited thereby. A writ of execution not warranted by the decision or judgment which gives it life or cause to exist has no validity (*Bank of the Philippine Islands vs. Green*, 48 Phil., 284; *Silvestre vs. Torres and Oben*, 57 Phil., 885). To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property, as in this case, without due process of law. This due process requires that in order that a writ and an order of the nature of those under consideration herein be issued against the petitioner, he should have been joined personally as party in case No. 4282.

The respondents granting that the petitioner believed in good faith that the judgment was against the estate of which he was the administrator and not against him personally, they contend, however, that he should have made efforts to pay the amount of said judgment with the funds and property of the estate in his charge, and not having done so he became personally liable for said payment. In support of their contention they invoke sections 742 and 678 of Act No. 190 which read:

"When an order is made for the distribution of assets among the creditors the executor or administrator, after the time of payment arrives, shall be personally liable to the creditors for their debts, or the dividend thereon, as for his own debt; he shall also be liable on his bond." (Section 742.)

"When an administrator neglects, or unreasonably delays, to raise money, by collecting the debts or selling the real or personal estate of the deceased, or neglects to pay over the money he has in his hands, and the value of the estate is thereby lessened or necessary cost or interest accrues, or the persons interested suffer loss, the same shall be deemed waste, and the damage sustained may be charged and allowed against him in his account, and he shall be liable therefor on his bond." (Section 678.)

The two sections above-cited are not applicable to the case under consideration because the action brought against the petitioner in case No. 4282 was only for the recovery of the land described in the complaint and the exclusion thereof from the inventory of the properties of the estate of which he was the administrator, not to demand responsibility of him for violation of the provisions of said two sections. The court which rendered the judgment of February 15, 1935 (Exhibit B), acquired no jurisdiction over the person of the petitioner or the subject matter of the litigation except as administrator of the estate of the deceased Ramona Rasines and only for the purpose of determining whether, as such, he was obliged to return the land in question to the plaintiff therein and,

furthermore, to pay him the fruits thereof. It acquired no jurisdiction to issue the order authorizing the alias writ of execution, in question by virtue of which the petitioner's own properties were attached to be sold, as they were in fact sold, at public auction to pay the value of said fruits, because he was an entire stranger to the case and no action was ever brought against him for violation of the above-mentioned sections.

On the other hand, no law has been cited in support of respondents' contention that a judgment against an administrator must be satisfied personally by the latter if it is not expressly stated therein that it must be satisfied by the estate of which he is the administrator. On the contrary, there is section 676 of Act No. 180 from which it may be inferred that the administrator of a testate or intestate estate is not personally liable for the debts of the estate. Said section reads:

"No executor or administrator shall be accountable for the debts due the deceased if it appears that they remain uncollected without his fault." (Section 676.)

According to the record the petitioner made it appear that the respondent Ramon Chacon could not be paid the sum of P1,326.54 without his fault because, as the respondent judge himself knew from the documents of record, the funds of the estate in his charge had been exhausted.

It is true that the cases of *Thompson & Lively vs. Mann* (44 S. E., 246 [April 28, 1903]); *Hanson vs. Blake* (60 S. E., 589 [February 18, 1908]); and *Hall vs. McGregor* (64 S. E., 736 [February 2, 1909]), among others, have been cited as of persuasive value. We find, however, that they are not analogous to the one under consideration.

In *Thompson & Lively vs. Mann*, the court that had cognizance thereof had to hold that "a judgment against T. G. Mann, administrator of Sherman Clarkson, deceased", as shown in the caption—it not appearing that the recovery as to be levied of goods and chattels of Clarkson in the hands of Mann to be administered—is not a judgment against Mann", because, as stated in the decision itself, only an extract of the decision rendered against Mann was presented and said extract simply read: "*Thompson & Lively vs. T. G. Mann, Administrator of Sherman Clark, deceased. (As a caption) Judgment in favor of the plaintiffs and against the defendant for \$250, and \$67.10 costs.*" In said case the court said: "If the full judgment were before us, we might see that it was to be levied of the goods of the deceased in the hands of his administrator, but it is not before us." It means nothing else than that said court was also of the opinion that the dispositive part of a decision or order must be interpreted in connection with the whole text thereof, not independently. This is exactly our opinion.

