

MAURICIO CRUZ & CO., INC., PETITIONER, VS. MARCELIANO R. MONTEMAYOR, JUDGE OF FIRST INSTANCE OF MANILA, RICARDO NEPOMUCENO AND JOSE G. MACATANGAY, RESPONDENTS.*G. R. No. 45174. September 05, 1936*

Ponente: IMPERIAL, J.

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This is a petition filed by the petitioner to annul and set aside the order of the Court of First Instance of Manila of March 31, 1936, directing the issuance in civil case No. 45969 of an alias execution, against the petitioner, for the sum of P1,949 with interest thereon at 12 per cent per annum from April 8, 1933, until fully paid, plus 20 per cent of the sum of P5,970, as attorneys' fees, and the costs amounting to P62.36, and to have it declared that the judgment promulgated in said civil case has been satisfied and paid in its entirety by the petitioner. It was likewise prayed in the petition that, pending the determination of the case, a preliminary injunction be issued restraining the respondents from executing the order in question.

On June 27, 1934, the Court of First Instance of Manila rendered judgment in civil case No. 45969 ordering Mauricio Cruz & Co., Inc., to pay to the therein plaintiff Jose Soriano, as judicial administrator of the intestate estate of the deceased Antero Soriano, the sum of P5,970 with interest thereon at 12 per cent per annum, plus 20 per cent of said sum of P5,970, with the costs of the suit. On May 27, 1935, the judicial administrator, Jose Soriano, filed a motion in the intestate proceeding of Antero Soriano, special proceeding No. 35704, asking for authority to sell the intestate estate's interest and participation in the judgment rendered in civil case No. 45969, consisting in the sum of P4,021 with interest thereon at 12 per cent per annum, from April 8, 1933, until fully paid. It was alleged in the motion that the judgment was for P5,970 with interest thereon at 12 per cent per annum, plus 20 per cent of said sum and the costs amounting to P62.36; but according to the agreement had with Attorneys Ricardo Nepomuceno and Jose G. Macatangay, the former was entitled to one-third of said sum of P5,970 and both to 20 per cent thereof, as attorneys' fees. On June 18, 1935, the probate court issued an order approving the motion and authorizing the judicial administrator of the intestate estate of the deceased Antero Soriano to sell at public auction said intestate estate's interest and participation in the judgment in question, consisting in the sum of P4,021, with interest thereon at 12 per cent per annum, from April 8, 1933, until fully paid. Pursuant to the authority granted him, the judicial administrator sold at public auction to Arturo A. Soriano all the interest and participation of the intestate estate in said judgment, and the sale so made was approved by the probate court. On November 29, 1935, Arturo A. Soriano, in a public instrument, sold the interest and participation of the intestate estate in said judgment, which he had purchased from the administrator thereof, to Mauricio Cruz for the sum of P600. On December 2, 1935, Mauricio Cruz & Co., Inc., filed a motion in civil case No. 45969 praying the court to declare that the judgment rendered in said case had been satisfied in its entirety and to order the final filing thereof. On February 15, 1936, pending the resolution of said motion, the administrator Jose Soriano, as plaintiff, filed a petition in said case, praying for the issuance of an alias execution in favor of the plaintiff for the sum of P2,010.78, with interest thereon at 12 per cent per annum from April 8,

1933, until fully paid, plus the sum of P1,194 as attorneys' fees. It was alleged in the motion, as a ground thereof, that all the interest or participation of the intestate estate sold at public auction and acquired by Arturo A. Soriano consisted in the sum of P4,021 with interest thereon at 12 per cent per annum from April 8, 1933, and that the balance of the judgment rendered, represented by the amounts specified in said motion, was not yet paid. This petition was opposed in writing by the defendant Mauricio Cruz & Co., Inc. On March 31, 1936, the court, after hearing the attorneys for both parties, issued the order, which is the subject matter of this petition for certiorari, directing the clerk of court to issue an alias execution for the sum of P1,949 with interest thereon at 12 per cent per annum, plus 20 per cent of the sum of P5,970, as attorneys' fees, and the costs amounting to P62.36. Mauricio Cruz & Co., Inc., filed a motion for reconsideration which was denied. Upon petition of Attorneys Ricardo Nepomuceno and Jose G. Macatangay, the probate court, on April 29, 1936, issued an order in special proceeding No. 35704, adjudicating to said attorneys the sums of money ordered to be collected by means of alias execution from the then defendant Mauricio Cruz & Co., Inc., and directing the filing of the record of the intestate proceeding as finally terminated.

In its petition, the petitioner contends that the court had no jurisdiction to order the issuance of the alias execution: (1) Because once the record of the intestate proceeding was filed, the judicial administrator no longer had personality to appear as such, and (2) because the court no longer had the power to direct the petitioner to pay the amounts of money specified in the order on the ground that the entire amount of the judgment was already paid by the assignment and sale made to it by Arturo A. Soriano.

With respect to the first ground, this court is of the opinion and so holds that it is well taken. When the probate court ordered the filing of the record as finally terminated, it should be understood and assumed that all the obligations of the intestate estate had already been paid and the adjudication, distribution and delivery of the estate to the heirs had been ordered, in accordance with the provisions of Chapters XXXVII and XL of the Code of Civil Procedure. It should likewise be assumed that once the record of the intestate proceeding is filed as terminated, the probate court had already relieved the administrator of his obligations and had cancelled the bond which the law required him to file. Under these circumstances, it is obvious that when the administrator filed the motion asking for the issuance of an alias execution, he no longer had such legal capacity and was a stranger in said case. In view of this, it appears clear that the court, in granting the motion and in issuing the order in question, acted without jurisdiction over the person of the then plaintiff, the judicial administrator.

According to the facts, Attorneys Nepomuceno and Macatangay were the assignees of that part of the judgment not yet executed, and, as such, both or any of them would have been entitled to appear in the name of the administrator to ask for the same remedy; but this court cannot arrive at this conclusion in view of the fact that the pleading filed appears to have been presented by the judicial administrator who already ceased to exist.

As to the second ground, it is evident that Mauricio Cruz & Co., Inc., did not acquire from Arturo A. Soriano the entire amount of the judgment rendered in civil case No. 45969, but only two-thirds thereof, or the sum of P4,021 with interest thereon at 12 per cent per annum from April 8, 1933, until fully paid. The reason is obvious because what the probate court authorized to be sold and what Arturo A. Soriano really acquired in the public auction was only said two-thirds of the judgment in question, with the interest thereon.

Therefore, the right of Attorneys Ricardo Nepomuceno and Jose G. Macatangay to appear in civil case No. 45969 and ask for the issuance by the court of an alias execution against Mauricio Cruz & Co., Inc., for the unsatisfied part of the judgment, is indisputable. This court reserves such right in favor of said attorneys for them to exercise in due time and form.

For the foregoing reasons, the remedy of certiorari applied for is granted, setting aside the order of March 31,

1936, rendered in civil case No. 45969 of the Court of First Instance of Manila, without costs. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, and Laurel, JJ., concur.

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