Supreme Court E-Library

FIRST DIVISION

[G.R. No. L-27343. February 28, 1979]

MANUEL G. SINGSON, JOSE BELZUNCE, AGUSTIN E. TONSAY, JOSE L. ESPINOS, BACOLOD SOUTHERN LUMBER YARD, and OPPEN, ESTEBAN, INC., *plaintiffs-appellees, vs.* **ISABELA SAWMILL, MARGARITA G. SALDAJENO and her husband CECILIO SALDAJENO, LEON GARIBAY, TIMOTEO TUBUNGBANUA, and THE PROVINCIAL SHERIFF OF NEGROS OCCIDENTAL, defendants. MARGARITA G. SALDAJENO and her husband CECILIO SALDAJENO,** *defendants-appellants.*

SYLLABUS

1. **REMEDIAL LAW; COURTS; JURISDICTION; ACTION TO COLLECT A SUM OF MONEY AND TO NULLIFY A CHATTEL MORTGAGE IS WITHIN THE JURISDICTION OF THE COURT OF FIRST INSTANCE.** — An action for the nullity of the assignment of right with chattel mortgage is not capable of pecuniary estimation and falls under the jurisdiction of the Court of First Instance. Where the basic issue is something more than the right to recover a sum of money and where the money claim is purely incidental to or a consequence of the principal relief sought, the action is as a case where the subject of the litigation is not capable of pecuniary estimation and is cognizable exclusively by the Court of First Instance.

2. **ID.; ACTIONS; ACTION TO ANNUL JUDGMENT; RULE IN CASE OF ACTION NOT CAPABLE OF PECUNIARY ESTIMATION.** — The jurisdiction of all courts in the Philippines insofar as the authority thereof depends upon the nature of litigation, is defined in the amended Judiciary Act, pursuant to which courts of first instance shall have exclusive original jurisdiction over any case the subject matter of which is not capable of pecuniary estimation. An action for the annulment of a judgment and an order of a court of justice belongs to this category.

3. **ID.; ID.; ID.; ID.; CRITERION.** — In determining whether an action is one the subject of which is not capable of pecuniary

Supreme Court E-Library

estimation, the nature of the principal action or remedy sought is first ascertained. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something more than the right to recover a sum of money, or where the money claim is purely incidental to, or a consequence of, the principal relief sought, such actions are considered as cases where the subject of the litigation may be estimated in terms of money, and are cognizable exclusively by courts of first instance.

4. **ID.; COURTS.; ONE BRANCH OF A COURT OF FIRST INSTANCE MAY TAKE COGNIZANCE OF AN ACTION TO NULLIFY A FINAL JUDGMENT OF ANOTHER BRANCH.** — In February 1974 this Court reiterated the ruling in the Dulap case. In the light of the latest ruling of the Supreme Court, there is no doubt that one branch of the Court of First Instance of Negros Occidental can take cognizance of an action to nullify a final judgment of the other two branches of the same court.

5. **CIVIL LAW; PARTNERSHIP; DISSOLUTION AND WINDING UP; CONSTRUED.** — It is true that the dissolution of a partnership is caused by any partner ceasing to be associated in the carrying on of the business. However, on dissolution, the partnership is not terminated but continues until the winding up of the business.

6. **ID.; ID.; ID.; WITHDRAWING PARTNER LIABLE TO CREDITORS OF PARTNERSHIP.** — Where the remaining partners instead of winding up the business did not terminate but continued the business in the name of the partnership, and used the properties of said partnership, the withdrawing to whom the properties were mortgaged and sold at public auction is liable to the creditors of the partnership.

7. **ID.; ID.; ID.; LACK OF PUBLICATION OF WITHDRAWAL OF A PARTNER; EFFECT.** — Where it does not appear that the withdrawal of a partner from the partnership was published in the newspapers, the judicial foreclosure of the chattel mortgage executed in favor of the withdrawing partner did not relieve said partner from liability to the creditors of the partnership. The creditors and the public in general have a right to expect that whatever credit they extended to the partnership could be enforced against the properties of said partnership.

Supreme Court E-Library

8. ID.; CONTRACT; VALIDITY; GENERALLY, IT CANNOT BE ASSAILED BY ONE WHO IS NOT A PARTY THERETO; EXCEPTION. — Where one of two innocent persons must suffer, that person who gave occasion for the damages to be caused must bear the consequences. As a rule, a contract cannot be assailed by one who is not a party thereto. However, when a contract prejudices the rights of a third person, he may file an action to annul the contract. Thus, a person who is not a party obliged principally or subsidiarily under a contract, may exercise an action for nullity of the contract if he is prejudiced in his rights with respect to one of the contracting parties, and can show detriment which would positively result to him from the contract in which he has no intervention.

9. ID.; ID.; ID.; ID.; ID.; APPLICATION IN CASE AT BAR. — Where the creditors of a partnership were prejudiced in their rights by the execution of the chattel mortgage over the properties of the partnership in favor of a withdrawing partner by the remaining partners, the creditors have a right to file the action to nullify the chattel mortgage in question.

10. ID.; DAMAGES; ATTORNEY'S FEES; WHEN CANNOT BE SUSTAINED. — The claim for attorney's fees cannot be sustained where there is no showing that the defendants displayed a wanton disregard of the rights of the plaintiffs, and defendants believed in good faith, albeit erroneously, that they were not liable to pay the claims.

