

**INTESTATE ESTATE OF THE DECEASED FLORENHNO SAN GIL.
JOSEFA R. OPPUS, PETITIONER AND APPELLANT, VS. BONIFACIO
SAN GIL, ETC., OPPOSITOR AND APPELLEE.**

G.R. No. 48115. October 12, 1942

Ponente: OZAETA, J.

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OZAETA, J.:

In civil case No. 3498 of the Court of First Instance of Tayabas, the herein appellant Josefa R. Qppus sued the herein M administrator of the intestate estate of the deceased Florentino San Gil for the possession, among others, of the following personalties: 24 beds, 1 "Schkler" piano, 12 chairs, 8 small tables, 2 iceboxes, 1 phonograph, 2 long dining tables, and 1 big mirror. On November 1, 1933, the court in said case rendered judgment ordering the defendant to deliver the possession of said furniture to the plaintiff, For reasons that do not appear in the record, that judgment has not been satisfied. On October 6, 1939, Josefa R. Oppus presented a motion in the above-entitled intestate proceeding of Florentino San Gil, asking the court to order the administrator Bonifacio San Gil to deliver to her the furniture above mentioned, The probate court denied said motion on the grounds (1) that the furniture in question does not belong to the estate of the deceased Florentino San Gil and (2) that in any event the execution of the judgment in civil case No. 3498 should be applied for in said case. We are now asked to review and reverse that order.

The first ground stated by the probate court is correct because it was established in said civil case No. 3498 that the furniture in question belongs to the appellant Josefa R. Oppus, who bought it from the deceased Florentino San Gil. The second ground is also well founded because the administrator Bonifacio San Gil having been sued as such in the ordinary court and judgment having been rendered there against him, we find no legal impediment to the execution of said judgment by order of the court that rendered it. Appellant's contention that she has to apply to the probate court for the execution of said judgment on the theory that the property in question is in custodia legis, is untenable. The judgment in question is not one for a sum of money which has to be satisfied by levying execution on property belonging to the estate and therefore in custodia legis. It is a judgment for the manual delivery and possession of specific articles of personal property, the action for which survives by express provision of law "and may be commenced and prosecuted by or against the executor or administrator." (Section 703, Code of Civil Procedure; section 1, Rule 88, Rules of Court.) On the one hand, the prosecution of an action against an executor or administrator which the law allows regarding the possession of specific articles, necessarily includes the execution of the judgment that may be entered in said action. On the other hand, once the court determines in such action that the property in litigation belongs to the plaintiff and not to the estate of the deceased, it cannot be maintained that such property is in custodia legis, it not forming part of the estate of the deceased. Hence appellant's motion herein was not in order and was properly denied.

We might add that perhaps such motion in the probate court was resorted to instead of a petition for execution in the ordinary court that rendered the judgment, because more than five years had elapsed since it became final in December, 1933. Suffice it to say, however, that what the law does not permit to be done directly cannot be done

indirectly.

Lastly, we observe from the record (p. 37, B. of E.) that twice did appellant procure writs of execution in said case No. 3498—first in February, 1934, and again in September, 1935. We cannot understand why the judgment in question has remained unsatisfied.

The order appealed from is affirmed; but we refrain from awarding costs to the appellee because we think his obstinate refusal to deliver the furniture in question to the appellant notwithstanding the judgment of a competent tribunal is unjustifiable and unworthy of a law-abiding citizen. So ordered.

Yulo, C. J., Moran and Bocobo, JJ., concur.

CONCURRING

PARAS J.,

The appellant may be the owner of the Personalities in question and yet the same may be in custodia legis if the appellee has possession thereof as administrator.

The judgment in civil case No. 3498 is of doubtful collusiveness. When the defendant administrator in said case alleged that the personalities belonged to one Damasa Melendres, the latter should have been included as party defendant. It is important to observe that the children of the intestate, Florentino San Gil, are claiming ownership and possession not through inheritance from the latter, but by virtue of a donation from Damasa Melendres who is alleged to have bought the controverted properties from Florentino San Gil. Although the validity of this sale was not upheld in a later case (No. 4295 of the Court of First Instance of Tayabas), there was an appeal pending at the time the assailed order was issued.

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