In *Hanson vs. Blake*, the plaintiff Hanson brought an action against Blake as administrator of Charles Lomadew for the recovery of what the latter, in life, owed him for "board, house rent, fuel, and light furnished to Charles Lomadew, and for waiting on him as nurse during his last illness." Judgment was rendered against the defendant stating simply: "Plaintiff do recover of and from the defendant the sum of," etc. It was not stated that the amount of the judgment was to be paid with funds or property of the defendant as administrator. The defendant Blake appealed because it was insisted that the judgment was directed against him personally, not as administrator. Deciding the appeal the court said: "Whether such words as follow the name of defendant are to be deemed descriptive of his person or of the character and capacity in which he is sued is to be determined by the allegations of the declaration."

In the body of the decision rendered in case No. 4282 appears the court's statement or conclusion of fact that the therein defendant and herein petitioner took possession of the land in question because it was included in the inventory of the properties of the estate of which he was administrator, which is equivalent to saying that had not his duty forced him he would not have taken possession of said land; in other words, he acted for the benefit of the estate.

In Hall vs. McGregor, the defendant, who was then administratrix of the estate of David McGregor, engaged the services of the plaintiff attorney to act as such for said estate. The defendant not having paid the plaintiff's services after the latter had rendered them, Hall brought an action against her as administratrix and obtained judgment against her for the sum of \$300. A writ of execution was issued against the estate but nothing could be collected because no property could be found on which to levy the judgment. The plaintiff then brought an action to recover his judgment credit from certain lands of the deceased David McGregor which had been adjudicated to the defendant, and the court held that the original judgment was valid as against the defendant herself, stating that the phrase "executrix of the last will and testament of David McGregor, deceased" by which she was therein designated were merely descriptive of her person. In so doing it stated as follows:

"This is true, not only because of the form of the judgment and the statement of the account filed before the justice upon which it is based, but it is forcibly true by reason of the very substance of the cause of action. A personal representative is individually liable for compensation to an attorney for services, rendered at the instance of such representative, on behalf of the estate. The representative has recourse for reimbursement for reasonable expenditures in such behalf, in his settlement with the estate."

The same rule exists in this jurisdiction (Escueta vs. Sy-Juilliong, 5 Phil., 405; and Piliin vs. Jocson and Agoncillo, 41 Phil., 26); and it is apparent that there is no analogy between the question settled in said case of Hall vs. McGregor and the one under consideration.

The respondents likewise contend that inasmuch as the petitioner had failed to appeal from the order in question, having been able to do so, the remedy of certiorari invoked by him does not now lie. This contention is without merit as the petitioner, not having been personally a party to case No. 4282, had no cause to appeal from the order in question. Neither could he have done so for the simple reason that only those who are parties to a case may appeal therein. Furthermore, the respondent judge acquired no jurisdiction over the person of the petitioner nor over the subject matter which he tried to decide by means of his said order.

On the other hand, the then proper remedy was not an appeal but certiorari inasmuch as the purpose of this latter remedy is to correct acts in excess of jurisdiction, or manifest abuse of discretion of an inferior tribunal. The respondent judge, in issuing the order in question, undoubtedly acted in excess of his authority by sentencing somebody against whom he should not and could not render judgment on the ground that said person had not been a party to the case.

The respondent Ramon Chacon finally contends that inasmuch as the order and the alias writ of execution in question have already been complied with, the remedy of certiorari does not lie because according to him both of them have already served their purpose and are functus officio.

We are of the opinion that the rule of functus officio is not applicable to this case because, while it is true that the order and the alias writ of execution in question have already been complied with, the latter at least partly, it is no less true that they never had validity, not having been the result of a lawful exercise of a judicial or ministerial function.

The case of Gutierrez vs. Court of First Instance of Romblon (58 Phil., 575); and that of Bataclan vs. Court of First Instance of Cavite and Santo Domingo (61 Phil., 428), invoked by the respondent Chacon have no bearing on the decision of this case because in the latter case an appeal was perfectly possible and it was the adequate remedy but the therein petitioner, however, failed to appeal; and in the former case, the court had jurisdiction to issue the order the effect of which was sought to be annulled through certiorari.