D E C I S I O N

FERNANDEZ, *J.*:

This is an appeal to the Court of Appeals from the judgment of the Court of First Instance of Negros Occidental in Civil Case No. 5343, entitled "*Manuel G. Singson, et al., vs. Isabela Sawmill, et al.*," the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, it is hereby held: (1) that the contract, Appendix 'F', of the Partial Stipulation of Facts, Exh. 'A', has not created a chattel mortgage lien on the machineries and other chattels mentioned therein, all of which are

Supreme Court E-Library

property of the defendant partnership 'Isabela Sawmill', (2) that the plaintiffs, as creditors of the defendant partnership, have a preferred right over the assets of the said partnership and over the proceeds of their sale of public auction, superior to the right of the defendant Margarita G. Saldajeno, as creditor of the partners Leon Garibay and Timoteo Tubungbanua; (3) that the defendant 'Isabela Sawmill' is indebted to the plaintiff Oppen, Esteban, Inc. in the amount of ₱1,288.89, with legal interest thereon from the filing of the complaint on June 5, 1959; (4) that the same defendant is indebted to the plaintiff Manuel G. Singson in the total amount of ₱3,723.50, with interest thereon at the rate of 1% per month from May 6, 1959, (the date of the statements of account, Exhs. 'L' and 'M'), and 25% of the total indebtedness at the time of payment, for attorneys' fees, both interest and attorneys fees being stipulated in Exhs. 'I' to 'I-17', inclusive; (5) that the same defendant is indebted to the plaintiff Agustin E. Tonsay in the amount of ₱933.73, with legal interest thereon from the filing of the complaint on June 5, 1959; (6) that the same defendant is indebted to the plaintiff Jose L. Espinos in the amount of ₱1,579.44, with legal interest thereon from the filing of the complaint on June 5, 1959; (7) that the same defendant is indebted to the plaintiff Bacolod Southern Lumber Yard in the amount of ₱1,048.78, with legal interest thereon from the filing of the complaint on June 5, 1959; (8) that the same defendant is indebted to the plaintiff Jose Belzunce in the amount of ₱2,052.10, with legal interest thereon from the filing of the complaint on June 5, 1959; (9) that the defendant Margarita G. Saldajeno, having purchased of public auction the assets of the defendant partnership over which the plaintiffs have a preferred right, and having sold said assets for ₱45,000.00, is bound to pay to each of the plaintiffs the respective amounts for which the defendant partnership is held indebted to them, as above indicated, and she is hereby ordered to pay the said amounts, plus attorneys' fees equivalent to 25% of the judgment in favor of the plaintiff Manuel G. Singson, as stipulated in Exhs. 'I' to 'I-17', inclusive, and 20% of the respective judgments in favor of the other plaintiffs, pursuant to Art. 2208, pars. (5) and (11), of the Civil Code of the Philippines; (10) The defendants Leon Garibay and Timoteo Tubungbanua are hereby ordered to pay to the plaintiffs the respective amounts adjudged in their favor in the event that said plaintiffs cannot recover them from the defendant Margarita G. Saldajeno and the surety on the bond that she has filed for the lifting of the injunction ordered by this court upon the commencement of this case.

Supreme Court E-Library

"The cross-claim of the defendant Margarita G. Saldajeno against the defendants Leon Garibay and Timoteo Tubungbanua is hereby dismissed. Margarita G. Saldajeno shall pay the costs.

SO ORDERED."[1]

In a resolution promulgated on February 3, 1967, the Court of Appeals certified the records of this case to the Supreme Court "considering that the resolution of this appeal involves purely questions or question of law over which this Court has no jurisdiction x x x."[2]

On June 5, 1959, Manuel G. Singson, Jose Belzunce, Agustin E. Tonsay, Jose L. Espinos, Bacolod Southern Lumber Yard, and Oppen, Esteban, Inc. filed in the Court of First Instance of Negros Occidental, Branch I, against "Isabela Sawmill," Margarita G. Saldajeno and her husband Cecilio Saldajeno, Leon Garibay, Timoteo Tubungbanua and the Provincial Sheriff of Negros Occidental a complaint the prayer of which reads:

"WHEREFORE, the plaintiffs respectfully pray:

"(1) That a writ of preliminary injunction be issued restraining the defendant Provincial Sheriff of Negros Occidental from proceeding with the sales at public auction that he advertised in two notices issued by him on May 18, 1959 in connection with Civil Case No. 5223 of this Honorable Court, until further orders of this Court; and to make said injunction permanent after hearing on the merits;

"(2) That after hearing, the defendant partnership be ordered; to pay to the plaintiff Manuel G. Singson the sum of ₱3,723.50 plus 1% monthly interest thereon on 25% attorney's fees, and costs; to pay to the plaintiff Jose Belzunce the sum of ₱2,052.10, plus 6% annual interest thereon and 25% for attorney's fees, and costs; to pay to the plaintiff Agustin E. Tonsay the sum of ₱933.73 plus 6% annual interest thereon and 25% attorney's fees, and costs; to pay to the plaintiff Jose L. Espinos the sum of ₱1,579.44, plus 6% annual interest thereon and 25% attorney's fees, and costs; to pay to the plaintiff Bacolod Southern Lumber Yard the sum of ₱1,048.78, plus

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[1] Record on Appeal, pp. 202-205. Rollo, pp. 122-124.

