

4 Phil. 713

[G.R. No. 1572. September 01, 1905]

ENRIQUE F. SOMES, HEIR OF MANUEL F. SOMES, PLAINTIFF AND APPELLEE, VS. WIFE AND SON OF IGNACIO GORRICHIO, DEFENDANTS AND APPELLANTS.

D E C I S I O N

JOHNSON, J.:

This was an action by the plaintiff against the defendant, commenced in the court of the justice of the peace in the city of Manila, to recover the sum of 200 pesos upon the following instrument:

“Received of Don Manuel F. Somes the sum of two hundred pesos, promising to return the same in four monthly payments of fifty pesos each, the first payment to be made on the 1st day of November, until the month of February, until this sum of two hundred pesos shall be paid.

“(Signed)

IGNACIO DE GORRICHIO.

“MANILA, *24th of August, 1891.*“

The only defense offered by the defendant was that the cause of action based upon the said instrument was prescribed by virtue of paragraph 3 of article 1966 of the Civil Code.

The justice of the peace, after considering the proof in said cause, decided that the action based upon said instrument was prescribed by virtue of said paragraph 3 of article 1966, and rendered his decision

in favor of the defendants, dismissing said cause with costs to the plaintiff.

The plaintiff appealed to the Court of First Instance of the city of Manila, and the cause was tried *de novo* before said court. The cause proceeded in the Court of First Instance upon the same complaint and answer which were filed in the court of the justice of the peace.

After hearing the proof in said cause the judge of the Court of First Instance rendered the following decision:

“In this cause the parties proved the following facts:

“1. On the 24th day of August, 1891, Ignacio Gorricho executed and delivered to Manuel F. Somes a promissory note in the following form:

”

‘Recibi de D. Manuel F. Somes la cantidad de doscientos pesos, obligandome a devolverlos en cuatro mensualidades de a cincuenta pesos desde Noviembre proximo en que empezare” a pagar hasta Febrero del entrante en que quedara saldada esta suma y para su seguridad, firmo el presente en Manila, 24 de Agosto de 1891.’

“2.

No part of said promissory note has been paid. “The only question presented during the trial is whether paragraph 3 of article 1966 of the Civil Code is applicable; and, if so, is said action prescribed? I am of opinion that the words ‘pagos que deban hacerse por anos o en plazos mas breves’ do not refer to payments the time of which has been fixed by agreement of the parties. When the day of the payment is fixed I do not see any reason why the law should give importance to the time that transpires before the day of payment. Therefore, I decide that the

defendants shall pay to the plaintiff the sum of two hundred pesos, with the costs of the suit.

“(Signed)

W. J. ROHDE, *Judge.*”

The defendants appealed from said decision to this court, alleging that the Court of First Instance committed an error in deciding that the cause of action had not been prescribed by virtue of the provisions of article 1964 of the Civil Code. “

The appellee has presented no brief in this court. Article 1966 of the Civil Code provides as follows:

“Art. 1966. Actions to demand the fulfillment of the following obligations prescribe in five years:

“1. For the payment of income for support;

“2. For the payment of rents, whether derived from rural or from town property;

“3. That of any other payments which should have been made annually or in shorter periods.”

Article 1964 of the Civil Code provides:

“Art. 1964. A mortgage action prescribes after twenty years, and those which are personal, and for which no special term of prescription is fixed, after fifteen years.”

The question presented to this court is, Does the instrument upon which this action was based come within the obligations prescribed in the third paragraph of article 1966, which reads “that of any other

payments which should have been made annually or in shorter periods," or under that part of article 1964 which provides "those (obligations) which are personal, and for which no special term of prescription is fixed, after fifteen years?"

We are of the opinion that the actions included in paragraph 3 of article 1966 refer to actions belonging to the same class as those enumerated in paragraphs 1 and 2 of the same article. The contract upon which this action was based does not belong to that class of obligations. The contract sued upon in this cause belongs to the class of actions mentioned in the second part of article 1964 of the Civil Code which reads:

"Those which are personal and for which no special term of. prescription is fixed, after fifteen years."

This contract was dated the 24th day of August, 1891. The action upon said contract was commenced upon the 24th day of May, 1903. Whereas fifteen years had not expired, the action is not barred by the statute of limitations.

Therefore, the judgment of the Court of First Instance of the city of Manila is hereby affirmed, with costs to the appellants. After the expiration of twenty days judgment will be entered in conformity herewith, and the cause will be returned to the lower court for execution. So ordered.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.

Willard, J., did not sit in this case.