In view of the foregoing, we hold that the respondent judge acted without jurisdiction or exceeded his authority in issuing the order of June 29, 1935, in civil case No. 4282 of Oriental Misamis and in authorizing the issuance of

the alias writ of execution of July 5, 1935.

Wherefore, we hold said order and alias writ of execution null and without effect, with costs to the respondent Ramon Chacon. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Recto, and Laurel, JJ., concur.

DISSENTING OPINION

VILLA-REAL, J.:

It appears from the complaint filed by the respondent Ramon Chacon against the petitioner Apolinar Velez, administrator of the testate estate of Ramona Racines, in civil case No. 4282 of the Court of First Instance of Oriental Misamis, which is attached to the petition for certiorari marked Exhibit A, that notwithstanding the acknowledgment made by the testatrix in question in her will that the land under consideration herein had already been transferred to said Ramon Chacon, and notwithstanding the latter's protest against the inclusion thereof in the inventory of the estate left by said testatrix, Apolinar Velez included it in the inventory in question as property belonging to her; that from February 1, 1929, until March 30, 1930, said administrator, with the protest of the plaintiff, had been demanding the latter delivery to him of an alleged participation of the deceased in the fruits of the land; that in view of said administrator's insistent demands the plaintiff was compelled to deliver to him said participation amounting to P1,326.54; and in spite of repeated demands made to the administrator for the exclusion of said land from the inventory of the properties of the deceased and the return of said amount to the plaintiff, said administrator has refused to do so.

During the trial of civil case No. 4282, the herein petitioner Apolinar Velez testified as follows:

"Q. Is the administrator (Apolinar Velez) sure that this land belongs to the plaintiff?—A. The will has been approved and in it it appears that the testatrix simply made of record that this land had been given by her to the plaintiff in the present case. Inasmuch as it appears in the will, that is the only reason why the administrator had to account in his inventory in the administration case.

"Q. But the administrator is convinced that this land belongs to the plaintiff?—A. Only according to the will. And I was going to add that it was only due to the respect to the heirs of the deceased that the administrator was not of his own account willing to deliver the possession."

In the face of these facts the question arises whether or not the herein petitioner Apolinar Velez is personally responsible for the return to the respondent Ramon Chacon of the parcel of land and the fruits thereof taken by him from the latter to be included in the inventory of the properties of the testate estate of Ramona Racines, it appearing to him from the will of the testatrix that she had already transferred it to said Ramon Chacon.

Section 668 of the Code of Civil Procedure reads as follows:

"SEC. 668. Inventory to be returned.—Every executor or administrator, unless he is residuary legatee and has given the bond prescribed for the residuary legatee, shall, within three months after his appointment, return to the court a true inventory of the real estate and all the goods, chattels, rights, and credits of the deceased which come into his possession or knowledge."

The pertinent part of section 643 of said Code provides as follows:

"SEC. 643. Bond, generally.—Before an executor, or an administrator, enters upon the execution of his trust, and letters testamentary or of administration are issued, the person to whom they are issued shall give a bond in such reasonable sum as the court directs, with one or more sufficient sureties, conditioned as follows:

"1. To make and return to the court, within three months, a true and perfect inventory of all goods, chattels,

rights, credits, and estate of the deceased, which shall come to his possession or knowledge, or to the possession of any other person for him."

Under the above-quoted legal provisions it is the duty of every executor or administrator not a residuary legatee of the estate to submit to the court within three months after his appointment a true inventory of the real estate and all the goods, chattels, rights, and credits of the deceased which come into his possession or knowledge. Said sections do not authorize him to attach properties not belonging to the deceased or in which the latter has no interest.

The bond required by law to be given by the administrator to answer for the performance of his obligations covers only the properties of the deceased which have come to the former's possession or knowledge and which said administrator must inventory. So that properties not belonging to the deceased which the administrator attaches either through error or in bad faith are not protected by his bond.

The American doctrine on this point is stated in 23 Corpus Juris, 1152, section 365, as follows:

"Property bona fide and regularly transferred to others by decedent during his lifetime with mutual intent that the title should pass, whether by way of sale or gift, does not vest in the executor or administrator. * * *"

In 24 Corpus Juris, 1062, 1063, sections 2543 and 2547, the following appear:

"The sureties on the bond of an executor or administrator are responsible only for what might properly come into his hands as assets, which as a general rule includes only such assets as have actually come into his possession or which he could have collected by the exercise of due diligence. * * * (Sec. 2543.)

