

LETECIA DEL CASTILLO MACKEY, PLAINTIFF-APPELLEE, VS. GAVINO ZANORIA, DEFENDANT-APPELLANT.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before Us is an Original Appeal[1] from the Decision[2] of the Regional Trial Court, Branch 28, Mandaue City dated May 28, 2008 in Civil Case No. MAN-5410 for Partition, Specific Performance, Conveyance, Reimbursement, Damages & Attorneys Fees which ruled in favor of plaintiff-appellee in ordering the partition of Lot 106-D-5.

The Facts

On April 10, 2006, Letecia Del Castillo Mackey (plaintiff-appellee) filed a Complaint[3] against defendant-appellant Gavino Zanoria alleging that defendant-appellant and the latter's brothers and sisters, namely: Jose Zanoria, Editha Malinao, Socorro Arragon, Negolacion Zanoria, Melquiadez Zanoria and David Zanoria are the owners of a certain property, situated in Tipolo, Mandaue City, consisting an area of one hundred fifty eight (158) square meters, with an assessed value of P3,320.00 declared for taxation purposes under Tax Declaration No 0659-R. Plaintiff-appellee alleged that although the title of the aforementioned land is registered in the name of defendant-appellant Gavino Zanoria, the same is actually owned by him and his brothers and sisters in common having inherited the same from their deceased mother, Isabel Zanoria; that the title of the subject property is registered in defendant's name for convenience only and this fact is known to their relatives and neighbors.[4]

Plaintiff-appellee also alleged in her Complaint that on September 5, 2000, defendant-appellant Gavino Zanoria and his wife Paciana Bontoyan mortgaged the subject property to Spouses Pontico Fortuna and Cirilita Fortuna, for a consideration of thirty five thousand pesos (P35,000.00) payable within four (4) months from the execution of the Real Estate Mortgage; that defendant-appellant Gavino Zanoria and his wife failed to pay the loan within the period stated in the mortgage, dated September 5, 2000; that Gavino's wife Paciana Bontoyan together with her sister-in-law Teresita Zanoria Braybrooks requested the plaintiff-appellee to pay the loan in order to save the property from being foreclosed by Spouses Fortuna. Accordingly, plaintiff-appellee acceded to the request and paid the amount of forty three thousand seven hundred fifty pesos (P43,750.00) to Spouses Fortuna.[5]

According to plaintiff-appellee, defendant-appellant's brothers and sisters sold to the plaintiff-appellee their total shares of the land with a combined area of 138 square meters on installment basis for a total consideration of four hundred twenty thousand pesos (P420,000.00) and that with their express consent, the agreement was signed by defendant-appellant. The defendant-appellant's brothers and sisters also made a declaration that they have authorized the defendant-appellant to enter into such agreement with plaintiff-appellee; that as such, the defendant-appellant's brothers and sisters have already received in full the total consideration of their respective shares of the property.[6]

Plaintiff-appellee further alleged that defendant-appellant authorized plaintiff-appellee to hire a Geodetic Engineer to partition the property with specific instruction that the area consisting of twenty (20) square meters

where defendant-appellant's house is presently constructed be segregated as his share of the property and the remaining area consisting of 138 square meters shall be the shares of his brothers and sisters which plaintiff-appellee had already purchased; that pursuant to their agreement and for formality, plaintiff-appellee requested defendant-appellant to sign the Deed of Absolute Sale because he appeared as the registered owner of the property though the same is co-owned by him and his brothers and sisters. However, defendant-appellant refused to sign the Deed of Absolute Sale.[7]

Plaintiff-appellee made the following Prayer in the Complaint:

WHEREFORE, in view of the foregoing, it is most respectfully prayed unto this Honorable Court, to order the partition of the land (Lot No. 106-D-5) situated in Tipolo, Mandaue City, covered by TCT No. 25893 in the following manner, to wit:

a.) Lot No. 106-D-5-A, consisting an area of 20 square meters where defendant's house is presently constructed as defendant's share;

b.) The remaining area consisting of 138 square meters, designated as lot no. 106-D-5-B representing the shares of the defendant's brothers and sisters be declared as the share of the herein plaintiff;

c.) Order the defendant to execute and sign the deed of partition and the deed of sale for the shares of his brothers and sisters in the total area of 138 square meters in favor of the herein plaintiff;

d.) To order the defendant to pay to the plaintiff the sum of FORTY THREE THOUSAND SEVEN HUNDRED FIFTY PESOS [(P43,750.00) as reimbursement of the amount paid by the plaintiff to Spouses Pontico Fortuna and Cirilita Fortuna;

e.) To order the defendant to pay to the herein plaintiff moral damages in the amount of TWENTY THOUSAND PESOS (P20,000.00) and exemplary damages in the amount of TWENTY THOUSAND PESOS (P20,000.00) plus litigation expenses and reimbursement of attorney's fees.

