

**IN THE MATTER OF THE INTESTATE ESTATE OF RAFAEL JOCSON,
DECEASED. THE PROVINCIAL TREASURER OF OCCIDENTAL
NEGROS, CLAIMANT AND APPELLANT, VS. THE ASSOCIATED OIL
COMPANY, OPPOSITO...***G.R. No. 47014. December 14, 1940*

Ponente: LAUREL, J.

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This case arose out of two separate motions filed by the provincial fiscal of Occidental Negros seeking to recover, in behalf of the provincial treasurer of that province, the amounts of P314.17, representing a judgment credit in favor of the Government; and P4,104.30 for unpaid taxes which had accrued in favor of the provincial government of Occidental Negros upon lot No. 2075-A of the cadastral survey of Himamaylan, Occidental Negros, belonging to the late Rafael Jocson.

It appears that in civil case No. 3600 of the Court of First Instance of Occidental Negros (G. R. No. 41830 of this court), wherein the Associated Oil Company, the present appellee, was intervenor, the properties of the late Rafael Jocson, among which is lot No. 2075-A aforementioned, were ordered sold at public auction to satisfy a mortgage lien of P100,989.21 against said Rafael Jocson in favor of his mortgage creditor Segundo Monteblanco. In that same case, however, this court found that said mortgage creditor Monteblanco was liable to the intervenor, the Associated Oil Company, for the sum of P75,000 and thus ordered him in turn to pay the intervenor said sum out of the amount to be paid to him by the estate of Rafael Jocson or realized upon the foreclosure sale.

The amount realized from the sale above-mentioned was P73,715.19 and the purchaser at the foreclosure sale was Governor Valeriano M. Gatuslao of Occidental Negros. While this amount was still in the hands of the provincial sheriff, the provincial fiscal of Occidental Negros, in behalf of the appellant provincial treasurer, filed the two motions aforementioned with the Court of First Instance of Occidental Negros, sitting as a probate court in the administration proceedings for the settlement of the estate of Rafael Jocson (case No. 4497), praying that the provincial sheriff be ordered to retain the amounts of P5,350.07—later reduced to P4,104.30—to cover the full settlement of the land tax delinquency, interest and penalties due on lot No. 2075-A belonging to the late Rafael Jocson, and P14.17 for the satisfaction of a civil obligation of the Hibila Trading Corporation in favor of the Government of the Philippine Islands in accordance with a decision of the justice of the peace of Hinigaran, Occidental Negros, in civil case No. 394 of that court. That corporation had an existing credit against Segundo Monteblanco, and in view of its failure to pay its judgment debt, the provincial fiscal consequently applied to the court for an order directing the administrator of the late Rafael Jocson that part of the amount awarded to Segundo Monteblanco sufficient to cover the amount of P314.17 be paid to provincial treasurer of Occidental Negros. The lower court granted these motions of the provincial fiscal but, upon motion for reconsideration filed by the appellee, the Associated Oil Company, the court below reconsidered its order, set it aside and finally declined to entertain the motions of the fiscal on the ground that it has no jurisdiction over the matter. A motion to reconsider this last order of the lower court was denied. Hence, the present appeal.

The appellant provincial treasurer has apparently abandoned the claim to the amount of P314.17, so that the present appeal concerns only the sum of P4,104.30.

The appellant assigned four errors alleged to have been committed by the court a quo. He contends that the lower court erred in not taking cognizance of the claim of the provincial government of Occidental Negros for unpaid taxes which are preferred lien on lot No. 2075-A and, consequently, on any proceeds realized from the foreclosure sale thereof, probate courts being conferred expressly by law with complete jurisdiction to adjudicate claims against estates of deceased persons. Appellee, on the other hand, contends that precisely because real estate tax constitutes a lien superior to all others and follows the land, the same may not be satisfied out of the proceeds realized from a foreclosure sale thereof, and that the sheriff holding said proceeds can not be required by a probate court to retain and deliver part thereof in payment of said land tax.

The question as to whether a court, sitting as a probate court in the administration proceedings for the settlement of the estate of a deceased person, may extend its jurisdiction to and interfere with the proceedings of a coordinate court exercising ordinary jurisdiction in a mortgage foreclosure proceedings over a property of said deceased person, when his mortgage creditor has chosen, under an alternative provision of the law, to foreclose the mortgage—which question is raised in the first assignment of error of the appellant—presents an aspect entirely different from that of the priority of right of tax liens. Aside from the consideration that that question is not new, we are of the opinion that the important legal issue is that raised in the second and third assignments of errors in the appellant's brief, with reference to the character of the preference of the lien on the realty sold in a foreclosure proceedings upon the undisputed facts of the present case.

The purchaser of the mortgaged property here, Governor Valeriano Gatuslao of Occidental Negros, paid the taxes on the property, and the appellee, in his motion to dismiss, dated February 24, 1940, urged the dismissal of this appeal on the ground that by virtue of that payment the claim of the appellant treasurer has already been satisfied. The appellant does not deny that payment has been received, but contends that the purchaser made the payment under protest which "is not in any way a recognition on the part of Governor Valeriano M. Gatuslao that he is the one legally required to pay the land taxes * * *" Be that as it may, the fact, however, is that the corresponding tax has already been paid by the purchaser at the foreclosure sale, so that the claim of the provincial government of Occidental Negros on lot No. 2075-A for real estate taxes has been fully satisfied to the extent contemplated by law.

Under the law, real estate tax constitutes a burden on the land superior to all other liens of any kind whatsoever and is enforceable against the property whether in the possession of the delinquent or any subsequent owner or possessor and shall be removable only by the payment of the taxes, penalties and costs. (Sec. 365, Rev. Adm. Code, supra.) Under this provision of the law, the government may proceed against and follow the property for the collection of any unpaid taxes thereon; and, as far as the Government and the collection of that tax are concerned, it is enough that the land sought to be taxed is not lost, and it is of no consequence whether it is still in the hands of the delinquent or of any other person, a purchaser or otherwise. In the case of the latter, he acquires the land subject to the tax lien. The law in this respect is mandatory and gives the taxing officer no authority to make any distinction or qualification as to the manner of its enforcement. He must collect the tax by the only means prescribed by law.

The appellant's claim, therefore, that the payment was made under protest is of no moment. Either the land is liable to tax or not. If it is, then, under the law, it is the duty of the appellant to proceed against the land in whomsoever it may be found.

In view of the result, it is unnecessary to pass upon the motion of dismissal filed by the oppositor-appellee bearing

date of February 24, 1940.

The order appealed from is affirmed, without costs. So ordered.

Avanceña, C.J., Imperial, Diaz, and Horrilleno, JJ., concur.

Order affirmed.

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