

DEMETRIO BUNAYOG, PLAINTIFF AND APPELLANT, VS. ANACLETA TUNAS, ET AL., DEFENDANTS AND APPELLEES.

G. R. No. 12707. December 23, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On September 6, 1956, plaintiff filed an action before the Court of First Instance of Misamis Occidental to foreclose a real estate mortgage and recover an amount not exceeding P1,500.00, representing damages and interests.

On October 19, 1956, defendants filed a motion to dismiss on the grounds that the complaint states no cause of action; that the deed of mortgage which is sought to be foreclosed is null and void; and that the action involves recovery of money which comes within the exclusive original jurisdiction of the justice of the peace court.

On November 7, 1956, plaintiff filed an opposition to the motion to dismiss maintaining that the deed of mortgage is valid because the same is authorized by Republic Act No. 133 which permits the execution of a mortgage on private real property in favor of any individual subject to certain conditions. On November 17, 1956, the trial court sustained the motion and dismissed the complaint with costs. On December 12, 1957, plaintiff filed a motion for reconsideration, and when the same was denied, he interposed the present appeal.

It appears that the real property covered by the mortgage sought to be foreclosed is covered by a homestead patent issued to defendants on October 26, 1950, and that before the expiration of the five-year period from the issuance of said patent, or on March 27, 1952, defendants executed the mortgage in question in favor of plaintiff to secure the payment of certain monetary obligation. On the other hand, Section 118 of Commonwealth Act 141, as amended by Commonwealth Act 456, provides that "except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provisions, shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period", otherwise the transaction shall become null and void (*Santos vs. Roman Catholic Church of Midsayap*, 94 Phil., 405; 50 Off. Gaz. [4], 1588, *Philippine National Bank vs. Espinosa*, 66 Phil., 716).

It would, therefore, appear that the deed of mortgage in question, which covers property acquired by a homestead patent, is null and void, it having been executed within the period of five years from the issuance of the patent. We, however, hold that the trial court erred in dismissing the complaint on the ground of lack of jurisdiction even if the amount sought to be recovered is less than P2,000.00 because the issue regarding the validity of the mortgage does not come within the original exclusive jurisdiction of the justice of the peace court. It being an issue which is not capable of pecuniary estimation, the same can only be determined by the court of first instance (Republic Act No. 296, Section 88, as amended by Republic Act No. 646, Section 22). The trial court should have therefore taken cognizance of the case and should have acted thereon on its merits.

Wherefore, the order appealed from is set aside and the case remanded to the trial court for further proceedings, with costs against the appellees.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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