Other remedies, consistent with law and equity are also prayed for.[8]

Defendant-appellant received the Summons together with the Complaint on June 9, 2006 as indicated in the Sheriff's Return.[9] On June 20, 2006, defendant-appellant's counsel filed an Entry of Appearance with Motion for Extension of Time to File Answer[10] alleging that counsel was only engaged by the defendant on the same day and that it would be humanly impossible for them to prepare and file defendant's Answer on time, which will expire on June 24, 2006. Hence, they were requesting for an extension of another fifteen (15) days from June 24, 2006 or until July 9, 2006 to file the Answer.

In an Order[11] dated June 28, 2006, the Motion for Extension to File Answer was granted and the defendant was given an extension of fifteen (15) days from June 24, 2006 or until July 9, 2006 to file his responsive pleading to the Complaint.

On July 20, 2006, plaintiff filed a Motion to Declare Defendant in Default. On July 31, 2006, the defendant-appellant filed his Answer with Counterclaim.[12] Subsequently, in an Order[13] dated August 4, 2006, the Motion to Declare Defendant in Default was granted. The court held that the Answer with Counterclaim

filed on July 31, 2006 was way beyond the day accorded to file the responsive pleading. Hence, defendant was declared in default and the Answer with Counterclaim was directed to be stricken off from the record.

On August 8, 2006, defendant-appellant filed an Urgent Motion to Set Aside Order of Default (with Motion to Dismiss)[14] alleging that the failure of the defendant to file his answer on time was occasioned by “accident;” that while the answer was already prepared within the first fifteen (15) day prescribed period, it was decided that there was need for him to present supporting documents; that the propriety of entering into an amicable settlement with the plaintiff was considered; that regrettably, when the extended period came to a close, defendant-appellant’s counsel of record has left for an engagement abroad though he left instructions with the office messenger to file the answer; that it was too late when it was discovered that the answer was not in fact filed.[15]

Furthermore, defendant-appellant reasoned that he has a good and valid defense as shown by the fact that per allegation in the Complaint, the defendant is the registered owner of the subject parcel of land; that the alleged documentary evidence attached to the Complaint and which purportedly is signed by the defendant-appellant is a falsified document; that the alleged mortgage to a third party was not even signed by the defendant-appellant though it is made to appear that the signature belongs to him.[16] Additionally, defendant-appellant argued that the Court does not have jurisdiction over the subject matter of the action because the case was an action for the recovery of title or any interest in real property notwithstanding the caption of the Complaint; that a cursory reading of the Complaint, more particularly the prayer thereof, clearly shows that the relief sought is one for the recovery of title or any interest to real property and not an action for specific performance;[17] that jurisdiction over the action lies with the Municipal Trial Court in Cities considering that the assessed value of the property subject matter of the case is below the prescribed P20,000.00, as indicated in the tax declaration of the lot which is attached to the Complaint.[18] Defendant-appellant emphasized that the ultimate objective of the plaintiff-apellee is to obtain title to real property; hence, it should be filed in the proper court having jurisdiction over the assessed value of the property subject thereof.[19]

In an Order[20] dated December 6, 2006, the Court found no merit in the Urgent Motion to Set Aside Order of Default (With Motion to Dismiss). The Court held that defendant-appellant counsel’s explanation of “accident” is not exactly deserving of any consideration for his failure to file a responsive pleading on time, where summons thereof was duly served on June 9, 2006. The Court also held that while it may be true that the answer which was received by the Court on July 31, 2006, was filed prior to the declaration of the Court that defendant was in default, the records show that said answer was filed only after defendant received a copy of plaintiff’s Motion to Declare Defendant in Default, perhaps realizing the grave omission after receiving plaintiff’s Motion on July 28, 2006.[21]

