

**CABMEN KETTE, PLAINTIFF AND APPELLANT, VS. ANGEL SUAREZ,
ADMINISTRATOR OF THE ESTATE OF THE DECEASED ADOLFO F.
PANDO, DEFENDANT AND APPELLEE.**

G. R. No. 33921. February 26, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is an action for damages in the amount of P50,000 alleged to have been sustained by the plaintiff on account of the late Adolfo F. Pando's failure to grant an extension of time for the payment of a real estate mortgage debt.

The plaintiff assures that had the extension been granted, one Maria Padilla would have bought the estate or her right of redemption for not less than P50,000, assuming, furthermore, all the plaintiff's mortgage obligations to the aforesaid Fando.

The defendant, who is the administrator of the above-named creditor's testamentary estate, alleges that the plaintiff had no right to the extension requested, as this court held in G. R. No. 29184,[1] that the aforementioned Maria Padilla lacked the necessary means to meet the obligations she intended to contract with the plaintiff, and that the action herein brought, being an appeal from the resolution of the committee on claims and appraisal of the late Adolfo F. Pando's estate, has, under section 775 of the Code of Civil Procedure, already prescribed. After trial, the Court of First Instance of Manila which heard the case absolved the defendant from the complaint, and sentenced the plaintiff to pay costs.

The plaintiff appealed, alleging that the court below erred:

- In finding that the plaintiff herein had failed to appeal from the decision of the commissioners appointed to hear claims against the estate of the deceased Adolfo F. Pando within the time fixed by the law.
- In finding that the evidence did not disclose that Maria Padilla, the person with whom the proposed exchange of lands was to be made, was the owner of properties valued at P50,000.
- In failing to find that the deceased Adolfo F. Pando had broken his verbal agreement to extend the mortgage in question for one year.
- In finding, without any proofs whatsoever to sustain such finding, that the lands in Pasay are not worth P35,000.
- In dismissing plaintiff's complaint, and in failing to render judgment in favor of plaintiff for P50,000 with interest and costs.
- In overruling and denying plaintiff's motion for a new trial."

In support of the first assignment of error, counsel for the appellant cited Exhibits C, EE, E, J, K, DD. We find nothing in these documents to destroy the trial court's conclusion that the complaint in this case was not presented in time.

Inasmuch as section 775 of the Code of Civil Procedure has not been complied with, the plaintiff lost her right to bring this action; not because of prescription, which does not exist in this case, but because the committee's resolution in the matter of the claims has become final, and because for lack of appeal duly taken the Court of First Instance did not acquire jurisdiction over the subject matter.

This would suffice, as the lower court correctly held, to put an end to the case. But even going into the merits of the case, the evidence of record bears out the court's finding that at the time referred to herein, Maria Padilla's property was not worth P5,000, according to its assessed value.

As to the extension of time, the plaintiff was not entitled to it, and this is *res judicata*, having been definitely decided against her in case G. R. No. 29184 between herself and the said Adolfo F. Pando, whose successor is made defendant in this case, the matter of the extension of time having been one of the questions raised and passed upon in that case. Neither can it be held as proven that the late Pando had promised, even orally, to grant her the extension of time repeatedly mentioned.

Lastly, the record supports the lower court's finding that the property in Pasay which was the subject matter of the mortgage is not worth P35,000.

The judgment appealed from is affirmed, and in view of the circumstances of the case, the appellant will pay double costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Johns, and Villa-Real., JJ., concur.

[1] Pando vs. Kette and Sellner (52 Phil., 150).

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