

FELIPE SAAVEDRA, PETITIONER, VS. POTENCIANO PECSON, JUDGE OF FIRST INSTANCE OF ZAMBOANGA, RESPONDENT.*G.R. No. L-260. March 25, 1946*

Ponente: PERFECTO, J.

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On December 18, 1945, Valeriano Turija filed in the municipal court of Zamboanga a complaint for the recovery of an automobile valued at P450 against petitioner Felipe Saavedra, who acquired the same from Arthur D. Walker, an American enlisted man, said car belonging to the plaintiff from whom it was seized and appropriated by the Japanese forces during the enemy occupation and, after the liberation, had been in the possession and control of the PCAU before its transfer by Arthur D. Walker to petitioner.

Petitioner filed a motion to dismiss the complaint on the ground that the municipal court has no jurisdiction over the subject matter of the action, for the reason that the car has lost its character as private property to take on the status of enemy state property and, therefore, the claim and adjudication of the same should be made in and by the Office of the Custodian of Enemy Property established by the United States Government in Zamboanga. On January 2, 1946, the municipal court, declaring itself without jurisdiction, ordered the dismissal of the case. On January 3, 1946, the plaintiff appealed.

After both parties were given ample opportunity to present their oral arguments in support of their respective contentions on the question of the jurisdiction of the municipal court, the Honorable Potenciano Pecson, Judge of the Court of First Instance of Zamboanga, issued on January 7, 1946, an order reversing the order of dismissal of the municipal court, declaring it with jurisdiction to try the case, and remanding the same for further proceedings, without costs. On January 9, 1946, petitioner moved for reconsideration of said order of January 7, but the motion was denied on January 11.

Now petitioner comes to us to seek the annulment of the order of the respondent judge dated January 7, 1946, as having been issued in excess of his jurisdiction.

We do not find any merit in petitioner's contention.

It appearing: that the complaint for the recovery of the automobile in question has been disposed of by the municipal court of Zamboanga upon a question of law and not upon a trial on the merits, the respondent judge has jurisdiction to issue the order dated January 7, 1946, in accordance with section 10 of Rule 40 of the Rules of Court, which reads as follows:

"Sect. 10. Appellate powers of Courts of First Instance where action not tried on its merits by inferior courts. —Where the action has been disposed of by an inferior court upon a question of law and not after a valid trial upon the merits, the Court of First Instance shall on appeal review the ruling of the inferior court and may affirm or reverse it, as the case may be. In case of reversal, the case shall be remanded for further proceedings."

Whether respondent acted correctly or not in issuing said order, the proper remedy for petitioner would be by

appeal. But in the instant case, it appears that an appeal against the order would be futile because the order is well-taken as the municipal court, without any shadow of doubt, has jurisdiction to decide the litigation on the merits, it appearing that the value of the litigated personal property is within the range of the concurrent jurisdiction between a court of first instance and a municipal court.

Petitioner's contention that, because the property had been appropriated by the Japanese forces during enemy occupation, the automobile has lost its character as private property to take on the status of enemy state property, lacks merit. The illegal seizure made by the Japanese could not, and cannot, change the nature, character, and status of a property legally belonging to a civilian private citizen. Petitioner who is in possession of the automobile in question appears also to be a private citizen, residing in the district of Tetuan, Zamboanga City. The litigation is, therefore, between two private citizens, both residing within the territorial jurisdiction of the municipal court, and there is nothing to show that the automobile is not within the jurisdiction of said court.

Petition is dismissed, with costs to be taxed against petitioner.

Moran, C. J., Ozaeta, Paras, Jaranilla, Feria, De Joya, Pablo, Hilado, Bengzon, and Briones, JJ, concur.
Petition dismissed.

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