On May 28, 2008, the Regional Trial Court (RTC) rendered the assailed Decision,[22] the dispositive portion of which states:

WHEREFORE, Decision is hereby rendered in favor of plaintiff Letecia del Castillo Mackey and against defendant Gavino Zanoria, ordering the partition of Lot 106-D-5 consisting of 158 square meters and covered by Transfer Certificate of Title No. 26893 in the following manner: the 20 square meters where defendant’s house is constructed as defendant’s share and the remaining 138 square meters representing the shares of defendant’s brothers and sisters, as the share of plaintiff.

Defendant is further directed to execute and sign in favor of plaintiff, the deed of sale over Lot 106-D-5 (TCT No. 26893) for the shares of his brothers and sisters consisting of 138 square meters.

IT IS SO ORDERED.

The RTC ruled that the evidence showed that while defendant-appellant is the registered owner of a parcel of land described as Lot 106-D-5 and covered by Transfer Certificate of Title No. 26893, he has acknowledged through the duly notarized documents entitled “Recognition of Right and Participation”[23] and “Declaration”[24] that he has held the property in trust for his brothers and sisters, as heirs of the late Isabel del Castillo; that based from these documents, it was very clear that there was an intent by defendant’s siblings to create a fiduciary relationship with respect to their shares over the 158 square meter lot (Lot 106-D-5), a property that they owned in common; that there was an express trust created on the shares of defendant’s siblings over the subject property; that his signature appearing thereon, the RTC ascertained acceptance and/or admission by defendant that he holds the property, at least on the portions referring to his brothers and sisters, as their trustee; that the clear intention to create a trust is not defeated just because the lot is already registered in defendant’s name under TCT No. 26893.[25]

The RTC further held that having recognized his siblings’ co-ownership of the parcel of land, he cannot prevent his brothers and sisters from rightfully selling their shares thereof, as they did so to plaintiff-appellee, who has already fully paid their shares; that plaintiff-appellee upon agreement of defendant-appellant, paid the amount of P43,750.00, representing the obligation of the defendant-appellant to Mr. Pontico Fortuna, to avoid the foreclosure of the mortgage over the parcel of land covered by TCT No. 26893.[26]

Further, the RTC ruled that plaintiff being a buyer in good faith, is entitled to the relief prayed for in the Complaint, that is, for defendant as trustee to execute the Deed of Sale over Lot 106-D-5 regarding the portions sold by defendant-appellant’s siblings to plaintiff-appellee. [27] The lower court did not award damages because no proof has been presented by plaintiff-appellee to establish the damages she suffered or incurred.

Defendant-appellant’s Motion for Reconsideration[28] dated June 19, 2008 was denied by the lower court in an Order[29]

Hence, this appeal with the following Assignment of Errors:[30]

I

THE HONORABLE COURT ERRED DECLARING DEFENDANT IN DEFAULT AND IN NOT GIVING DUE COURSE TO DEFENDANT-APPELLANT’S MOTION TO SET ASIDE THE ORDER OF DEFAULT.

II

THE HONORABLE COURT GRAVELY ERRED WHEN IT ACTED ON THE INSTANT CASE DESPITE ITS APPARENT LACK OF JURISDICTION.

III

THE HONORABLE COURT GRAVELY ERRED IN GRANTING THE PARTITION OF THE SUBJECT LOT BASED SOLELY ON THE EVIDENCE ADDUCED BY THE PLAINTIFF-APPELLEE.

Defendant-Appellant’s Arguments

Appellant argues that while the title of the Complaint is for Partition and Specific Performance, it cannot be denied that the contents and the allegations embodied therein all reveal the obvious objective of recovering title to real property or any interest therein; that in particular, the Complaint sought to secure title to the one hundred thirty eight (138) square meter portion of the property which according to plaintiff-appellee, he purchased from defendant; that the basic rule that allegations in the pleading prevail over the caption.[31]

Appellant contends that since the ultimate objective is for recovery of title to real property or any interest therein, jurisdiction lies with the Municipal Trial Court in cities considering that the assessed value of the property subject matter of the instant appeal is below the prescribed P20,000.00, as indicated in the tax declaration of the lot which

is attached to the complaint.[32]

