

101 Phil. 606

[G. R. No. L-10789. May 28, 1957]

AMADUK TAJANLANGIT, ET AL., PLAINTIFFS AND APPELLANTS, VS. SOUTHERN MOTORS, INC., ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

BENGZON, J.:

The case. Appellants seek to reverse the order of Hon. Pantaleon Pelayo, Judge of the Iloilo court of first instance refusing to interfere with the alias writ of execution issued in Civil Case No. 2942 pending in another aala of the same court.

The facts. In April 1953 Amador Tajanlangit and his wife Angeles, residents of Iloilo, bought from the Southern Motors Inc. of Iloilo two tractors and a thresher. In payment for the same, they executed the promissory note Annex A whereby they undertook to satisfy the total purchase price of P24,755.75 in several installments (with interest) payable on stated dates from May 18, 1953 to December 10, 1955. The note stipulated that if default be made in the payment of interest or of any installment, then the total principal sum still unpaid with interest shall at once become demandable etc. The spouses failed to meet any installment. Wherefore, they were sued, in the above Civil Case No. 2942, for the amount of the promissory note.¹ The spouses defaulted, and the court, after listening to the Southern Motors' evidence entered judgment for it in the total sum of P24,755.75 together with interest at 12 per cent, plus 10 per cent of the total amount due as attorney's fees and costs of collection.

Carrying out the order of execution, the sheriff levied on the same machineries and farm implements which had been bought by the spouses; and later sold them at public auction to the highest bidder—which turned out to be the Southern Motors itself—for the total sum of P10,000.

As its judgment called for much more, the Southern Motors subsequently asked and obtained, an *alias* writ of execution; and pursuant thereto, the provincial sheriff levied

attachment on the Tajanlangits' rights and interests in certain real properties—with a view to another sale on execution.

To prevent such sale, the Tajanlangits instituted this action in the Iloilo court of first instance for the purpose among others, of annulling the *alias* writ of execution and all proceedings subsequent thereto. Their two main theories: (1) They had returned the machineries and farm implements to the Southern Motors Inc., the latter accepted them, and had thereby settled their accounts; for that reason, said spouses did not contest the action in Civil Case No. 2942; and (2) as the Southern Motors Inc. had repossessed the machines purchased on installment (and mortgaged) the buyers were thereby relieved from further responsibility, in view of the Recto Law, now article 1484 of the New Civil Code.

For answer, the company denied the alleged "settlement and understanding" during the pendency of civil case No. 2942. It also denied having repossessed the machineries, the truth being that they were attached by the sheriff and then deposited by the latter in its shop for safekeeping, before the sale at public auction.

The case was subrmitted for decision mostly upon a stipulation of facts. Additional testimony was offered together with documentary evidence. Everything considered the court entered judgment, saying in part:

"The proceedings in Civil Case No. 2942 above referred to, were had in the Court of First Instance (Branch 1) of the Province and of the City of Iloilo. While this court (Branch IV) sympathizes with plaintiffs, it cannot grant, in this action, the relief prayed for in the complaint because courts of similar jurisdiction cannot invalidate the judgments, and orders of each other. Plaintiffs have not pursued the proper remedy. This court is without authority and jurisdiction to declare null and void the order directing the issuance of alias writ of execution because it was made by another court of equal rank and category (see Cabiao and Izquicrdo vs. Del Kosario and Lim, 44 Phil., 182-186).

Wherefore, judgment is hereby rendered dismissing, the complaint with costs against plaintiffs. Let the writ of preliminary injunction issued on August 26, 1954, be lifted."

The plaintiffs reasonably brought the matter to the Court of Appeals, but the latter forwarded the expediente, being of the opinion that the appeal involved questions of jurisdiction and/or law.

Discussion. Appellants' brief elaborately explains in the nine errors assigned, their original two theories, although their "settlement" idea appears to be somewhat modified.

"What is being sought in this present action" say appellants "is to prohibit and forbid the appellee Sheriff of Iloilo from attaching and selling at public auction sale the real properties of appellants because that is now forbidden by our law after the chattels that have been purchased and duly mortgaged to the vendor-mortgagee had already been repossessed by the same vendor-mortgagee and later on sold at public auction sale and purchased by the same at such meager sum of P10,000."

