

**SPOUSES LEOPOLDO HIZON AND PERLITA DELA FUENTE HIZON,
PETITIONERS, VS. SPOUSES GIGI DELA FUENTE AND JOSEPHINE
MANGAHAS, SPOUSES JORGE MAGBITANG AND ADELAIDA
VILLACORTA MAGBITANG...**

G.R. No. 152328. March 23, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

The instant petition stemmed from a Motion for Voluntary Inhibition filed by herein petitioners against Judge D. Roy A. Masadao, Jr. of the Regional Trial Court of Malolos, Bulacan, Branch 9 in Civil Case No. 175—M—97.

The background facts are as follows:

Civil Case No. 175—M—97 was an action for reconveyance of title, annulment of sale and other documents, and damages, filed by herein petitioners, Spouses Leopoldo and Perlita Hizon against the private respondents, Spouses Gigi and Josephine dela Fuente and Spouses George and Adelaida Magbitang. A temporary restraining order and/or writ of preliminary injunction was also prayed for in order to enjoin the private respondents from keeping possession of a three—door commercial apartment standing on the land, the sale of which was being questioned. The petitioners alleged that the questioned sale or any of the documents relative thereto did not include any improvements on the subject land. During the hearing on the writ of preliminary injunction, the respondent judge allegedly showed extreme bias and partiality in favor of the private respondents. Thus, they filed a Motion for Voluntary Inhibition to enjoin the latter from further hearing the civil case.

On August 7, 2000, Judge Masadao issued an Order denying the Motion for Voluntary Inhibition, stating as follows:

... For abject want of proof to substantiate the avowed fears of the plaintiff over what they perceive is “over vigilance” on the part of the undersigned (a sentiment which their counsel claims not to share), the plaintiffs’ MOTION for Voluntary Inhibition is hereby DENIED.[1]

The subsequent motion for reconsideration of the order was denied on September 25, 2000.

Ascribing grave abuse of discretion on the part of the respondent judge in issuing the assailed orders, the petitioners filed a petition for certiorari with the Court of Appeals.

On October 18, 2001, the CA dismissed the petition.[2] The motion for reconsideration was, likewise, denied.

Hence, this petition.

In the Resolution dated April 15, 2002, the Court required the private respondents to file their Comments, after which, the petitioners filed a consolidated reply.

In the petition, the petitioners allege that:

- The Court of Appeals erred in not including in its decision, the submitted fact that Judge Roy Masadao [Jr.] deliberately prevented the presentation of evidences that may establish the fact that the questioned deed of sale did not include the commercial apartments subject of the petition for injunction.

- The Court of Appeals erred in ignoring the pronouncements of the Supreme Court in the different jurisprudence cited by herein petitioners to favor Judge Masadao's inhibition, and cling on the decisions cited by the very same court which by themselves cannot be deemed to contradict the petitioners' cited decisions.[3]

The issue in this case is whether or not the trial court judge committed grave abuse of discretion in denying the motion for his inhibition from proceeding with the civil case.

The petitioners point out that the respondent judge's active participation during the hearing of the writ of preliminary injunction evidently displayed his bias and partiality in favor of the private respondents and should, therefore, disqualify himself from further hearing the civil case, on grounds of propriety and fairness. They cite the following instances to support their contention:

... (a) during the hearing on October 1, 1999, while the petitioners' counsel was cross-examining witness Jorge Magbitang relative to an encumbrance on the title in controversy, the respondent judge intervened and unilaterally questioned the materiality thereof, without objection from the private respondents, Further, the respondent judge seems to avoid the evidence that would favor the cause of the petitioners by twisting the answer given by witness Magbitang; (b) respondent judge vehemently objected to the petitioners' motion to cross-examine witness Magbitang on certain documents, giving hint to the private respondents' counsel to likewise object; (c) during the hearing on October 8, 1999, while the private respondents' counsel was conducting a direct examination on witness Gigi dela Fuente, the respondent judge suggested to counsel of the private respondents on how to proceed with his direct examination so as to extricate favorable facts; and (d) on June 30, 2000 while the petitioners' counsel was conducting the direct examination of a witness, a representative from the Register of Deeds relative to the recording of a certain document, the respondent judge conducted the cross-examination...[4]

The petition is devoid of merit.