Further, appellant argues that he should not have been declared in default on August 4, 2006 during the hearing of plaintiff-appellee's Motion to declare the former in default because the declaration was made despite defendant-appellant's counsel's explanation as to the circumstances constituting the accident why the answer, although already prepared earlier, was not filed within the time allotted to do so; that there was no intent to delay the proceedings when he, by accident was unable to file the answer on time;[33] that while the answer was already prepared within the prescribed period it was decided that there was need for him and counsel to review the factual circumstances of the case including the propriety of entering into an amicable settlement with plaintiff-appellee; that vital documents were needed to be secured if only to determine the defenses that were available to him and which needed to be alleged in his answer; that this is the reason why he filed for additional time to file his responsive pleading; that defendant-appellant's answer was filed prior to the declaration by the RTC that he is in default.[34]

Appellant alleges that he has a good and valid defense as shown by the fact that per the allegation in the complaint, the defendant is the registered owner of the parcel of land subject matter of the complaint; that it is indubitable that the alleged documentary evidence attached to the complaint and which purportedly is signed by the defendant is a falsified document; that the alleged mortgage to a third party is not even signed by the defendant though it is made to appear that the signature belongs to him.

Appellant vehemently denies signing the documents on which the plaintiff-appellee's cause of action lies; that a perusal of the Real Estate Mortgage purportedly executed by the defendant-appellant on September 5, 2000 in favor of Spouses Pontico and Cirilita Fortuna contains earmarks of falsification; that defendant-appellant did not mortgage the lot to the spouses neither did he sign the document; that the handwritten name Gavino Zanoria is not his usual signature and does not even come close to his own hand writing; that on the other hand, the Agreement and pages one and two of the Deed of Sale of a Portion of Land on Installment bases (executed only six months after the Real Estate Mortgage), all of which bears the alleged signature of defendant-appellant, were made of different, slightly unsteady strokes, each one overtly different from the other; that the differences are too glaring to be overlooked; that what makes the difference even more pronounced is the fact that the two documents were executed on the same month in 2001 and clearly, defendant-appellant's signature could not have varied significantly in such a short interval of time; that even the varying personal circumstances of defendant-appellant makes the documents dubious – he was married and a resident of Tipolo, Mandaue City whereas the other document states he is single and resident of Mandaue City, without specifying the particular barangay.[35]

Lastly, appellant contends that the allegation in the Complaint that the lot was inherited by the defendant and his sibling from their mother Isabel Zanoria, does not hold water because the lot was transmitted to defendant-appellant by way of Deed of Donation executed on October 19, 1988 by its registered owner, Irene Del Castillo; that it never passed through Isabel Zanoria; that the Deed likewise never stipulated that the defendant is holding the property in trust for his siblings; that the donation was absolute – everything belongs to the defendant-appellant; that his siblings' act of executing affidavits to the effect that they are co-owners thereof are purely self-serving; that defendant-appellant has no participation thereat, his signature was forged; that his siblings' act of selling the land solely belonging to defendant-appellant is void and does not in any way bind the defendant; that in the first place, his siblings cannot sell what they do not own; that secondly, any sale executed by them does not bind the real owner, the defendant-appellant in this case.[36]

Plaintiff-Appellee's Arguments

Plaintiff-appellee argues that the Trial Judge Marilyn L. Yap of Branch 28, Mandaue City, was very liberal in granting the request of defendant-appellant for an extension of time within which to file his answer; that he was

given until July 9, 2006 within which to file his responsive pleading; that defendant-appellant did not take advantage of it and failed to file his responsive pleading on July 9, 2006; that plaintiff-appellee was also very liberal because she waited for almost one (1) month (on July 28, 2006) from the expiration of the extended time for defendant-appellant to file in court his answer, before she actually filed a motion to declare defendant-appellant in default; defendant-appellant filed his responsive pleading on July 31, 2006.[37]

Plaintiff-appellee submits that the Presiding Judge denied defendant-appellant's Motion to Set Aside Order of Default but defendant-appellant did not elevate or question the same to the Court of Appeals under Rule 45 or to the Supreme Court under Rule 47 of the Rules of Court; that instead, the defendant-appellant opted to avail a wrong remedy under the Rules of Court for in this case he has no more legal standing and whatever evidence or arguments presented by him in his appellant's brief cannot be considered in the appellate court.[38]

The Court's Ruling.