[2] Resolution, Court of Appeals. Written by Mr. Justice Francisco R. Capistrano and concurred in by Justice Antonio Cañizares and Mr. Justice Nicasio A. Yatco. *Rollo*, p. 321.

Supreme Court E-Library

6% annual interest thereon and 25% attorney's fees, and costs; and to pay to the plaintiff Oppen, Esteban, Inc. the sum of ₱1,350.89, plus 6% annual interest thereon and 25% attorney's fees and costs:

"(3) That the so-called Chattel Mortgage executed by the defendant Leon Garibay and Timoteo Tubungbanua in favor of the defendant Margarita G. Saldajeno on May 26, 1958 be declared null and void being in fraud of creditors of the defendant partnership and without valuable consideration insofar as the said defendant is concerned:

"(4) That the Honorable Court order the sale of public auction of the assets of the defendant partnership in case the latter fails to pay the judgment that the plaintiffs may recover in the action, with instructions that the proceeds of the sale be applied in payment of said judgment before any part of said proceeds is paid to the defendant Margarita G. Saldajeno;

"(5) That the defendant Leon Garibay, Timoteo Tubungbanua, and Margarita G. Saldajeno be declared jointly liable to the plaintiffs for whatever deficiency may remain unpaid after the proceeds of the sale of the assets of the defendant partnership are applied in payment of the judgment that said plaintiffs may recover in this action;

"(6) The plaintiffs further pray for all other remedies to which the Honorable Court will find them entitled to, with costs to the defendants.

Bacolod City, June 4, 1959."[3]

The action was docketed as Civil Case No. 5343 of said court.

In their amended answer, the defendants Margarita G. Saldajeno and her husband, Cecilio Saldajeno, alleged the following special and affirmative defenses:

"x x x x x x x x x

"2. That the defendant Isabela Sawmill has been dissolved by virtue of an action entitled 'In the matter of: Dissolution of Isabela Sawmill as partnership, etc. *Margarita G. Saldajeno et al. vs. Isabela Sawmill, et al.*, Civil Case No. 4797, Court of First Instance of Negros Occidental;

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[3] Record on Appeal, *Rollo*, pp. 25-26.

Supreme Court E-Library

"3. That as a result of the said dissolution and the decision of the Court of First Instance of Negros Occidental in the aforesaid case, the other defendants herein Messrs. Leon Garibay and Timoteo Tubungbanua became the successors-in-interest to the said defunct partnership and have bound themselves to answer for any and all obligations of the defunct partnership to its creditors and third persons;

"4. That to secure the performance of the obligations of the other defendants Leon Garibay and Timoteo Tubungbanua to the answering defendant herein, the former have constituted a chattel mortgage over the properties mentioned in the annexes to that instrument entitled 'Assignment of Rights with Chattel Mortgage' entered into on May 26, 1958 and duly registered in the Register of Deeds of Negros Occidental on the same date:

"5. That all the plaintiffs herein, with the exception of the plaintiff Oppen, Esteban, Inc. are creditors of Messrs. Leon Garibay and Timoteo Tubungbanua and not of the defunct Isabela Sawmill and as such they have no cause of action against answering defendant herein and the defendant Isabela Sawmill;

"6. That all the plaintiffs herein, except for the plaintiff Oppen, Esteban, Inc. granted cash advances, gasoline, crude oil, motor oil, grease, rice and nipa to the defendants Leon Garibay Timoteo Tubungbanua with the knowledge and notice that the Isabela Sawmill as a former partnership of defendants Margarita G. Saldajeno, Leon Garibay and Timoteo Tubungbanua, has already been dissolved;

"7. That this Honorable Court has no jurisdiction over the claims of the plaintiffs Oppen, Esteban, Inc., Agustin R. Tonsay, Jose L. Espinos, and the Bacolod Southern Lumber Yard, it appearing that the amounts sought to be recovered by them in this action is less than ₱2,000.00 each, exclusive of interests;

"8. That in so far as the claims of these alleged creditors plaintiffs are concerned, there is a misjoinder of parties because this is not a class suit, and therefore this Honorable Court cannot take jurisdiction of the claims for payment;

"9. That the claims of plaintiffs-creditors, except Oppen, Esteban, Inc. go beyond the limit mentioned in the statute of frauds. Art. 1403 of the Civil Code, and are therefor unenforceable, even assuming that there were such credits and claims;

Supreme Court E-Library

"10. That this Honorable Court has no jurisdiction in this case for it is well settled in law and in jurisprudence that a court of first instance has no power or jurisdiction to annul judgments or decrees of a coordinate court because other function devolves upon the proper appellate court; (*Lacuna, et al. vs. Ofilada, et al.*, G. R. No. L-13548, September 30, 1959; *Cabigao vs. del Rosario*, 44 Phil. 182; *PNB vs. Javellana*, 49 O.G. No. 1, p. 124), as it appears from the complaint in this case that a judgment is sought by the plaintiffs which will in effect try to annul the decision of this same court, but of another branch (Branch II, Judge Querubin presiding)."[4]

Said defendants interposed a cross-claim against the defendants Leon Garibay and Timoteo Tubungbanua praying "that in the event that judgment be rendered ordering defendant cross claimant to pay to the plaintiffs the amount claimed in the latter's complaint, that the cross defendants be simultaneously ordered to pay back to the cross claimant whatever amount is paid by the latter to the plaintiff in accordance to the said judgment x x x"[5]

After trial, judgment was rendered in favor of the plaintiffs and against the defendants.

