

AGUSTIN P. REGALA, REPRESENTED BY HIS DAUGHTER, TERESITA F. REGALA, PETITIONER, VS. THE COURT OF APPEALS AND ORVILLE ODICTA, RESPONDENTS.

G.R. NO. 90213. March 22, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

This case involves the interpretation of Rule 3, Section 21, of the Rules of Court on the effect of the defendant's death on a claim filed against him for recovery of money, debt or interest thereon when he dies before final judgment on the claim is rendered by the regional trial court.

On 23 November 1988, private respondent Orville Odicta filed against Agustin Regala in the Regional Trial Court of Manila a complaint for recovery of the sum of P503,048.00, representing the balance of the purchase price of assorted knocked-down motor vehicles and spare parts.[1] On 10 March 1989, Judge Artemon D. Luna granted the motion of the plaintiff for the issuance of a writ of preliminary attachment against the properties of the defendant.[2] Trial commenced in due time, but while the defense was presenting its evidence, Regala died, on 7 June 1989.[3] The trial court was informed of his death, but in its order dated 14 June 1989,[4] it gave the defendant 10 days within which "to make a formal offer of his documentary evidence and rest his case," subject to comment or objection from the plaintiff. At the same time, it allowed both parties to submit simultaneous memoranda, if desired, within 30 days, after which "the case shall be ready for decision;" and required the plaintiff to comment within 5 days of the defendant's Urgent Motion to Discharge Attachment. On 19 June 1989 the defense filed an Omnibus Motion for reconsideration of the said order and for the dismissal of the complaint pursuant to the above-cited rule.[5] This motion was denied in the order of the trial court dated 23 June 1989.[6] Teresita F. Regala, in representation of her deceased father, then went to the Court of Appeals in a petition for certiorari and mandamus with preliminary injunction to question the said orders of the trial court. Her petition was dismissed on the finding that the trial court had not acted with grave abuse of discretion amounting to excess of jurisdiction.[7]

Before us now, the petitioner argues that the respondent court itself erred in sustaining the orders of the trial court denying dismissal of the complaint before it and maintaining the writ of preliminary attachment notwithstanding the death of the defendant.

In affirming the questioned orders, the respondent court, relying on the case of *Macondray & Co., Inc. v. Dungao*,[8] held that the complaint in question came under the exception to Section 21, Rule 3, of the Rules of Court, which it said was not absolute. Thus –

The rule, Section 21, Rule 3, Revised Rules of Court, is not absolute for in the case of *Macondray & Co., Inc. vs. Dungao* (11 SCRA 72), the Supreme Court held that the "attachment levied on some properties of the defendant, on the plaintiff's motion, to secure payment of its money claim, might constitute an exception to the general rule on claims that do not survive, as provided for in Section 21 of Rule 3, Rules of Court. But after the discharge of

the attachment upon the filing of a bond by the surety company, the property attached became free from any specific lien and reverted to its previous condition."

In the light of the aforesaid ruling, considering that there is an attachment against the properties of the defendant Agustin Regala in the case at bar, the same, although an action for recovery of sum of money, and ordinarily does not survive upon the death of the party, should not be dismissed.

Apparently, the respondent court had not taken into account the much later case of *Malolos v. Asia Pacific Finance Corporation*,^[9] decided only on January 7, 1987, where the Court ruled through Justice Edgardo L. Paras:

There is no question that the action in the Court below is for collection or recovery of money.

It is already a settled rule that an action for recovery of money or for collection of a debt is one that does not survive and upon the death of the defendant the case should be dismissed to be presented in the manner especially provided in the Rules of Court (*Villegas and Santos v. Zapanta and Zorilla*, 104 Phil. 973). This is explicitly provided in Sec. 21, Rule 3 of the Rules of Court which states that:

SEC. 21. Where claim does not survive. – When the action is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided in these rules.

Said provision of the Rules was in turn interpreted by the Supreme Court in *Dy v. Enage* (70 SCRA 117 [1976]) stating that "The language of Section 21 of Rule 3 is too clear in this respect as to require any interpretation or construction. It very explicitly says that 'when the action for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner specially provided by the rules,' meaning, Section 5 of Rule 86 and its related provisions."

