

[G. R. No. L-11755. April 23, 1958]

FLORENCIO SENO, PLAINTIFF AND APPELLANT, VS. FAUSTO PESTOLANTE AND TELESFORO BARIMBAO, DEFENDANTS AND APPELLEES.

D E C I S I O N

BAUTISTA ANGELO, J.:

Plaintiff brought this action before the Court of First Instance of Cebu to recover from defendant Fausto Pestolante the sum of P600, plus interest, and the sum of P250 as attorneys' fees and, in default of payment thereof, to order the foreclosure of the chattel mortgage executed by said defendant covering personal properties valued at P2,500. One Telesforo Barimbao was made party defendant for the reason that he is presently in possession of the the mortgage property and has refused to surrender the same to the plaintiff.

Defendant Barimbao, answering the complaint, stated that he refused to surrender possession of the mortgaged property because he has purchased it from his co-defendant as evidenced by a deed of sale executed before a notary public. Defendant on the other hand, filed a motion to dismiss on the ground, among others, that the court has no jurisdiction to take cognizance of the case, it appearing that the action is only to collect a balance of P600 which comes under the original jurisdiction of the Justice of the Peace Court of Oroquieta, Misamis Occidental.

On August 1, 1956, the court sustained the motion and dismissed the complaint without pronouncement as to costs. The reasons on which the dismissal is predicated are:

“A careful perusal of the complaint discloses that the nature of this case is but a collection of the balance of P600 which defendants owe the plaintiff out of the original debt of P1,900, and to secure the prompt and full payment of said principal obligation and interest thereon, a deed of chattel mortgage in favor of

the plaintiff was executed. Later on, P950 was paid by defendant Fausto Pestolante of said obligation leaving an unpaid balance of P600. The chattel mortgage was executed in the municipality of Oroquieta, Misamis Occidental on February 17, 1954. The Justice of the Peace Court of Oroquieta, Misamis Occidental is the proper court who has original and exclusive jurisdiction to try this case. Section 3, Rule 5 of the Rules of Court invoked by plaintiff is not applicable to the present case for said section refers to foreclosure of mortgage on real property.”

From the order of dismissal, plaintiff took the case directly to this Court on the ground that only questions of law are involved.

There is merit in the appeal. While it is true that the purpose of the action is to recover the sum of P600, plus interest, which comes within the original jurisdiction of the justice of the peace court, it is as well true that the action involves the foreclosure of the chattel mortgage executed by defendant Fausto Pestolante to secure the payment of his obligation, which mortgage covers personal properties valued at more than P2,000. Speaking of foreclosure of a chattel mortgage, former Chief Justice Moran says: “Of course a chattel mortgage may be foreclosed judicially, following substantially the same procedure provided in this Rule (Rule 70, Rules of Court). * * * When the mortgagor refuses to surrender possession of the mortgaged chattel *an action of judicial foreclosure necessarily arises*, or one of replevin to secure possession as a preliminary step to the sale contemplated in Section 14 of Act No. 1508” (Moran, Comments on the Rules of Court, Vol. II, 1957 Ed., 250-251). And in a similar case, this Court said: “Where * * * the debtor refuses to yield up the property, the creditor must institute an action, *either to effect a judicial foreclosure directly*, or to secure possession as a preliminary to the sale above quoted” (Bachrach Motor Co. vs. Summers, 43 Phil., 6). (Italics supplied).

Plaintiff had to institute the present action because, as alleged in the complaint, one Telesforo Barimbao has refused to surrender the possession of the mortgaged chattel because he claims to have bought it from the mortgagor free from encumbrance by virtue of a document executed before a notary public. And the action has to be instituted before the court of first instance because the chattel is worth more than P2,000.

Wherefore, the order appealed from is hereby set aside and the case is remanded to the trial court for further proceedings, with costs against appellee Fausto Pestolante.

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Paras, C. J., Bengzon, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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