The defendants, Margarita G. Saldajeno and her husband Cecilio Saldajeno, appealed to the Court of Appeals assigning the following errors:

"I

THE COURT *A QUO* ERRED IN ASSUMING JURISDICTION OVER THE CASE.

"II

THE COURT *A QUO* ERRED IN HOLDING THAT THE ISSUE WITH REFERENCE TO THE WITHDRAWAL OF DEFENDANT-APPELLANT MARGARITA G. SALDAJENO FROM THE PARTNERSHIP 'ISABELA SAWMILL' WAS WHETHER OR NOT SUCH WITHDRAWAL CAUSED THE 'COMPLETE DISAPPEARANCE' OR 'EXTINCTION' OF SAID PARTNERSHIP.

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[4] Record on Appeal, *Rollo*, pp. 55-56.

[5] *Rollo*, p. 58.

Supreme Court E-Library

"III

THE COURT *A QUO* ERRED IN NOT HOLDING THAT THE WITHDRAWAL OF DEFENDANT-APPELLANT MARGARITA G. SALDAJENO AS A PARTNER THEREIN DISSOLVED THE PARTNERSHIP 'ISABELA SAWMILL' (FORMED ON JAN. 30, 1951 AMONG LEON GARIBAY, TIMOTEO TUBUNGBANUA AND SAID MARGARITA G. SALDAJENO).

"IV

THE COURT *A QUO* ERRED IN ISSUING THE WRIT OF PRELIMINARY INJUNCTION.

"V

THE COURT *A QUO* ERRED IN HOLDING THAT THE CHATTEL MORTGAGE DATE MAY 26, 1958, WHICH CONSTITUTED THE JUDGMENT IN CIVIL CASE NO. 4797 AND WHICH WAS FORECLOSED IN CIVIL CASE NO. 5223 (BOTH OF THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL) WAS NULL AND VOID.

"VI

THE COURT *A QUO* ERRED IN HOLDING THAT THE CHATTELS ACQUIRED BY DEFENDANT-APPELLANT MARGARITA G. SALDAJENO IN THE FORECLOSURE SALE IN CIVIL CASE NO. 5223 CONSTITUTED 'ALL THE ASSETS OF THE DEFENDANT PARTNERSHIP.'

"VII

THE COURT *A QUO* ERRED IN HOLDING THAT DEFENDANT-APPELLANT MARGARITA G. SALDAJENO BECAME PRIMARILY LIABLE TO THE PLAINTIFFS-APPELLEES FOR HAVING ACQUIRED THE MORTGAGED CHATTELS IN THE FORECLOSURE SALE CONDUCTED IN CONNECTION WITH CIVIL CASE NO. 5223.

"VIII

THE COURT *A QUO* ERRED IN HOLDING THAT DEFENDANT-APPELLANT MARGARITA G. SALDAJENO LIABLE FOR THE OBLIGATIONS OF MESSRS. LEON GARIBAY AND TIMOTEO TUBUNGBANUA, INCURRED BY THE LATTER AS PARTNERS IN THE NEW 'ISABELA SAWMILL', AFTER THE DISSOLUTION OF THE OLD PARTNERSHIP IN WHICH SAID MARGARITA G. SALDAJENO WAS PARTNER.

Supreme Court E-Library

"IX

THE COURT *A QUO* ERRED IN HOLDING THAT DEFENDANT-APPELLANT MARGARITA G. SALDAJENO LIABLE TO THE PLAINTIFFS-APPELLEES FOR ATTORNEY'S FEES.

"X

THE COURT *A QUO* ERRED IN NOT DISMISSING THE COMPLAINT OF THE PLAINTIFFS-APPELLEES.

"XI

THE COURT *A QUO* ERRED IN DISMISSING THE CROSS-CLAIM OF DEFENDANT-APPELLANT MARGARITA G. SALDAJENO AGAINST CROSS-DEFENDANTS LEON GARIBAY AND TIMOTEO TUBUNGBANUA."[6]

The facts, as found by the trial court, are:

"At the commencement of the hearing of the case on the merits the plaintiffs and the defendants Cecilio and Margarita G. Saldajeno submitted a Partial Stipulation of Facts that was marked on Exh. 'A'. Said stipulation reads as follows:

'1. That on January 30, 1951 the defendants Leon Garibay, Margarita G. Saldajeno, and Timoteo Tubungbanua entered into a Contract of Partnership under the firm name 'Isabela Sawmill', a copy of which is hereto attached Appendix 'A'.

'2. That on February 3, 1956 the plaintiff Oppen, Esteban, Inc. sold a Motor Truck and two Tractors to the partnership Isabela Sawmill for the sum of ₱20,500.00. In order to pay the said purchase price, the said partnership agreed to make arrangements with the International Harvester Company at Bacolod City so that the latter would sell farm machinery to Oppen, Esteban, Inc. with the understanding that the price was to be paid by the partnership. A copy of the corresponding contract of sale is attached hereto as Appendix 'B'.

'3. That through the method of payment stipulated in the contract marked as Appendix 'B' herein, the International Harvester Company has been paid a total of ₱19,211.11, leaving

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[6] Brief for defendants-appellants, *Rollo*, pp. 161-162.

