

ELVIRA MATO VDA. DE OÑATE, SUBSTITUTED BY HER HEIRS MARIA MATO--ALAMEDA, AIDA MATO, ZOE MATO, PACITA MATO AND JUAN MATO II, PETITIONERS, VS. THE COURT OF APPEALS AND EULALIA M. ...

G.R. No. 116149. November 23, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Petitioners challenge the decision of the trial court, as affirmed by respondent court, for lack of basis. They argue that the lower court and the Court of Appeals erred in considering evidence not formally offered by private respondent in accordance with the Rules of Court.

The controversy involves Lot No. 1571, a riceland located at Toran, Aparri, Cagayan covered by Transfer Certificate of Title No. T--5168. On January 10, 1980, an action for specific performance with damages was filed in the then Court of First Instance of Cagayan, Branch II by Eulalia Marcita Taguba in her capacity as administratrix of the estate of the deceased Leonor Taguba against Elvira Mato Vda. de Oñate.

As the trial court found, the deceased Leonor Taguba bought the subject parcel of land from Elvira Mato Vda. de Oñate sometime in 1976 for a consideration of P5,000.00 payable in four (4) installments. Accordingly, she paid P2,250.00 on January 20, 1976,[1] P750.00 on February 23, 1976,[2] P1,000.00 on March 20, 1976[3] and P1,000.00 on July 29, 1976.[4] After full payment was made on July 29, 1976, the parties however failed to reduce their contract in writing. On December 30, 1976, Leonor Taguba died. The instant complaint was filed when demand was made upon Elvira Mato Vda. de Oñate to execute a public document of sale in favor of the deceased and her heirs and she refused.

The trial court rejected the petitioners' defense that Elvira Mato Vda. de Oñate contracted a verbal loan from Leonor Taguba in the amount of P12,000.00 payable within a period of 4 years with 12% interest. Also disbelieved was the allegation that two (2) parcels of land covered by TCT No. 5167 and TCT No. 5168 (the land in dispute) were mortgaged by Elvira Mato Vda. de Oñate to Leonor Taguba as security for the payment of the loan and that only P5,000.00 of the P12,000.00 loan was given by Taguba.

On July 12, 1990, the trial court rendered judgment, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

1. Declaring the agreement between the late Leonor Taguba and deceased defendant Elvira Mato Vda. de Oñate entered into on 20 January 1976, as a contract of 'to sell';
2. Ordering the defendants to execute the proper document to give effect to the contract within thirty (30) days, otherwise, this Court shall be forced to order the cancellation of the certificate of title covering Lot No. 1571 of the Aparri Cadastre, and the Register of Deeds of Cagayan to issue another certificate of title in the name of the

Estate of Leonor Taguba;

3. Ordering the plaintiff to prosecute their money claims against deceased defendant's estate in accordance with Section 21, Rule 3 of the Rules of Court.

Costs de oficio.

SO ORDERED.[5]

Petitioners appealed to respondent Court of Appeals faulting the trial court's factual findings. They contended that the trial court erred when it took cognizance of the plaintiffs evidence, particularly Exhibits "F," "F-1," "F-2" and "F-3", which had been marked but never formally submitted in evidence as required by the Rules of Court. Consequently, it was claimed that the trial court erred in relying on the said evidence in deciding for private respondents.

On December 13, 1993, respondent court affirmed the decision of the trial court.[6] In sustaining the lower court, the respondent court held that Exhibits "F," "F-1," "F-2" and "F-3" though not formally offered, may still be admitted in evidence for having complied with the two (2) requisites for admission enunciated in our jurisprudence,[7] that is, (1) evidence must be duly identified by testimony duly recorded and (2) it must be incorporated in the records of the case.

A motion for reconsideration of said decision was denied for lack of merit on June 13, 1994.[8]

Hence, the present petition for review. Petitioners ascribe to the respondent court the following errors, to wit:

THE HONORABLE COURT OF APPEALS ERRED IN NOT RULING THAT DOCUMENTS WHICH ARE MARKED AS EXHIBITS BUT NOT FORMALLY OFFERED ARE NOT TO BE CONSIDERED BY THE COURT;

THE HONORABLE COURT OF APPEALS ERRED IN NOT RULING THAT SINCE THERE WAS NO FIXED PURCHASE PRICE OF THE LAND AGREED UPON BY THE PARTIES, SPECIFIC PERFORMANCE COULD NOT BE AVAILED BY THE BUYER TO FORCE THE OWNER OF THE LAND TO EXECUTE A DEED OF SALE.[9]

Section 35 (now Section 34) of Rule 132 of the Rules of Court provides:

SEC. 35. Offer of evidence.- The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles*,^[10] we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.

