

**SATURNINA PORTUGALETE, ET AL., PETITIONERS-APPELLEES, VS.
JOSE AZCONA, EX-OFICIO PROVINCIAL SHERIFF OF NEGROS
OCCIDENTAL, RESPONDENTS, PHILIPPINE NATIONAL BANK,
BINALBAGAN BRANC...**

G.R. No. L-14666. May 25, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

The Philippine National Bank has appealed from the decision of the court of first instance of Negros Occidental restraining it and the Sheriff from carrying out the extrajudicial foreclosure sale of Lot No. 939 of the cadastral survey of Ilog, same province.

In 1937, Francisco Gemora and his wife Saturnina Portugalete executed a deed of mortgage of said lot to the Bank, authorizing the latter, in case of breach, to foreclose extrajudicially in accordance with Act No. 3135.

In November 1957 the Bank requested the Provincial Sheriff to take — and the latter took — steps for extrajudicial foreclosure by giving appropriate notices; whereupon Saturnina and the heirs of her deceased husband presented a special civil action for prohibition against the Sheriff and the Bank to block the foreclosure. They asserted prescription, the debt having become payable in 1938.

Replying to the petition, the Bank alleged that the mortgage fell due in April, 1942; that on April 15, 1955 it had sent a demand letter to Francisco Gemora; that such letter had stopped the running of the prescriptive period; that discounting the years during which the Moratorium Law had been in force, less than ten years had elapsed; and that, consequently its right to collect the mortgage debt still subsisted.

The parties submitted the controversy upon a stipulation of facts. In his decision of September 30, 1958, Hon. Jose S. de la Cruz, Judge, found the debt to have prescribed; and therefore, he permanently restrained the foreclosure proceedings.

Copy of such decision was forwarded to the Bank's attorneys by registered mail. According to the Registry Return Receipt at p. 92 of the record, they received it on September 15, 1958.[1] Without moving for reconsideration, they filed the Bank's notice of appeal on October 9, 1958.

The appeal was, therefore, taken on the 24th day after receipt of the decision. It was late: the notice should have been docketed on or before the fifteenth day, as prescribed by sec. 17, Rule 41, this being a prohibition case.

Under Rule 52, sec. 1, in connection with Rule 58, sec. 1, this appeal is hereby dismissed with costs against appellant. So ordered.

Paras, C.J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

Endencia, J., took no part.

[1] See also p. 125 record, and p. 52 Record on Appeal.

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