Supreme Court E-Library

an unpaid balance of ₱1,288.89 as shown in the statements hereto attached as Appendices 'C', 'C-1', and 'C-2'.

'4. That on April 25, 1958 Civil Case No. 4797 was filed by the spouses Cecilio Saldajeno and Margarita G. Saldajeno against the Isabela Sawmill, Leon Garibay, and Timoteo Tubungbanua, a copy of which Complaint is attached as Appendix 'D'.

'5. That on April 27, 1958 the defendants Leon Garibay, Timoteo Tubungbanua and Margarita G. Saldajeno entered into a "Memorandum Agreement," a copy of which is hereto attached as Appendix 'E' in Civil Case 4797 of the Court of First Instance of Negros Occidental.

'6. That on May 26, 1958 the defendants Leon Garibay, Timoteo Tubungbanua and Margarita G. Saldajeno executed a document entitled 'Assignment of Rights with Chattel Mortgage', a copy of which documents and its Annexes 'A' to 'A-5' forming a part of the record of the above mentioned Civil Case No. 4797, which deed was referred to in the Decision of the Court of First Instance of Negros Occidental in Civil Case No. 4797 dated May 29, 1958, a copy of which is hereto attached as Appendix 'F' and 'F-1' respectively.

'7. That thereafter the defendants Leon Garibay and Timoteo Tubungbanua did not divide the assets and properties of the "Isabela Sawmill" between them but they continued the business of said partnership under the same firm name "Isabela Sawmill."

'8. That on May 18, 1959 the Provincial Sheriff of Negros Occidental published two (2) notices that he would sell at public auction on June 5, 1959 at Isabela, Negros Occidental certain trucks, tractors, machinery, office equipment and other things that were involved in Civil Case No. 5223 of the Court of First Instance of Negros Occidental, entitled "*Margarita G. Saldajeno vs. Leon Garibay, et al.*" See Appendices 'G' and 'G-1'.

'9. That on October 15, 1959 the Provincial Sheriff of Negros Occidental executed a Certificate of Sale in favor of the defendant Margarita G. Saldajeno, as a result of the sale conducted by him on October 14 and 15, 1959 for the enforcement of the judgment rendered in Civil Case No. 5223 of the Court of First Instance of Negros Occidental, a certified copy of which certificate of sale is hereto attached as Appendix 'H'.

Supreme Court E-Library

'10. That on October 20, 1959 the defendant Margarita G. Saldajeno executed a deed of sale in favor of the Pan Oriental Lumber Company transferring to the latter for the sum of ₱45,000.00 the trucks, tractors, machinery, and other things that she had purchased at a public auction referred to in the foregoing paragraph, a certified true copy of which Deed of Sale is hereto attached as Appendix 'I'.

'11. The plaintiffs and the defendants Cecilio Saldajeno and Margarita G. Saldajeno reserve the right to present additional evidence at the hearing of this case.'

Forming parts of the above copied stipulation are documents that were marked as Appendices 'A', 'B', 'C', 'C-1', 'C-2', 'D', 'E', 'F', 'F-1', 'G', 'G-1', 'H', and 'I'.

"The plaintiffs and the defendants Cecilio and Margarita G. Saldajeno presented additional evidence, mostly documentary, while the cross-defendants did not present any evidence. The case hardly involves questions of fact at all, but only questions of law.

"The fact that the defendant 'Isabela Sawmill' is indebted to the plaintiff Oppen, Esteban, Inc. in the amount of ₱1,288.89 as the unpaid balance of an obligation of ₱20,500.00 contracted on February 3, 1956 is expressly admitted in paragraphs 2 and 3 of the Stipulation, Exh. 'A' and its Appendices 'B', 'C', 'C-1', and 'C-2'.

"The plaintiff Agustin E. Tonsay proved by his own testimony and his Exhs. 'B' to 'G' that from October 6, 1958 to November 8, 1958 he advanced a total of ₱4,200.00 to the defendant 'Isabela Sawmill'. Against the said advances said defendant delivered to Tonsay ₱3,266.27 worth of lumber, leaving an unpaid balance of ₱933.73, which balance was confirmed on May 15, 1959 by the defendant Leon Garibay, as Manager of the defendant partnership.

"The plaintiff Manuel G. Singson proved by his own testimony and by his Exhs. 'J' to 'L' that from May 25, 1958 to January 13, 1959 he sold on credit to the defendant 'Isabela Sawmill' rice and bran, on account of which business transactions there remains an unpaid balance of ₱3,580.50. The same plaintiff also proved that the partnership owes him the sum of ₱143.00 for nipa shingles bought from him on credit and unpaid for.

"The plaintiff Jose L. Espinos proved through the testimony of his witness Cayetano Palmares and his Exhs. 'N' to O-3' that he owns

Supreme Court E-Library

the 'Guia Lumber Yard'; that on October 11, 1958 said lumber yard advanced the sum of ₱2,500.00 to the defendant 'Isabela Sawmill'; that against the said cash advance, the defendant partnership delivered to Guia Lumber Yard ₱920.56 worth of lumber, leaving an outstanding balance of ₱1,579.44.