However, in *People v. Napat-a*^[11] citing *People v. Mate*,^[12] we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, viz: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.

In the case at bench, we find, as respondent court did, that these requisites have been satisfied.

The evidence in question refers to Exhibits "F," receipt for P2,250.00 dated January 20, 1976; "F-1," receipt for P750.00 dated February 23, 1976; "F-2," receipt for P1,000.00 dated March 20, 1976; and "F-3," receipt for another P1,000.00 dated July 29, 1976, all showing the varying amounts paid by Leonor Taguba to Elvira Mato Vda. de Oñate. These exhibits were marked at the pre-trial for the purpose of identifying them. In fact, the payment of P5,000.00 was admitted by herein petitioners in the same pre-trial. On March 5, 1984, Eulalia Marcita Taguba identified the said exhibits in her testimony which was duly recorded. She testified as follows:

ATTY. LUCERO:

Q:

Now, you said that the offer of P5,000.00 selling price accepted by your sister and that she paid P2,250.00 on January 20, 1976 (Exhibit 'F') how about the balance on the consideration?

A:

The amount of Seven hundred fifty (P750.00) pesos to make it Three thousand (P3,000.00) pesos was paid on February 23, 1976 and the two (2) at One thousand pesos (P1,000.00) were paid on March 20, 1976 and July 29, 1976, ma'am.

COURT:

Was that admitted by the other party?

ATTY. LUCERO:

May we put it on record that the amount of P750.00 was paid by Miss Leonor B. Taguba on February 23, 1976, Your Honor.

COURT:

First receipt is P2,250.00.[13]

x x x x x x x x.

ATTY. LUCERO:

The receipt for the amount of Two Thousand two hundred fifty (P2,250.00) pesos be marked as Exhibit 'F', Your Honor.

COURT:

Mark it as Exhibit 'F'. [14]

x x x x x x x x.

ATTY. LUCERO:

May we request Your Honor that the amount of P750.00 receipt be marked as Exhibit 'F-1' dated February 23, 1976; Exhibit 'F-2' is the receipt for P1,000.00 paid on March 20, 1976; all in all, the amount is P5,000.00

including Exhibit 'J' or rather Exhibit 'F-3' which is the amount of P1,000.00 and was paid apparently on July 29, 1976 as partial payment for the parcel of land covered by TCT No. 5167 (sic), Your Honor.

x x x x x x x x.

COURT:

Q:

Will you look at Exhibit 'F-3' and tell the Court if you know this Exhibit and why do you know this?

A:

This was the receipt prepared by my sister paid to Elvira M. vda. de Oñate the amount of One thousand (P1,000.00) pesos as the payment of the land she purchased.

Q:

Why do you say that the same receipt was prepared by your late sister Leonor Taguba?

A:

Yes ma'am because I was present when she made that receipt.[15]

Likewise, extant from the records is the witness' explanation of the contents of each of the said exhibits. Also telling is petitioners' counsel vigorous cross-examination of the said witness who testified on the exhibits in question.[16]

Herein subject exhibits were also incorporated and made part of the records of this case.[17]

Finally, petitioners' allegation that an action for specific performance cannot be availed of in this case because the parties did not agree on a fixed price is likewise devoid of merit. Private respondent's evidence and testimony remain un rebutted that the contract price for the parcel of land in question is P5,000.00.

WHEREFORE, finding no reversible error on the part of respondent court, the decision appealed from is hereby AFFIRMED in toto.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Hermosisima, Jr., JJ., concur.

[1] Exhibit "F".

[2] Exhibit "F-1".

[3] Exhibit "F-2".

[4] Exhibit "F-3".

[5] Original Records, p. 218.

[6] Rollo, p. 49.

[7] Tabuena v. Court of Appeals, 196 SCRA 650 [1991]; People v. Napat-a, 179 SCRA 403 [1989]; People v. Mate, 103 SCRA 484 [1981].

[8] See Note 6, *supra*, p. 56.

[9] *Id.*, at 9.

[10] 186 SCRA 385, 388-389 [1990]

[11] See Note 7, *supra*.

[12] *Ibid.*

[13] TSN, March 5, 1984, pp. 25-26.

[14] *Id.*, at 39.

[15] *Id.*, at 26-28.

[16] *Id.*, at 47-53.

[17] Original Records, pp.187-C to 187-F.

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