

MANILA MOTOR COMPANY, INC., PLAINTIFF AND APPELLANT, VS. R. F. FERNANDEZ, DEFENDANT AND APPELLEE.*G.R. No. L-8377. August 28, 1956*

Ponente: PARAS, C.J.

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On February 24, 1939, the defendant-appellee purchased from the plaintiff-appellant a second-hand Ford Sedan for P1,125, P100 being paid in cash and the balance being payable in 34 fifteen-day installments with interest at the rate of twelve per cent per annum. As a security, the appellee executed in favor of the appellant a chattel mortgage on the car. Up to July 21, 1940, the appellee had paid the first ten installments and a part of the eleventh installment, thereby leaving a balance of P775.17. The appellee having defaulted in paying the other installments, the appellant filed in 1940 a suit in which judgment was rendered in March 1941, sentencing the appellee to pay to the appellant the sum of P775.17, with interest at twelve per cent per annum, plus twenty-five per cent of the total amount due as liquidated damages and attorney's fees. This judgment was never executed due to the outbreak of the last war and the promulgation of the debt moratorium orders. The judicial records, including the judgment, were neither saved nor duly reconstituted. On February 19, 1954, the appellant filed in the Court of First Instance of Manila the present complaint for the collection of appellee's indebtedness, alleging substantially the foregoing facts; but upon motion of the appellant, the court dismissed the case so as to enable it to file another with the Municipal Court of Manila which has jurisdiction over the amount involved. Accordingly, on April 13, 1954, the appellant filed with the latter court a similar complaint, whereupon the appellee filed a motion to dismiss which was granted by the Court on the ground thdt appellant's cause of action was barred by the statute of limitations. The appellant elevated the case to the Court of First Instance of Manila wherein the appellee again filed a motion to dismiss which was also granted, on the grounds that appellant's cause of action had prescribed and that appellee's foreclosure suit in 1940 constituted a waiver of any unpaid balance. Hence this appeal by the plaintiff.

It is contended for the appellant that the debt moratorium interrupted the running of the statute of limitations. This contention finds support in *Ma-ao Sugar Central Co. vs. Barrios*, 45 Off. Gaz., 2444, wherein it was held:

"While the debt moratorium is in force the defendant-petitioner has no obligation yet to pay the plaintiffs, and the latter can not file a suit against him in the courts of justice requiring him to recognize his debts to the plaintiffs and to pay them (after the moratorium) not only the amount of the indebtedness, but the legal interest thereon from the filing of the complaint, the attorney's fees of ten per centum of the amounts due, and the costs of the suits. There is no such action to compel defendant to acknowledge or recognize his debt which is not yet payable, distinct and different from the action for recovery or payment of a debt already due and payable, against the debtor who refuses to pay it. * * *

"* * * Said Executive Order No. 25 as amended by Executiye Order No. 32 not only suspends the execution of the judgment that the court may render so far as it orders the payment of debts and other monetary obligations, as stated in the resolution in said case, but also suspends the filing of suit in the courts of justice for the enforcement of the payment of debts and other monetary obligations therein referred to, if timely objection is set up by the defendant debtor."

The complaint was filed on April 13, 1954, or 13 years, 1 month and 12 days after March 1, 1941 (assuming that this was the date when the judgment rendered in March 1941 became final). The debt moratorium lasted from November 18, 1944, when Executive Order No. 25 was promulgated, to July 26, 1948, when it was partially lifted by Republic Act No. 342, or 3 years, 8 months and 8 days. Deducting this from 13 years, 1 month and 12 days, or less than the 10-year prescriptive period for an action based on judgment.

The lower court erred in considering the present complaint as one based on a chattel mortgage. The following allegations sufficiently serve to make the judgment rendered in March 1941 as the basis of appellant's cause of action, or they would otherwise be unnecessary and meaningless:

"7. That because defendant was delinquent in the payment of his obligations, plaintiff was forced to institute court action against the defendant sometime in 1940; that, in due course, judgment was rendered against the defendant sometime in March, 1941;

"8. That to the best of plaintiff's knowledge and recollection, the said judgment ordered the defendant to pay plaintiff the amount of P775.17 plus interest thereon at the contract rate of 12 per cent per annum, until the whole account be fully paid, and an additional amount of 25 per cent of the total amount due owing the plaintiff, as liquidated damages and attorney's fees;

"9. That the said judgment was never executed due to the out break of the war and the Debt Moratorium orders;

"10. That plaintiff's copy of the said judgment was lost or destroyed during the Battle for Liberation of Manila." (Allegations 7-10, Complaint.)

Although a copy of the chattel mortgage was attached to the complaint and reference was made to certain provisions thereof, the purpose undoubtedly was to demonstrate the propriety of the judgment of 1941 and, as stated by counsel for appellant, to allow the introduction of secondary evidence of the contents of said judgment which Was not reconstituted.

The lower court likewise committed a mistake in assuming that the suit in 1940 was one of foreclosure. The allegations with reference to said suit and the corresponding judgment of 1941 do not contain any suggestion in support of the assumption. Upon the other hand, in appellee's motion to dismiss, it was stated that the car in question was commandeered from him by the Japanese occupation forces, thereby indicating that, even during the war period, the property was in appellee's possession and had not been sold at public auction. At any rate, it is the actual sale of the mortgaged chattel in accordance with section 14 of Act No. 1508 that would bar the creditor (who chooses to foreclose) from recovering any unpaid balance (*Pacific Commercial Company vs. De la Rama*, 72 Phil., 380).

Wherefore, the appealed order is reversed and the case will be as it is hereby remanded to the court of origin for further proceedings. So ordered with costs against the defendant-appellee.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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