"The plaintiff Bacolod Southern Lumber Yard proved through the testimony of the witness Cayetano Palmares and its Exhs. 'P' to 'Q-1' that on October 11, 1958 said plaintiff advanced the sum of ₱1,500.00 to the defendant 'Isabela Sawmill'; that against the said cash advance, the defendant partnership delivered to the said plaintiff on November 19, 1958, ₱377.72 worth of lumber, and ₱73.54 worth of lumber on January 27, 1959, leaving an outstanding balance of ₱1,048.78.

"The plaintiff Jose Balzunce proved through the testimony of Leon Garibay whom he called as his witness, and through the Exhs. 'R' to 'E' that from September 14, 1958 to November 27, 1958 he sold to the defendant 'Isabela Sawmill' gasoline, motor fuel, and lubricating oils, and that on account of said transactions, the defendant partnership owes him an unpaid balance of ₱2,052.10.

'Appendix 'H' of the stipulation Exh. 'A' shows on October 13 and 14, 1959 the Provincial Sheriff sold to the defendant Margarita G. Saldajeno for ₱38,040.00 the assets of the defendant 'Isabela Sawmill' which the defendants Leon G. Garibay and Timoteo Tubungbanua had mortgaged to her, and said purchase price and applied to the judgment that she has obtained against the said mortgagors in Civil Case No. 5223 of this Court.

'Appendix 'I' of the same stipulation Exh. 'A' shows that on October 20, 1959 the defendant Margarita G. Saldajeno sold to the PAN ORIENTAL LUMBER COMPANY for ₱45,000.00 part of the said properties that she had bought at public auction one week before.

"x x x x x x x x x"[7]

It is contended by the appellants that the Court of First Instance of Negros Occidental had no jurisdiction over Civil Case No. 5343 because the plaintiffs Oppen, Esteban, Inc., Agustin R. Tonsay, Jose L. Espinos and the Bacolod Southern Lumber

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[7] Record on Appeal, pp. 182-189, *Rollo*, pp. 112-116.

Supreme Court E-Library

Yard sought to collect sums of money, the biggest amount of which was less than ₱2,000.00 and, therefore, within the jurisdiction of the municipal court.

This contention is devoid of merit because all the plaintiffs also asked for the nullity of the assignment of right with chattel mortgage entered into by and between Margarita G. Saldajeno and her former partners Leon Garibay and Timoteo Tubungbanua. This cause of action is not capable of pecuniary estimation and falls under the jurisdiction of the Court of First Instance. Where the basic issue is something more than the right to recover a sum of money and where the money claim is purely incidental to or a consequence of the principal relief sought, the action is as a case where the subject of the litigation is not capable of pecuniary estimation and is cognizable exclusively of the Court of First Instance.

The jurisdiction of all courts in the Philippines, in so far as the authority thereof depends upon the nature of litigation, is defined in the amended Judiciary Act, pursuant to which courts of first instance shall have exclusive original jurisdiction over any case the subject matter of which is not capable of pecuniary estimation. An action for the annulment of a judgment and an order of a court of justice belongs to this category.[8]

In determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated

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[8] *Pedro Dulap, et al., vs. Hon. Court of Appeals, et al.*, G.R. No. L-28306, Dec. 18, 1971, 42 SCRA 537, 545-546.

Supreme Court E-Library

in terms of money, and are cognizable exclusively by courts of first instance.

In *Andres Lapitan vs. SCANDIA, Inc., et al.*,[9] this Court held:

"Actions for specific performance of contracts have been expressly pronounced to be exclusively cognizable by courts of first instance: *De Jesus vs. Judge Garcia*, L-26816, February 28, 1967: *Manufacturers' Distributors, Inc. vs. Yu Siu Liong* L-21286, April 29, 1966. And no cogent reason appears, and none is here advanced by the parties, why an action for rescission (or resolution) should be differently treated, a 'rescission' being a counterpart, so to speak, of 'specific performance.' In both cases, the court would certainly have to undertake an investigation into facts that would justify one act of the other. No award for damages may be had in an action for rescission without first conducting an inquiry into matters which would justify the setting aside of a contract, in the same manner that courts of first instance would have to make findings of fact and law in actions not capable of pecuniary estimation expressly held to be so by this Court, arising from issues like those arised in *Arroz v. Alojado et al.*, L-22153, March 31, 1967 (the legality or illegality of the conveyance sought for and the determination of the validity of the money deposit made); *De Ursua v. Pelayo*, L-13285, April 18, 1950 (validity of a judgment); *Bunayog v. Tunas*, L-12707, December 23, 1959 (validity of a mortgage); *Baito v. Sarmiento*, L-13105, August 25, 1960 (the relations of the parties, the right to support created by the relation, *etc.*, in actions for support); *De Rivera, et al. v. Halili*, L-15159, September 30, 1963 (the validity or nullity of documents upon which claims are predicated). Issues of the same nature may be raised by a party against whom an action for rescission has been brought, or by the plaintiff himself. It is, therefore, difficult to see why a prayer for damages in an action for rescission should be taken as the basis for concluding such action as one capable of pecuniary estimation — a prayer which must be included in the main action if plaintiff is to be compensated for what he may have suffered as a result of the breach committed by defendant, and not later on precluded from recovering damages by the rule against splitting a cause of action and discouraging multiplicity of suits."

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[9] 24 SCRA 479, 482-483.