"According to the weight of authority, where an executor or administrator receives property to which he is not legally entitled in the discharge of his duties as personal representative, his administration bond does not cover such property and his sureties are not liable in respect to it, although it is included in the representative's report as assets. * * * (Sec. 2547.)

In *People vs. Houghtaling* (7 CaL, 343), the facts and the decision are as follows:

"The complaint in this case charges that W. W. Wright, deceased, was sheriff, and ex officio tax collector of Nevada county, and that there was in his hands, at the time of his death, certain money belonging to the plaintiff, which had been before that time collected by such sheriff as taxes, under the revenue law of this State; that in November, 1856, defendant was appointed, and entered upon the duties of, administrator of the estate of said Wright, and took into possession all the property and assets belonging to the estate; that he also took possession of the moneys above-mentioned, under the pretense that it formed a part of such assets, and was about to convert the same to the uses of the estate; that said money was a public fund belonging to the plaintiff; that it constituted no part of the assets of Wright's estate; that in consequence of the act of defendant, the fund was in danger of being wholly lost to the plaintiff, and prayed a judgment that defendant be required to pay said money into the hands of the county treasurer of said county, he being, under the law, the proper custodian of public money.

"DECISION : That he (defendant) occupied the position of one who takes possession, without authority, of property belonging to another, and that he may be treated as a trustee de son tort.

"Though the defendant, in such an action, be described the caption of the complaint as administrator, yet the facts show that it is not sought to charge him as administrator, and no relief is sought against the estate: Held, that the objection that he is sued in his representative capacity is

In *Heydenfeldt vs. Jacobs* (107 CaL, 373), the facts and the decision are:

"The plaintiff is the son of Solomon Heydenfeldt, deceased. The said deceased, in his lifetime, procured a policy of insurance upon his life from the Brooklyn Insurance Company of New York for ten thousand dollars,

payable to 'Catherine, wife of Solomon Heydenfeldt, or any wife that may survive him, and minor children living at the time of his death'. Said Catherine having died during the lifetime of the deceased, he married Elizabeth A. Heydenfeldt, who is now his widow. He also left seven minor children, of whom plaintiff is one. The defendants, who are executors of said deceased, collected said policy from said insurance company, and this action is brought to recover from defendants one-eighth of the amount of said policy.

"DECISION : The executors of the estate of a decedent have no right as such to receive the proceeds of a policy payable to his widow and children as any part of the estate of the decedent, and they may be sued personally by one who was a minor child at the time of the death of the deceased to recover his share of the policy.

"Executors who have wrongfully come into possession of the amount of an insurance policy, whether by mistake or otherwise, became trustees of the thing gained for the benefit of the person who would otherwise have had it." In *Newsum vs. Newsum* (19 Am. Dec, 739, 741), the following doctrine was laid down:

"* * * In like manner, the defendant was liable to the action, though he received the slave as administrator, sold him as administrator, and disbursed the money as administrator, without the least notice of the defect of his intestate's title. The right of the owner to sue for his slave' can never depend on such circumstances as these. The administrator, when he sells property as belonging to his intestate, acts at his peril. If he sells my property, he must answer to me for it, however he may have thought himself bound by law to sell, and however fairly he may have applied the proceeds of the debts of his intestate. * * *"

In *McCustian vs. Ramey* (33 Ark., 141), the following ruling was laid down:

"An executor or administrator receiving money by mistake as assets of his decedent's estate, will not be excused from his liability to refund the same on the ground that the money has been applied by him in the course of administration."

In *White vs. McFarland* (148 Mo. A., 338), the following ruling was established:

"2. Executors and Administrators; Detaining Property; Personally Liable, When.-Tan executor or administrator is personally responsible for property he detains from a claimant as an asset of the estate of the deceased, with knowledge that it did not belong to decedent, but to claimant."

