

THE FIRST NATIONAL CITY BANK OF NEW YORK, PLAINTIFF AND APPELLANT, VS. SILVIO CHENG TAN ALIAS SILVIO CHENG PAN, DEFENDANT AND APPELLEE.*G. R. No. L-14234. February 28, 1962*

Ponente: DIZON, J.

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On July 2, 1947 the Court of First Instance of Manila rendered judgment in Civil Case No. 59502—which was an action to foreclose a real estate mortgage—ordering the defendants therein,—Silvio Cheng Tan alias Silvio Cheng Pan amongst them—to pay, jointly and severally, the First National City Bank of New York the sum of P142,000.56, with the stipulated interest on the sum of P129,361.13, plus costs, and providing that in case of default of payment within the period of time therein given, the properties mortgaged by said defendants be sold at public auction to satisfy the judgment. After the sale of the mortgaged properties a deficiency judgment was rendered on March 25, 1950 for P98,256.13 (Rec. on App. p. 4-5). After the issuance of the corresponding writ of execution and the sale of two parcels of land located in San Miguel, Bulacan, there remained unsatisfied the sum of P38,090.06, with the 7% stipulated interest thereon from October 3, 1941, until paid.

As the other defendants in the case had died or could nowhere be found, and the five-year period for the enforcement of the deficiency judgment by mere motion had elapsed without the same having been satisfied, on June 26, 1957. The First National City Bank of New York instituted the present action against Silvio Cheng Tan in the Court of First Instance of Manila to revive the judgment aforesaid.

During the pendency of the case Cheng Tan died and was substituted by his legal representative, Serafin Cheng, who filed a motion to dismiss, the action on the ground that under Section 21, Rule 3 and Section 5, Rule 87 of the Rules of Court, plaintiff should file its claim in the intestate estate proceedings for the settlement of the estate of said deceased pending in the Court of First Instance of Rizal since February 27, 1958, an administrator having been appointed by said court on April 7, 1958.

Opposing the motion to dismiss, plaintiff contended that the judgment rendered in Civil Case No. 59502 having ceased to be executory, demandable and operative, the same had been reduced to a mere right of action; that the present action to revive said judgment is not one for the recovery of money; that it was for this reason that a contingent claim had been filed by it against defendant's estate.

In its order of July 1, 1958 the lower court granted defendant's motion to dismiss. Hence, this appeal.

We have heretofore held in *Bank of the Philippine Islands vs. Concepcion e Hijos*, 53 Phil. 806, and *Government, etc. vs. Soncuya, et al.*, G. R. No. L-45994, promulgated on January 20, 1944, that a deficiency judgment is a contingent claim and must be filed with the probate court where the settlement of the estate of the deceased mortgagor is pending, within the period of time fixed for the filing of claims. On the other hand, Section 5, Rule 87 of the Rules of Court, provides that, among others, judgments for money against the decedent whose estate is in the process of judicial settlement must be filed with the probate court within the time limited in the notice given

for that purpose, otherwise they will be deemed barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the judgment creditor.

It is true that a judgment rendered in a civil action remaining unsatisfied after 5 years from its date of entry, is reduced to the condition of a mere right of action (*Cia. General de Tabacos etc. vs. Martinez et al.*, 29 Phil. 515), but this, in our opinion, does not argue against the proposition that it should be filed with the probate court for corresponding action. To the contrary, reduced, as it has been, to the condition of a mere right of action, it can well be likened to a promissory note. Like the latter, therefore, it should be submitted as a claim to the probate court where the settlement of the estate of the deceased debtor is pending.

Even reasons of expediency militate in favor of our conclusion. Were the present proceedings allowed to continue, they could end with nothing more than a judgment reviving the one subject matter of the action. Thus revived said judgment could not be enforced except through the probate court (*Piliin vs. Jocson*, 41 Phil., 26; *Espino vs. Rovira*, 50 Phil., 152; *Asia Banking, etc. vs. Elser*, 54 Phil., 994) because the judgment debtor died before execution could be actually levied upon any of his properties (Section 7, Rule 39, Rules of Court). There is, therefore, no need to prosecute the present action the herein plaintiff-appellee having the right to go directly to the probate court to file his claim based on the deficiency judgment mentioned heretofore.

Wherefore, the appealed order is affirmed, without special pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and De Leon, JJ., concur.

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