Supreme Court E-Library

The foregoing doctrine wag reiterated in *The Good Development Corporation vs. Tutaan,*[10] where this Court held:

"On the issue of which court has jurisdiction, the case of *Seno vs. Pastolante, et al.*, is in point. It was ruled therein that although the purpose of an action is to recover an amount plus interest which comes within the original jurisdiction of the Justice of the Peace Court, yet when said action involves the foreclosure of a chattel mortgage covering personal properties valued at more than ₱2,000, (now ₱10,000.00) the action should be instituted before the Court of First Instance.

In the instant case, the action is to recover the amount of ₱1,520.00 plus interest and costs, and involves the foreclosure of a chattel mortgage of personal properties valued at ₱15,340.00.00, so that it is clearly within the competence of the respondent court to try and resolve."

In the light of the foregoing recent rulings, the Court of First Instance of Negros Occidental did not err in exercising jurisdiction over Civil Case No. 5343.

The appellants also contend that the chattel mortgage may no longer be annulled because it had been judicially approved in Civil Case No. 4797 of the Court of First Instance of Negros Occidental and said chattel mortgage had been ordered foreclosed in Civil Case No. 5223 of the same court.

On the question of whether a court may nullify a final judgment of another court of co-equal, concurrent and coordinate jurisdiction, this Court originally ruled that:

"A court has no power to interfere with the judgments or decrees of a court of concurrent or coordinate jurisdiction having equal power to grant the relief sought by the injunction.

"The various branches of the Court of First Instance of Manila are in a sense coordinate courts and cannot be allowed to interfere with each others' judgments or decrees."[11]

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[10] 73 SCRA 189, 191.

[11] *Cabigao and Izquierdo vs. Del Rosario, et al.*, 44 Phil. 182.

Supreme Court E-Library

The foregoing doctrine was reiterated in a 1953 case[12] where this Court said:

"The rule which prohibits a Judge from interfering with the actuations of the Judge of another branch of the same court is not infringed when the Judge who modifies or annuls the order issued by the other Judge acts in the same case and belongs to the same court (*Eleazar vs. Zandueta*, 48 Phil. 1993. But the rule is infringed when the Judge of a branch of the court issues a writ of preliminary injunction in a case to enjoin the sheriff from carrying out an order by execution issued in another case by the Judge of another branch of the same court." (*Cabigao and Izquierdo vs. Del Rosario et al.* 44 Phil. 182).

This ruling was maintained in 1964. In *Mas vs. Dumara-og*,[13] the judgment sought to be annulled was rendered by the Court of First Instance of Iloilo was the action for annulment was filed with the Court of First Instance of Antique, both courts belonging to the same Judicial District. This Court held that:

"The power to open, modify or vacate a judgment is not only possessed by, but is restricted to the court in which the judgment was rendered."

The reason of this Court was:

"Pursuant to the policy of judicial stability, the judgment of a court of competent jurisdiction may not be interfered with by any court of concurrent jurisdiction."

Again, in 1967 this Court ruled that the jurisdiction to annul a judgment of a branch of the Court of First Instance belongs solely to the very same branch which rendered the judgment.[14]

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[12] *Philippine National Bank vs. Javellana*. 92 Phil. 525.

[13] *Mas vs. Dumara-og*. G.R. No. L-16252. Sept. 29. 1964. 12 SCRA 34.

[14] *J. M. Tuazon & Co. vs. Torres, etc., et al.*. G. R. No. L-24717. Dec. 4. 1967. 21 SCRA 1169.

Supreme Court E-Library

Two years later, the same doctrine was laid down in the Sterling Investment case.[15]

In December 1971, however, this court re-examined and reversed its earlier doctrine on the matter. In *Dupla vs. Court of Appeals*,[16] this Tribunal, speaking through Mr. Justice Villamor declared:

". . . the underlying philosophy expressed in the *Dumara-og* case, the policy of judicial stability, to the end that the judgment of a court of competent jurisdiction may not be interfered with by any court of concurrent jurisdiction, this Court feels that this is as good an occasion as any to re-examine the doctrine laid down. . .

"In an action to annul the judgment of a court, the plaintiff's cause of action springs from the alleged nullity of the judgment based on one ground or another, particularly fraud, which fact affords the plaintiff a right to judicial interference in his behalf. In such a suit the cause of action is entirely different from that in the action which gave rise to the judgment sought to be annulled, for a direct attack against a final and executory judgment is not a incidental to, but is the main object of the proceeding. The cause of action in the two cases being distinct and separate from each other, there is no plausible reason why the venue of the action to annul the judgment should necessarily follow the venue of the previous action.

"The present doctrine which postulate that one court or one branch of a court may not annul the judgment of another court or branch, not only opens the door to a violation of Section 2 of Rule 4, (of the Rules of Court) but also limit the opportunity for the application of said rule. . .

"Our conclusion must therefore be that a court of first instance or a branch thereof has the authority and jurisdiction to take cognizance of, and to act in, suit to annul final and executory judgment or order rendered by another court of first instance or by another branch of the same court . . ."

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[15] *Sterling Investment Corp. .et al. vs. Ruiz, etc., et al.*, G.R. No. L-30694, Oct. 31, 1969, 30 SCRA 318.

[16] *Pedro Dulap & Dolores Amparo vs. Court of Appeals and Asian Surety & Insurance Co.*, L-28306, Dec. 18, 1971, 42 SCRA 537.

