

LEOCADIA SALOMON AND SERAPIO LACHICA, PLAINTIFFS AND APPELLANTS, VS. FRANCISCO DANTES, DEFENDANT AND APPELLEE.

G. R. No. 43824. September 30, 1936

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This action was commenced in the Court of First Instance of Cavite by the filing of a complaint by the appellants against the appellee for the recovery of a sum of money. The complaint alleged, among other things, that the appellee borrowed from the appellant Leocadia Salomon the sum of P800 and one hundred cavans of palay as evidenced by a certain document which was annexed to the complaint, marked as Exhibit A, and made a part thereof. It was further alleged that although said document Exhibit A was entitled *Escritura de Hipoteca*, it constituted a mere contract of loan as the same was not recorded on account of certain defects. The appellee demurred to the complaint on the ground that the court had no jurisdiction over the subject of the action. The court below sustained the demurrer and dismissed the complaint on the ground of lack of jurisdiction. From the order thus entered this appeal was taken.

In sustaining the demurrer, the court held that a contract of mortgage, even if unrecorded, is valid and binding as between the parties thereto and that registration is only necessary for the validity of the mortgage as against third parties. The court further held that as the property involved in the contract Exhibit A is located in the Province of Zambales, the Court of First Instance of Cavite had no jurisdiction in the premises.

In disposing of this appeal, it is not necessary for us to pass on the question of whether the document Exhibit A has created a valid mortgage between the parties thereto. Even granting, without deciding, that it did create such a valid mortgage, the mortgagee, that is the appellant Leocadia Salomon, was not precluded from maintaining a personal action for the recovery of the debt covered by the mortgage. (*Hijos de I. de la Rama vs. Sajo*, 45 Phil., 703.)

The order appealed from is reversed, and the case will be remanded to the court below for further proceedings in conformity with this opinion. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Laurel, JJ., concur.

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