Earlier, Secs. 119 and 700 of Act 190 (Code of Civil Procedure) from which this Rule was derived were interpreted by the Supreme Court in *Pabico v. Jaranilla, et al.* (60 Phil. 247, 251) to be mandatory in character and confers no jurisdiction upon the Court. (*Moran, Comments on the Rules of Court*, 1970 ed. p. 215).

The reason for the dismissal of the case is that upon the death of the defendant a testate or intestate proceeding shall be instituted in the proper court wherein all his creditors must appear and file their claims which shall be paid proportionately out of the property left by the deceased (1 *Moran, Comments on the Rules of Court*, 1979 ed. p. 219).

The purpose of the rule is to avoid useless duplicity of procedure – the ordinary action must be wiped out from the ordinary court (*Ignacio v. Pampanga Bus Co.*, May 23, 1963, 20 SCRA 126).

In the case of *Macondray v. Dungao*, *supra*, cited by private respondent to support its position, does not fall squarely with the case at bar.

In the above-cited case, the facts are as follows: (1) the promissory note executed by defendant Dungao represented the purchase price of the car and trucks which said defendant bought from Macondray on installment; (2) a writ of attachment was issued on August 16, 1949, but this was later on dissolved on September 21, 1949, when the defendant put up a surety bond; and (3) the promissory note sued upon in the cited case was secured by a mortgage on personal property and the proper action should have been a foreclosure of mortgage.

In the present case, the money claim arose out of a pure and simple debt, which as aforementioned, under the provisions of Rule 3, Sec. 21 of the Rules of Court shall be dismissed and must be brought before the probate court (1 *Moran, Comments on the Rules of Court*, 1970 ed., pp. 215-216).

In the light of the foregoing considerations, the conclusion is inevitable that the trial court deviated from the procedure laid down by the above-mentioned provisions of the Rules. The fact that a writ of attachment has been issued cannot provide an excuse for such deviation, as a writ of attachment is a remedy ancillary to the principal proceedings. (*Gruenberg v. Court of Appeals*, 138 SCRA 471 [1985]). Consequently, if it is mandatory, under Rule 3, Sec. 21 of the Rules of Court that the principal proceeding or action be dismissed for non-survival of the money claim, the purpose of the attachment which is to secure the outcome of the trial no longer exists and so with the reasons for the issuance of the writ in this case, insofar as the deceased debtor is concerned.

Corollary thereto, it has been held that a court order which violates the Rules constitutes grave abuse of discretion as it wrecks the orderly procedure prescribed for the settlement of claims against deceased persons designed to protect the interests of the creditors of the decedent. Allowing the private respondent to attach petitioners' properties for the benefit of her claim against the estate would give an undue advantage over other creditors against the estate. (*Gruenberg v. Court of Appeals*, supraciting *Dy v. Enage*, *supra*). Therefore, under the same principle, a writ of attachment already issued in connection with a money claim which has to be dismissed because of the death of the defendant before final judgment cannot provide an exception to the general rule, and must accordingly be dissolved.

Conformably to the above ruling, we hold that as the complaint filed against Agustin P. Regala was for a sum of money, the trial court lost jurisdiction thereover upon his death on 7 June 1989, before final judgment thereon could be rendered. Consequently, such claim must now be dismissed, without prejudice to its being filed against the estate of the deceased defendant in the appropriate probate proceedings.

WHEREFORE, the decision of the respondent court dated 18 September 1989 is REVERSED and the respondent judge of the Regional Trial Court of Manila is ordered to DISMISS Civil Case No. 88-46969. The Register of Deeds of Valenzuela, Metro Manila, is directed to CANCEL the Notice of Levy made on the defendant's properties pursuant to the Order of Attachment issued in the said case. Costs against the private respondents.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 30.

[2] *Ibid*.

[3] *Id.*, p. 31.

[4] *Id.*

[5] *Id.*

[6] *Id.*, pp. 31-32.

[7] Annex "A", Rollo, pp. 30-33; Paras, G., J., ponente; Aldecoa and Ordoñez-Benitez, JJ., concurring.

[8] 11 SCRA 72.

[9] 147 SCRA 61.

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