The appeal is without merit.

Propriety of the Default Order

The declaration of default was properly made. The records show that defendant-appellant, after receipt of the summons, filed a Motion for Extension of Time to File Answer which was granted by the lower court and instead of the original period to file the Answer on June 24, 2006, defendant-appellant was given until July 9, 2006 to file his Answer to the Complaint. However, on the said deadline, no Answer was filed. The effect of failure to plead is governed by Rule 9 of the 1997 Rules of Civil Procedure which provides:

Sec. 3. Default; declaration of. – If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default xxx”

The following requirements for the declaration of default were complied with in the present case before defendant-appellant was declared in default, to wit:

- (1) the claiming party must file a motion asking the court to declare the defending party in default;
- (2) the defending party must be notified of the motion to declare him in default;
- (3) the claiming party must prove that the defending party has failed to answer within the period provided by the Rule.[39]

In the present case, plaintiff-appellee filed a Motion to Declare Defendant in Default on June 20, 2006 or after the expiration of the extended period to file the Answer; the defendant-appellant was notified of the said Motion; and the records prove that the defending party failed to answer within the period provided by the Rules and the extended period granted by the lower court. In fact, it has been clearly established that the Answer was only received by the Court on July 31, 2006 which was way beyond the extended period to file the same and after the plaintiff-appellee has filed the Motion to Declare Defendant in Default.

Upon being declared in default, defendant-appellant filed an Urgent Motion to Set Aside Order of Default (With Motion to Dismiss). The same was denied by the lower court. We rule that the denial was proper because the motion did not comply with the requisites for a valid motion to lift order of default, as provided in the same Rule:

Sec. 3. Default; declaration of. – xxx

(b) Relief from order of default. – A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In

such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

The Urgent Motion to Set Aside Order of Default alleged accident as a cause for the failure of defendant-appellant to file his responsive pleading; that while the answer was already prepared within the prescribed period, it was decided that there was need for him and counsel to review the factual circumstances of the case including the propriety of entering into an amicable settlement with the plaintiff-appellee and that vital documents were needed to be secured if only to determine the defenses that were available to him and which needed to be alleged in his answer. However, upon examination of the Answer with Counterclaim, We find that the RTC did not err in denying the Urgent Motion to Set Aside Order of Default. There was neither any mention of an attempt to enter into an amicable settlement, nor any document attached upon which the defenses of defendant-appellant would have been based.

Moreover, the Motion to Set Aside Order of Default did not state the meritorious defense relied upon by the defendant-appellant. When a party files a motion to lift order of default, he must show that he has a meritorious defense or that something would be gained by having the order of default set aside. The term meritorious defense implies that the applicant has the burden of proving such a defense in order to have the judgment set aside.[40] In an attempt to remedy the declaration of default, defendant-appellant included a Motion to Dismiss in the Urgent Motion to Set Aside Order of Default raising lack of jurisdiction over the subject matter. However, We find the same to be unmeritorious. The present case is actually an action for partition and specific performance on the basis of the Declaration of defendant-appellant and his brothers and sisters, to enforce the agreement contained in the said Declaration. An action for specific performance is an action incapable of pecuniary estimation,[41] thus, within the Regional Trial Court's jurisdiction.

Effect of Order of Default

In addition to the above ruling, let us discuss the effect of the declaration of default. A defendant who fails to file an answer loses his standing in court. Loss of standing in court, the forfeiture of one's right as a party litigant, contestant or legal adversary, is the consequence of an order of default. A party in default loses his right to present his defense, to control the proceedings, and to examine or cross-examine witnesses. He has no right to expect that his pleadings would be acted upon by the court nor may object to or refute evidence or motions filed against him.[42] Based on the foregoing, defendant-appellant lost standing and therefore, no action may be had on his motion to dismiss on the ground of lack of jurisdiction over the subject matter.

It is true that defendant-appellant filed his Answer (July 31, 2006) prior to the declaration of default (August 4, 2006). But such fact does not mean that the Answer should be admitted. It is worth repeating that the Answer was filed way beyond the period provided for by the Rules and subsequently, beyond the extended period as ordered by the Court and which was based on defendant-appellant's requested date (July 9, 2006).