The rule on the voluntary inhibition of the judge is provided in

paragraph (2), Section 1 of Rule 137, Rules of Court, to wit:

SECTION 1. Disqualification of judges.— No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties—in—interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

This is in accord with the following pronouncement of the Court:

...[No] judge should handle a case in which he might be perceived, rightly or wrongly, to be susceptible to bias and partiality. His judgment must not be tainted by even the slightest suspicion of improbity or preconceived interest. The rule is aimed at preserving at all times the faith and confidence in courts of justice by any party to the litigation...[5]

While this salutary norm should undoubtedly be observed, the second paragraph of Section 1 of Rule 137 does not

give judges the unfettered discretion to decide whether to desist from hearing a case. The inhibition must be for just and valid reasons. The mere imputation of bias or partiality is not enough ground for them to inhibit, especially when the charge is without basis.[6]

In the instant case, the CA, indeed, found no basis for the petitioners' allegations of bias and partiality on the part of the respondent judge. The CA clearly explained, thus:

The alleged acts of respondent judge in participating or intervening during the hearing for injunctive relief are neither acts of improper conduct and bias nor manifestations of respondent judge's overvigilance in favor of the private respondents' cause. Mere intervention of the respondent judge during the said hearing by simply asking the materiality of a question directed upon the witness and ruling against the petitioners are within the prerogatives and powers of the judge. The fact that the judge asked questions in the course of the trial does not make him a biased judge. It is not only the right but oft—times the duty of a trial judge to examine witnesses when it appears necessary for the elucidation of the record. Under the system of legal procedure in vogue in this jurisdiction, where the trial court is judge of both the law and the facts, it is oft—times expedient or necessary in the due and faithful administration of justice for the presiding judge to re—examine a witness in order that his judgment when rendered may rest upon a full and clear understanding of the facts.

Anent the claim of the petitioners that it was the respondent judge who was conducting the cross—examination of their witnesses instead of the private respondents' counsel, the same is devoid of merit ... A perusal of the proceedings that transpired before the respondent judge as shown by the excerpts of the Transcript of Stenographic Notes (TSN) attached to the petition reveals that while indeed the respondent judge propounded questions to the witnesses and their respective counsels, it appears that the same was done only for clarification purposes and not to build the case or favor the cause of the private respondents ... It is settled that judges may ask questions to clarify matters during the testimony of witnesses. Judges are not mere referees like those of a boxing bout, only to watch and decide the results of a game, for they should have as much interest as counsel in the orderly and expeditious presentation of evidence, calling the attention of such counsel to points at issue that are overlooked, directing them to ask questions that would elicit the facts on the issues involved, clarifying ambiguous remarks by witnesses and so on.

Finally, the petitioners' contention that the respondent judge seems to disregard their evidence merits scant consideration. From the records, it may be deduced that the respondent judge merely stressed and pointed out the fact that the petitioners should adduce only those evidence which are pertinent and material to the issue under consideration. A judge may properly intervene in the presentation of evidence to expedite and prevent unnecessary waste of time and clarify obscure and incomplete details after the witness has given direct testimony.[7]

We find no reversible error with the above findings and conclusions of the CA that the respondent judge did not abuse his discretion in denying the motion for his disqualification from presiding over the subsequent proceedings of Civil Case No. 175—M—97. This finding need not be disturbed. Mere suspicion of partiality is not enough. There should be hard evidence to prove it, as well as a manifest showing of bias and partiality stemming from extrajudicial source or some other basis.[8] In the absence of clear and convincing evidence to prove the charge, a ruling not to inhibit oneself cannot just be overturned. Furthermore, just because the opinion of a party is at variance with that of the judge, the former cannot use it as an excuse to hurl imputations of unfairness and partiality in the absence of clear and convincing proof. No one can arrogate infallibility unto himself.[9]

IN VIEW OF THE FOREGOING, the Court resolves to DENY the petition for lack of merit.

SO ORDERED.

Quisumbing, (Acting Chairman), Austria—Martinez, and Tinga, JJ., concur.

Puno, J., (Chairman), on leave.

[1] Rollo, p. 27.

[2] Rollo, pp. 26—30. Penned by Associate Justice Delilah Vidallon—Magtolis with Associate Justices Teodoro P. Regino and Josefina Guevarra—Salonga concurring.

[3] Id. at 9—10.

[4] Id. at 28.

[5] Silverio, Sr. v. Court of Appeals, 304 SCRA 541 (1999).

[6] Gochan v. Gochan, 398 SCRA 323 (2003).

[7] Rollo, pp. 29—30.

[8] Dr. Isagani A. Cruz v. Judge Philbert Iturralde, A.M. No. RTJ—03—1775, April 30, 2003.

[9] Atty. Melencio C. Cea v. Judge Orlando C. Paguio, A.M. No. MTJ—03—1479, February 17, 2003.

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