In the light of the above-cited doctrines, the herein petitioner Apolinar Velez in taking possession of the disputed property and its fruits, depriving the respondent Ramon Chacon of the possession thereof over the latter's protest and with knowledge from the will of Ramona Racines that it had already been transferred by her to said Ramon Chacon, exceeded his power as administrator of the testate estate of said deceased and committed a true act of forcible entry, being personally responsible for the return of the land detained as well as the products thereof (section 80, Act No. 190).

The second question to be decided is whether or not the judgment rendered against Apolinar Velez must be understood in the sense that he is sentenced as administrator and not personally, having been referred to in the complaint "as an administrator for the testate estate of the deceased Ramona Racines, defendant."

The dispositive part of the judgment rendered in said civil case No. 4282 reads as follows:

"In view of the foregoing, it is hereby ordered that the herein defendant give to the herein plaintiff Ramon Chacon the possession of the land described in the complaint heading this case and to turn over, furthermore, to the said plaintiff the amount of P1,326.54 with interest at 6 per cent per annum from March 30, 1930, until fully paid; without costs."

It will be noted that the herein petitioner Apolinar Velez is not sentenced to deliver to the respondent Ramon

Chacon the possession of the land described in the complaint as well as the sum of P1,326.54 with interest thereon at 6 per cent per annum from March 30, 1930, as administrator of the estate left by the testatrix Ramona Racines, but simply in his personal capacity.

In 24 Corpus Juris, 825, section 2070, the following appears:

"Where suit is brought against a personal representative on a cause of action for which he can be held liable only in his individual capacity, the pleading is riot vitiated by describing him therein as executor or administrator, but such description may be rejected as surplusage, because the naming of defendant as executor or administrator neither adds to nor diminishes his individual responsibility and is matter of form and not of substance. So where an action is brought, the object of which is to charge defendant individually and a legal ground for the individual liability of the representative is set forth in the pleading, the fact that he was named therein as executor does not vitiate the pleading and this allegation may be treated as surplusage, and it has been said that under these circumstances it is not improper to name defendant as administrator by way of description or for the purpose of showing the circumstances of the transaction and the origin of the liability. It has been held, however, that, where the descriptive words are preceded by the word the action cannot be regarded as against the representative individually."

It will be seen from the foregoing quotations that the great majority of the supreme court of the states of the American Union have laid down the ruling that where suit is brought against a personal representative on a cause of action for which he can be held liable only in his individual capacity, the pleading is not vitiated by describing him therein as executor or administrator, but such description may be rejected as surplusage, because the naming of defendant as executor or administrator neither adds to nor diminishes his individual responsibility and is matter of form and. not of substance.

In civil case No. 4282 of the Court of First Instance of Oriental Misamis, wherein the herein respondent Ramon Chacon was plaintiff and the herein petitioner Apolinar Velez "as administrator for the testate estate of the deceased Ramona Racines", was defendant, it was alleged as a cause of action in the complaint that said defendant Apolinar Velez, notwithstanding the plaintiff's protest, deprived the latter of the possession of the parcel of land which the deceased Ramona Racines, in life, had already transferred to said plaintiff, as stated by her in her will, and required the plaintiff, also over the latter's protest, to deliver to him the sum of P1,326.54 representing the value of the fruits of said land, including them in the inventory of the estate left by said testatrix. The prayer asked that the defendant administrator be compelled to exclude the disputed land from the inventory in question and to return the aforesaid sum of P1,326.54 to the plaintiff, with interest thereon at 6 per cent per annum. It was not asked in said complaint that the defendant be sentenced as administrator, and the judgment rendered did not sentence him as such, but in his personal capacity.

Therefore the descriptive words "as administrator for the testate estate of the deceased Ramona Racines" given to the herein petitioner Apolinar Velez in the complaint in civil case No. 4282 are superfluous, because having exceeded his authority as administrator in depriving the respondent Ramon Chacon of the possession of the disputed land belonging to the latter and the fruits thereof, and in including them in the inventory of the estate of the testatrix Ramona Ratines, his responsibility with respect to said land and the products thereof is personal and not as administrator.

It is inferred from all the foregoing that as he is personally responsible for said land and the products thereof, and having been ordered individually to deliver them to their owner, the execution of the judgment issued against the petitioner in said civil case No. 4282 is legal and valid and so is the alias writ of execution of said judgment sought to be annulled by means of the present remedy of certiorari.

The remedy should be denied.

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