

FELIX DE VILLA, PLAINTIFF AND APPELLANT, VS. CESAREO A. FABRICANTE AND MARIA G. DE FABRICANTE, DEFENDANTS AND APPELLEES.

G. R. No. L-5531. June 30, 1953

Ponente: TUASON, J.

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TUASON, J.:

This appeal is from an order of the Court of First Instance of Camarines Sur handed down in a suit to foreclose a mortgage and granting the defendant's motion to dismiss. The grounds of the motion, both of which were sustained, were, first, that, according to the complaint, the certificates of title to the properties alleged to have been mortgaged had been destroyed during the war and had not been reconstituted, and, second, that the action was premature by reason of the debt Moratorium Law.

The complaint, filed on October 21, 1950, alleged that the defendants, man and wife residing in the municipality of Libmanan, province of Camarines Sur, executed on April 18, 1944, a deed of mortgage on two parcels of land situated in that province, to secure the payment of P150,000 and interest payable between April 19, 1948, and April 19, 1950; that the said deed was recorded in the office of the register of deeds for the province of Camarines Sur and annotated on the backs of the originals and the duplicates of the corresponding certificates of title; that the duplicates, which had been delivered to the mortgagee, and the originals, which were on file in the office of the register of deeds, were lost or destroyed on the closing days of the late war in the Philippines; that the copy of the deed of mortgage which was retained by the notary public who notarized, the instrument was saved and from it the copy attached to the complaint as Annex A was made.

We believe that the court below erred in dismissing the action. A mortgage and its registration may be shown, upon proof of their execution and loss or destruction, "by a recital of their contents in some authentic documents, or by the recollection of witnesses." (Section 51, Rule 123, of the Rules of Court. This the plaintiff said in his opposition to the motion to dismiss he would do. Whether he counts with sufficient competent secondary evidence is another thing and his own lookout, to be determined upon the trial.

Nothing in Republic Act No. 26, known as An Act Providing a Special Procedure for the Reconstitution of Torrens Certificate of Title Lost or Destroyed, can be construed to have replaced or modified the rule of evidence above referred to. It could not have been its intent to leave any creditor without a remedy, which would be the case where no vestiges of the missing papers and records from which reconstitution could be made, had been salvaged or could be found.

At any rate, there is no question as to the sufficiency of the averments that the defendants had received from the plaintiff a loan of P150,000 and that the note had fallen due when the action was brought. Assuming the truth of these allegations, as it must be assumed for the purpose of the motion to dismiss, the plaintiff had a clear cause of action for the amount sued upon, as a simple if not mortgage debt.

The second ground of the motion to dismiss has been decided in *Rutter vs. Esteban*, G. R. No. L-3708, May 18,

1953,[*] in which the Court held Republic Act No. 342 no longer in operation.

The appealed order is, accordingly, reversed and the case is remanded for further proceedings in accordance with law and the tenor of this decision. With costs against the appellees.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[*] Supra, p. 68.

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