

LEVY HERMANOS, INC., PLAINTIFF AND APPELLANT, VS. DIEGO PEREZ, DEFENDANT AND APPELLEE.

G.R. No. L-14487. April 29, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

Appeal from an order of the Court of First Instance of Negros Occidental, dismissing plaintiff's complaint upon defendant's motion on the ground of prescription.

Plaintiff's complaint, which was filed by it in the Municipal Court of the City of Bacolod on July 18, 1956, was, on April 18, 1958, reproduced in the court of record below after the defendant had perfected his appeal from the decision of the inferior court. The complaint alleges, among other things, that in Civil Case No. 8784 of the Court of First Instance of Negros Occidental, entitled "Levy Hermanos, Inc. vs. Diego Perez", judgment was rendered on August 23, 1941, sentencing defendant Diego Perez to pay plaintiff the sum of P1,045.33 with interest at 10 per cent per annum from June 10, 1941 until full payment, plus costs, and that a Packard car of the defendant was levied upon and sold at public auction on January 28, 1942, the proceeds of which were applied to the judgment debt, leaving a balance of P957.47 still unpaid, which defendant refused to pay notwithstanding repeated demands. The complaint, therefore, prays that judgment be rendered ordering defendant to pay plaintiff the sum of P957.47 with interest thereon at the rate of 10 per cent per annum from January 28, 1942 until full payment, plus attorney's fees and costs.

Instead of answering the complaint, defendant filed a motion to dismiss on the ground of prescription, it being alleged that from September 23, 1941, when the judgment sought to be enforced became final, to July 18, 1956, when the complaint was filed, more than 10 years required by law within which court action must be filed had already elapsed.

Considering that from August 23, 1941, "the date of the decision sought to be revived", to April 18, 1958, when the present action was "filed", 16 years, 7 months and 25 days had already elapsed, and holding that the Debt Moratorium Law was in force only from March 10, 1945 up to July 26, 1948—a period of 3 years, 4 months and 16 days—the lower court, on June 2, 1958, issued an order dismissing plaintiff's complaint. From that order, plaintiff appealed directly to this Court.

An action upon a judgment must be filed within ten years from the date the judgment became final. (Articles 1144 and 1152, new Civil Code; Moran, Rules of Court, Vol. 1, 1957 ed., p. 541.) In the present case, it is not disputed that the decision against the defendant in Civil Case No. 8784 sought to be enforced was rendered on August 23, 1941 and the same became final on September 28, 1941. Between that latter date and the filing of the present action on July 18, 1956 in the Municipal Court of Bacolod City, 14 years, 9 months and 25 days had elapsed. Following the theory of the lower court that the debt moratorium did not suspend the running of the prescriptive period for more than 3 years, 4 months and 16 days, it would seem that the action has already prescribed. This Court, however, has also held that in the case of a war sufferer the debt moratorium must be considered to have

been in force from March 10, 1945 up to May 18, 1953—a period of more than 8 years—and to have had the effect of suspending the statute of limitations for that period. (Tioseco vs. Day, et al., G. R. No. L-9944, April 30, 1957; see also Rio y Compañia vs. Sandoval, et al., 100 Phil., 407; 53 Off. Gaz. 7705; Pacific Commercial Co. vs. Aquino, 100 Phil, 961; 53 Off. Gaz. [12] 4067,) On the supposition, therefore, that defendant is a war sufferer, it is apparent that the present action was instituted in court within the prescriptive period of 10 years.

Plaintiff-appellant claims in its brief that defendant-appellee in the proceedings below did not deny having filed a claim with the War Damage Commission and is therefore a war sufferer. The latter, on the other hand, has not filed his brief, and the order complained of does not contain enough findings to verify the truth of plaintiff-appellant's allegation. In the circumstances, we hold that the ground of prescription alleged in defendant-appellee's motion to dismiss does not appear to be indubitable. The lower court should have, therefore, deferred action on said motion until after trial on the merits in order to do justice to plaintiff. (Rule 8, sec. 3, Rules of Court; Cordova, et al. vs. Cordova, et al., G. R. No. L-9936, January 14, 1958.)

Wherefore, the order of dismissal appealed from must be, as it hereby, reversed, and the case ordered remanded to the court below for further proceedings.

Without costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

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