

**AGRICULTURAL CREDIT COOPERATIVE ASSOCIATION OF PASSI,
PLAINTIFF-APPELLANT, VS. RUFINO PALABRICA,
DEFENDANT-APPELLEE.**

G.R. No. 48810, May 21, 1943

Ponente: OZAETA, J.

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OZAETA, J.:

On October 31, 1927, Francisco Palabrica signed a promissory note in favor of the plaintiff in the sum of P350 payable on April 30, 1928, with interest thereon at the rate of 10% per annum. On the same date he and his wife Paula Palencia executed a mortgage on a parcel of land described in original certificate of title No. 23617 to secure the payment of said promissory note. On September 28, 1936, the plaintiff secured a personal judgment on said promissory note in the justice of the peace court of Passi, Iloilo, against Francisco Palabrica for the total sum of P592.36, including accrued interest and attorney's fees.

For reasons not appearing in the record, that judgment seems not to have been executed; for on September 23, 1938, the plaintiff commenced a new action in the Court of First Instance of Iloilo against Teopisto Palabrica, Romulo Palabrica, Joaquin Palabrica, as heirs of the spouses Francisco Palabrica and Paula Palencia, both of whom had demised, and Rufino Palabrica, to foreclose the mortgage above mentioned. Among the allegations of the complaint in that new action (Civil Case No. 11320 of the Court of First Instance of Iloilo, G. R. No. 46990 of this Court) were the following:

"Que los herederos Teopisto Palabrica, Romulo Palabrica y Joaquin Palabrica han sido incluidos en esta demanda sobre la ejecucion de la hipoteca como partes real y verdaderamente interesadas en este asunto y como unicos herederos de los esposos ya difuntos Francisco Palabrica y Paula Palencia, deudores hipotecarios."

"Que el Sr. Rufino Palabrica, uno de los aqui demandados, otorgo y firmo una escritura de obligacion como fiador solidario de Francisco Palabrica el mes de julio de 1929, segun aparece en la escritura de obligacion a favor de la demandante, copia de la cual exhibito 'B se hace parte integrante de esta demanda."

The defendants demurred to the complaint on the grounds that the plaintiff had no cause of action against the defendants, and that the court had no jurisdiction to take cognizance of the case because the plaintiff should present its claim to the commissioners on claims of the intestacy of the spouses Francisco Palabrica and Paula Palencia, deceased. That demurrer was sustained by the court, which at the same time dismissed the complaint without costs. Upon appeal, this Court affirmed the order of dismissal in its decision promulgated on January 30, 1940.

On March 15, 1940, the plaintiff commenced the present action (the third of the series) in the justice of the peace court of Passi against Rufino Palabrica, as one of the solidary guarantors of Francisco Palabrica on the promissory note above mentioned. It appears that aside from the real estate mortgage above alluded to (which by the way was not recorded and for that reason, among others, its attempted foreclosure failed), Rufino Palabrica and Paula

Palencia, in July, 1929, guaranteed the payment to the plaintiff of the promissory note in question in the following words:

"Statement of sureties

"We, the undersigned, Rufino Palabrica and Paula Palencia, hereby guarantee, Jointly and severally,. with the borrower, the fulfillment of this obligation on the date of its maturity, and promise to pay, in case of insolvency of the borrower or his refusal to pay the entire amount of this note, with interest at 10 per cent per annum, beginning the date on which said obligation falls due, plus 10 per cent of the principal for attorney's fees, plus cost and other legal charges, in case a suit be brought on this note, binding ourselves Jointly and severally to pay the same, and that the creditor may legally proceed against us without the necessity of exhausting the borrower's property. It is expressly understood and agreed that the creditor may grant the borrower any extension or extensions of time allowed by law for the payment of this note, without thereby affecting in any degree our obligation as sureties.

"We declare ourselves to be solvent each and every one of us for the full amount of this note, binding ourselves that during the existence of this obligation we will not alienate, sell, dispose or transfer our property without leaving part thereof equal in value to that for which we have obligated ourselves to pay." (Exhibit A.)

After due hearing, the justice of the peace dismissed the case on the ground that the action was barred by the previous judgment in civil case No. 11320 of the Court of First Instance of Iloilo, which was affirmed by this Court in G. R. No. 46990. Upon appeal, the Court of First Instance absolved the defendant from the complaint on the same ground stated by the justice of the peace court.

The only question raised in this appeal is whether the plea of res judicata interposed by the defendant is valid or not. Civil Case No. 11320 was a mixed action of foreclosure of mortgage against the heirs of Francisco Palabrica and a personal action against Rufino Palabrica as solidary guarantor or surety of Francisco Palabrica, on the same principal obligation secured by said mortgage. In disposing of the case insofar as the present defendant was concerned, this Court said:

"La accion contra el co-heredero Rufino Palabrica para el cumplimiento de la garantia o fianza que presto no puede mantenerse separadamente en el asunto en vista de que la accion se ha ejercitado, aparentemente, para recobrar unicamente una deuda que dejaron de pagar los finados conyuges Francisco Palabrica y Paula Palencia."

It is apparent that the decision of this Court in G. R. No. 46990, insofar as the liability of the defendant Rufino Palabrica was concerned, was not a decision on the merits. The Court held in effect that the said defendant had been misjoined in that action, "which apparently was instituted only to recover a debt that the deceased spouses Francisco Palabrica and Paula Palencia had failed to pay." The Court did not pass upon the defendant's liability on his guaranty hereinbefore quoted. That question cannot, therefore, be considered res adjudicata.

The plaintiff has the right to bring the present action against the defendant, inasmuch as the latter guaranteed jointly and severally with the borrower the payment of the latter's promissory note and bound himself to pay the same in case of the borrower's insolvency or his refusal to pay. It is an undisputed fact that the borrower Francisco Palabrica refused during his lifetime to pay the promissory note in question notwithstanding that judgment had been rendered against him by the justice of the peace court of Passi, Iloilo. It was admitted during the trial of this case that with the exception of ₱10, the amount of the promissory note in question had not been paid notwithstanding due demand.

Wherefore, the judgment of the trial court is reversed and the defendant is hereby adjudged to pay to the plaintiff the sum of P 340, with interest thereon at 10% per annum from May 1, 1930, until the date of payment, plus the

sum of P34 as attorney's fees and the costs in the three instances. So ordered.

Yulo, C.J., Moran, and Bocobo, JJ., concur.

PARAS, J.: I concur in the result.

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