

**JUAN N. EVANGELISTA AND TEODORA EVANGELISTA, PETITIONERS,
VS. HON. LUIS B. REYES, ET AL., RESPONDENTS.***G.R. No. 20416. January 30, 1964*

Ponente: REYES, J.B.L., J.

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Petition for certiorari and prohibition praying that respondent judge of the Court of First Instance of Manila be ordered to desist from proceeding with the trial of the case and to remand the same to the Municipal Court of Manila for further proceedings.

On October 25, 1960, the spouses Cabral filed a civil complaint, entitled "Foreclosure of Chattel Mortgage", in the Municipal court of Manila against George Tunaya and the spouses Juan and Teodora Evangelista, praying that in the event of defendants' failure to pay the plaintiffs the sum of P1,000.00, jointly and solidarity with interest, the said defendants be ordered to deliver to the Sheriff of Manila properties mortgaged by Tunaya to the plaintiffs (by way of chattel mortgage); that the Sheriff be ordered to sell said properties at auction to satisfy the judgment debt; and for other relief, just and equitable, in the premises. The defendants, spouses Evangelista, were the judgment creditors and successful bidders of the properties of Tunaya, subject of the chattel mortgage in question, when the same were sold under execution issued pursuant to a judgment in Civil Case No. 5550 of the Court of First Instance of Rizal rendered on June 2, 1960, subsequent to the execution and registration of said chattel mortgage deed in favor of plaintiff spouses Cabral on December 12 and 14, 1959, respectively. Petitioners (defendants below) moved to dismiss the complaint on the ground of lack of cause of action, while defendant Tunaya confessed judgment on the date set for hearing. In spite of opposition to the motion to dismiss, the municipal court rendered judgment by confession against Tunaya, but dismissed the case against herein petitioners; so that respondents Cabral (plaintiffs below) appealed the decision of the municipal court to the Court of First Instance of Manila.

On March 24, 1961, defendants Evangelista filed a motion in the Court of First Instance of Manila to affirm the decision of the inferior court, and to dismiss the appeal of the spouses Cabral, which motion was subsequently denied by respondent judge on April 4, 1961 in open court, giving no reasons to support its denial. On April 17, 1961, defendants Evangelista filed an answer pleading prescription with counterclaim for damages, which pleading for respondent spouses Cabral controverted. Although the case was set for trial by respondent judge, the same was postponed several times to enable the parties to submit memoranda in connection with the application of Section 10, Rule 40, of the Rules of Court to the ease. In their memorandum, petitioners sought a remand of the case to the inferior court for further proceedings in accordance with Section 10 of Rule 40, supra; but opposition thereto having been registered by plaintiffs Cabral, respondent judge denied the motion to remand on August 31, 1962, and re-set the case for hearing on October 25, 1962. Motion for reconsideration of this order having been likewise denied, petitioners moved for another postponement, and interposed the present petition against the last-mentioned order of the respondent court.

Petitioners urge that the refusal to remand the case was contrary to jurisprudence and law (Section 10, Rule 40, of

the Rules of Court); that there is no appeal, nor any plain, speedy, and adequate remedy from the questioned orders of respondent judge other than by the present special civil action; and pray that respondent judge be ordered, after hearing, to remand the case to the inferior court for further proceedings because respondent court had no jurisdiction to hear the case on the merits either on its appellate or original jurisdiction.

We see no merit in the petition. By filing an answer in the court of first instance, where, the case lay on appeal, the petitioners herein withdrew their objections to the court's taking cognizance of the case pursuant to its original jurisdiction, as expressly authorized by the last portion of section 11, Rule 40, which is as follows:

"* * * But instead of dismissing the case, the Court of First Instance in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to the trial without any objection to such jurisdiction."

Once they had assented to the exercise of the court's jurisdiction, petitioners are not permitted thereafter to alter the position thus voluntarily chosen, and insist once more that the case be returned to the municipal court. Any other rule would allow the parties to confuse and delay at will the course of litigation.

The argument that the suit was for the recovery of only P1,000 and could not be taken cognizance of by the court of first instance in the exercise of its original jurisdiction because the amount involved was below the minimum prescribed by the Judiciary Act is untenable. Such a stand mistakenly assumes that the recovery of the indebtedness was the sole object of the suit, when the pleadings show that the respondents Cabral (plaintiffs below) likewise sought to recover the possession of the mortgaged chattels in order that foreclosure might proceed, and there was no proper showing that the value of these properties was not within the original jurisdiction of the court of first instance. Petitioners had the burden of proof in this regard, since they are the ones contesting the court's jurisdiction; but they failed to satisfy the charge.

Wherefore, the writs applied for are denied, with costs against petitioners Evangelista.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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