"Our law" provides,

"Art. 148-4. In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:

- (1) Exact fulfillment of the obligation, should the vendee fail to pay;
- (2) Cancel the sale, should the vendee's failure to pay cover two or more installments;
- (3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void." (New Civil Code.)

Appellants would invoke the last paragraph. But there has been no foreclosure of the chattel mortgage nor a foreclosure sale. Therefore the prohibition against further collection does not apply.

"At any rate it is the actual sale of the mortgaged chattel in accordance with section 14 Act No. 1508 that would bar the creditor (who chooses to foreclose) from recovering any unpaid balance. (Pacific Com. Co. vs. Tie la Kama, 72 Phil. 380.)" (Manila Motor Co. vs. Fernandez, 99 Phil., 782.)

It is true that there was a chattel mortgage on the goods sold. But the Southern Motors elected to sue on the note exclusively, i.e. to exact fulfillment of the obligation to pay. It had a right to select among the three remedies established in Article 1484. In choosing to sue on the note, it was not thereby limited to the proceeds of the sale, on execution, of the mortgaged good.¹

In Southern Motors Inc. vs. Magbanua, (100 Phil., 155) a similar situation arose in

connection with the purchase on installment of a Chevrolet truck by Magbanua. Upon the latter's default, suit on the note was filed, and the truck levied on together with other properties of the debtor. Contending that the seller was limited to the truck, the debtor obtained a discharge of the other properties. This court said:

“By praying that the defendant be ordered to pay the sum of P4,690 together with the stipulated interest at 12% per annum from 17 March 1954 until fully paid, plus 10 per cent of the total amount due as attorney's fees and cost of collection, *the plaintiff elected to exact the fulfillment of the obligation and not to foreclose the mortgage on the truck.* * * *

As the plaintiff has chosen to exact the fulfillment of the defendant's obligation, the former may enforce execution of the judgment rendered in its favor on the personal and real properties of the latter not exempt from execution sufficient to satisfy the judgment. *That part of the judgment depriving the plaintiff of its right to enforce judgment against the properties, of the defendant except the mortgaged truck and discharging the writ of attachment on his other properties is erroneous.*” (Italics ours.)

Concerning their second theory,—settlement or cancellation—appellants allege that the very implements sold “were duly returned” by them, and “were duly received and accepted by the said vendor-mortgagee”. Therefore, they argue, “upon the return of the same chattels and due acceptance of the same by the vendor-mortgagee, the conditional sale is *ipso facto* cancelled, with the right of the vendor-mortgagee to appropriate whatever down-payment and posterior monthly installments made by the purchaser as it did happen in the present case at bar.”

The trouble with the argument is that it assumes that acceptance of the goods by the Southern Motors Co. with a view to “cancellation” of the sale. The company denies such acceptance and cancellation, asserting the goods were deposited in its shop when the sheriff attached them in pursuance of the execution. Its assertion is backed up by the sheriff, of whose credibility there is no reason to doubt. Anyway this cancellation or settlement theory may not be heeded now, because it would contravene the decision in Civil Case No. 2942 above-mentioned—it would show the Tajanlangits owned nothing to Southern Motors Inc. Such decision is binding upon them, unless and until they manage

to set it aside in a proper proceeding— and this is not it.

There are other points involved in the case, such as the authority of the judge of one branch of a court of first¹ instance to enjoin proceedings in another branch of the same court. As stated, Judge Pelayo refused to interfere on that ground. Appellants insist this was error on several counts. We deem it unnecessary to deal with this procedural aspect, inasmuch as we find that, on the merits, plaintiffs are not entitled to the relief demanded.

Judgment. The decision dismissing the complaint, is affirmed, with costs against appellants. So ordered.

Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., and Endencia, JJ., concur.

¹ There was a mortgage, but plaintiffs elected to sue on the note, and ask for execution.

¹ Manila Trading & Supply Co. vs. Eeyes, 62 Phil. 461; Macondray & Co. vs. Eustaquio, 64 Phil. 446; Manila Motor Co. supra.