It must be emphasized, however, that it is not mandatory on the part of the trial court to admit an Answer which is belatedly filed where the defendant is not yet declared in default. Settled is the rule that it is within the discretion of the trial court to permit the filing of an Answer even beyond the reglementary period, provided that there is justification for the belated action and there is no showing that the defendant intended to delay the case.[43]

In the instant case, the lower court found it proper not to admit defendant-appellant's Answer and to subsequently declare him in default. We find no cogent reason to depart from the said ruling.

Procedural rules are not to be ignored or disdained at will to suit the convenience of a party. Procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While in certain instances, the Court allows a relaxation in the application of the rules, there is no intention to

forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Party litigants and their counsel are well advised to abide by – rather than flaunt – procedural rules for these rules illumine the path of the law and rationalize the pursuit of justice. Moreover, while the Court frowns upon default judgments, it does not condone gross transgressions of the rules. The Court is duty-bound to observe its rules and procedures and uphold the noble purpose behind their issuance. Rules are laid down for the benefit of all and should not be made dependent upon a suitor's sweet time and own bidding.[44]

Presentation of Evidence after Declaration of Default

Defendant-appellant argues that the lower court erred in granting partition of the subject lot based solely on the evidence adduced by the plaintiff-appellee.

We do not agree. The Rules provide that after the defendant is declared in default, the court may already render judgment even without the presentation of evidence provided that the grant to the claimant of the relief is warranted by the pleading. On the other hand, it is discretionary upon the court to require the claimant to submit evidence. Specifically, it is provided:

Sec. 3. Default; declaration of. – xxx Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

xxx

(c) Extent of relief to be awarded. – A judgment rendered against a party in default shall not exceed the amount or be different in kind from that prayed for nor award unliquidated damages.

In this case, the Court admitted evidence from the plaintiff-appellee instead of automatically granting relief as warranted by the Complaint. The Decision rendered by the lower court was supported both by the allegations in the Complaint and the evidence on record. Upon examination of the evidence adduced, We hold that the RTC was correct in ruling that while defendant-appellant Gavino Zanoria is the registered owner of a parcel of land described as Lot 106-D-5, he has acknowledged through the duly notarized document entitled “Recognition of Right and Participation”[45] and “Declaration”[46] that he has held the property in trust for his brothers and sisters, as heirs of the late Isabel del Castillo.[47] The “Recognition of Right and Participation” provides:

xxx

That in view of the foregoing premises and in consideration thereof I, GAVINO ZANORIA, Filipino, of legal age, married to Paz Bontuyan and resident of Tipolo, Mandaue City, hereby recognize my brothers MELQUIADES ZANORIA, single; ZANDRO ZANORIA, single; and JOSE ZANORIA, single and my sisters NEGOLACION ZANORIA, single; SOCORRO ZANORIA, single; TERESITA ZANORIA, married to Allan Brybrook; and EDITHA ZANORIA, married to ... Filipinos, of legal ages and residents of Tiplo, Mandaue City and accordingly, CEDE, TRANSFER & RECONVEY unto each of them one-seventh (1/7) portion of Lot ONE HUNDRED SIX DASH D DASH FIVE (106-D-5) Psd-07-01847 described in Transfer Certificate of Title No. TWENTY SIX THOUSAND EIGHT HUNDRED NINETY THREE (26893) of the Office of the Register of Deeds of Mandaue City, with an area of 158 square meters which was donated to me by my aunt intrust [sic] for the legal heirs of Isabel del Castillo.[48] (Emphasis supplied)

Furthermore, the “Declaration” clearly provides:

xxx

(2) That though the aforementioned real property was registered in the name of Gavino Zanoria the same, we are hereby declaring that the aforementioned real property is owned by us in common;

(3) That we, JOSE ZANORIA, NEGOLACION ZANORIA, SOCORRO ZANORIA, MELQUIADEZ ZANORIA, LIEZEL ZANORIA, TERESITA BRAYBROOK and GAVINO ZANORIA, hereby declare that on April 11, 2001 upon our instructions our brother Gavino Zanoria sold our respective shares to LETECIA DEL CASTILLO MACKEY XXX[49]