Supreme Court E-Library

In February 1974 this Court reiterated the ruling in the Dulap case.[17]

In the light of the latest ruling of the Supreme Court, there is no doubt that one branch of the Court of First Instance of Negros Occidental can take cognizance of an action to nullify a final judgment of the other two branches of the same court.

It is true that the dissolution of a partnership is caused by any partner ceasing to be associated in the carrying on of the business.[18] However, on dissolution, the partnership is not terminated but continuous until the winding up of the business.[19]

The remaining partners did not terminate the business of the partnership "Isabela Sawmill." Instead of winding up the business of the partnership, they continued the business still in the name of said partnership. It is expressly stipulated in the memorandum-agreement that the remaining partners had constituted themselves as the partnership entity, the "Isabela Sawmill."[20]

There was no liquidation of the assets of the partnership. The remaining partners, Leon Garibay and Timoteo Tubungbanua, continued doing the business of the partnership in the name of "Isabela Sawmill." They used the properties of said partnership.

The properties mortgaged to Margarita G. Saldajeno by the remaining partners, Leon Garibay, and Timoteo Tubungbanua, belonged to the partnership "Isabela Sawmill." The appellant, Margarita G. Saldajeno, was correctly held liable by the trial court because she purchased at public auction the properties of the partnership which were mortgaged to her.

It does not appear that the withdrawal of Margarita G. Saldajeno from the partnership was published in the newspapers.

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[17] *Gianan vs. Hon. Imperial, et al.*, L-37963, Feb. 28, 1974, 55 SCRA 755, 760.

[18] Article 1828, Civil Code of the Philippines.

[19] Article 1829, Civil Code of the Philippines.

[20] Record of Appeal, pp. 120-122, *Rollo*, pp. 82-83.

Supreme Court E-Library

The appellees and the public in general had a right to expect that whatever credit they extended to Leon Garibay and Timoteo Tubungbanua doing the business in the name of the partnership "Isabela Sawmill" could be enforced against the properties of said partnership. The judicial foreclosure of the chattel mortgage executed in favor of Margarita G. Saldajeno did not relieve her from liability to the creditors of the partnership.

The appellant, Margarita G. Saldajeno, cannot complain. She is partly to blame for not insisting on the liquidation of the assets of the partnership. She even agreed to let Leon Garibay and Timoteo Tubungbanua continue doing the business of the partnership "Isabela Sawmill" by entering into the memorandum-agreement with them.

Although it may be presumed that Margarita G. Saldajeno had acted in good faith, the appellees also acted in good faith in extending credit to the partnership. Where one of two innocent persons must suffer, that person who gave occasion for the damaged to be caused must bear the consequences. Had Margarita G. Saldajeno not entered into the memorandum-agreement allowing Leon Garibay and Timoteo Tubungbanua to continue doing the business of the partnership, the appellees would not have been misled into thinking that they were still dealing with the partnership "Isabela Sawmill." Under the facts, it is of no moment that technically speaking the partnership "Isabela Sawmill" was dissolved by the withdrawal therefrom of Margarita G. Saldajeno. The partnership was not terminated and it continued doing business through the two remaining partners.

The contention of the appellants that the appellees cannot bring an action to annul the chattel mortgage of the properties of the partnership executed by Leon Garibay and Timoteo Tubungbanua in favor of Margarita G. Saldajeno has no merit.

As a rule, a contract cannot be assailed by one who is not a party thereto. However, when a contract prejudices the rights of a third person, he may file an action to annul the contract.

This Court has held that a person, who is not a party obliged principally or subsidiarily under a contract, may exercise an

Supreme Court E-Library

action for nullity of the contract if he is prejudiced in his rights with respect to the one of the contracting parties, and can show detriment which would positively result to him from the contract in which he has no intervention.[21]

The plaintiffs-appellees were prejudiced in their rights by the execution of the chattel mortgage over the properties of the partnership "Isabela Sawmill" in favor of Margarita G. Saldajeno by the remaining partners, Leon Garibay and Timoteo Tubungbanua. Hence, said appellees have a right to file the action to nullify the chattel mortgage in question.

The portion of the decision appealed from ordering the appellants to pay attorney's fees to the plaintiffs-appellees cannot be sustained. There is no showing that the appellants displayed a wanton disregard of the rights of the plaintiffs. Indeed, the appellant believed in good faith, albeit erroneously, that they are not liable to pay the claims.

The defendants-appellants have a right to be reimbursed whatever amounts they shall pay the appellees by their co-defendants Leon Garibay and Timoteo Tubungbanua. In the memorandum-agreement, Leon Garibay and Timoteo Tubungbanua undertook to release Margarita G. Saldajeno from any obligation of "Isabela Sawmill" to third persons.[22]

WHEREFORE, the decision appealed from is hereby affirmed with the elimination of the portion ordering appellants to pay attorney's fees and with the modification that the defendants, Leon Garibay and Timoteo Tubungbanua, should reimburse the defendants-appellants, Margarita G. Saldajeno and her husband Cecilio Saldajeno, whatever they shall pay to the plaintiffs-appellees, without pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

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[21] *Teves vs. People's Homesite & Housing Corporation*, L-21498, 23 SCRA 1141, 1147-1148; *De Santos vs. City of Manila*, 45 SCRA 409, 416.

[22] *Rollo*, p. 82.