A notarized document is admissible in evidence without further proof of its due execution, is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity. Again, in this case, the “Recognition of Right and Participation” and the “Declaration” were notarized documents. Being public documents, they enjoy the presumption of regularity. It is a prima facie evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. To overcome this presumption, there must be clear and convincing evidence. Absence such evidence, as in this case since defendant-appellant can no longer present evidence to rebut the same because he was declared in default, the presumption of regularity must be upheld.[50]

Remedy of Appeal from Default Judgment

In this appeal, We cannot consider defendant-appellant’s allegations of falsification and forgery. Indeed, a defending party declared in default retains the right to appeal from the judgment by default. However, the grounds that may be raised in such an appeal are restricted to any of the following: first, the failure of the plaintiff to prove the material allegations of the complaint; second, the decision is contrary to law; and third, the amount of judgment is excessive or different in kind from that prayed for. In these cases, the appellate tribunal should only consider the pieces of evidence that were presented by the plaintiff during the ex parte presentation of his evidence.[51]

A defendant who has been declared in default is precluded from raising any other ground in his appeal from the judgment by default since, otherwise, he would then be allowed to adduce evidence in his defense, which right he had lost after he was declared in default. Indeed, he is proscribed in the appellate tribunal from adducing any evidence to bolster his defense against the plaintiff’s claim.[52]

WHEREFORE, the instant appeal is DENIED. The assailed Decision of the Regional Trial Court in Civil Case No. MAN-5410 is hereby AFFIRMED.

SO ORDERED.

Delos Santos, E.L., Chairperson., and [*]Hernando, R.P. L., JJ., concur.

[1] Rule 44, The 1997 Rules of Civil Procedure.

[2] Main Record, pp. 138-144.

[*] designated as New Member per raffle dated 20 January 2015 (Back of Front Cover of Rollo) of the Special Nineteenth (19th) Division vice Justice Marilyn B. Lagura-Yap (Inhibition).

[3] Id. at pp. 1-6.

[4] Id. at pp. 1-2.

[5] Id. at p. 2.

- [6] Id. at p. 3.
- [7] Id. at p. 4.
- [8] Id. at p. 6.
- [9] Id. at p. 30.
- [10] Id. at pp. 31-32.
- [11] Id. at p. 34.
- [12] Id. at p. 38.
- [13] Id. at p. 45.
- [14] Id. at pp. 47-54.
- [15] Id. at p. 49.
- [16] Id. at p. 49.
- [17] Id. at p. 50.
- [18] Id. at p. 51.
- [19] Id. at p. 52.
- [20] Id. at p. 57.
- [21] Id. at p. 63.
- [22] Rollo, pp. 75-86.
- [23] Exhibit “C,” Main Record, p. 93.
- [24] Exhibit “D,” Main Record, p. 94.
- [25] Main Record, p. 143.
- [26] Id. at p. 144.
- [27] Id. at p. 144.
- [28] Id. at pp. 148-151.
- [29] Id. at p. 165.
- [30] Rollo, p. 25.
- [31] Id. at p. 30.
- [32] Id. at p. 34.
- [33] Id. at p. 35.
- [34] Id. at pp. 34-35.
- [35] Id. at p. 37.
- [36] Id. at p. 38.

[37] Id. at pp. 51-52.

[38] Id. at p. 53.

[39] Spouses Delos Santos v. Carpio, G.R. No. 153696, September 11, 2006.

[40] Velayo-Fong v. Spouses Velayo, G.R. No. 155488, December 6, 2006.

[41] Surviving Heirs of Alfredo R. Bautista v. Lindo, G.R. No. 208232, March 10, 2014.

[42] Otero v. Tan, G.R. No. 200134, August 15, 2012.

[43] Hernandez v. Agoncillo, G.R. No. 194122, October 11, 2012.

[44] Hernandez v. Agoncillo, *supra*.

[45] Exhibit "C," Main Record, p. 93.

[46] Exhibit "D," Main Record, p. 94.

[47] Main Record, p. 143.

[48] Id. at p. 93.

[49] Id. at p. 94.

[50] Chua v. Westmont Bank, G.R. No. 182650, February 27, 2012.

[51] Otero v. Tan, G.R. No. 200134, August 15, 2012.

[52] Otero v. Tan, *supra*.

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