

EMILIO DE LA PAZ, JR., ENRIQUE DE LA PAZ, MANUELA DE LA PAZ, NATIVIDAD DE LA PAZ, MARGARITA DE LA PAZ AND ZENAIDA DE LA PAZ, PETITIONERS, VS. HON. INTERMEDIATE APPELLATE COURT, ...

G.R. No. 71537. September 17, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioners have lumped in one amended petition an original action for certiorari to set aside the decision of the Regional Trial Court, Branch 71 at Antipolo, Rizal, in Civil Case No. 164-A and a petition for review to nullify the decision of the Intermediate Appellate Court in AC-G.R. SP NO. 05472.

The records show the following incidents which transpired prior to the filing of the instant petition.

On May 12, 1983, Loreto de la Paz filed a complaint against the petitioners with the Regional Trial Court of Rizal for a judicial declaration of ownership of a 43,830 square meter parcel of land covered by Original Certificate of Title No. 901 of the Register of Deeds, Rizal in the name of Ponciano de la Paz with damages. The case was docketed as Civil Case No. 164-A.

Loreto alleged that the subject parcel of land was among the properties adjudicated to her and her mother as a result of a partition submitted by the heirs of Ponciano de la Paz and approved by the court in Civil Case No. 1399 of the Court of First Instance of Rizal. The subject matter of Civil Case No. 1399 was Ponciano's testate estate.

In their answer, the petitioners denied that the disputed lot was among the properties adjudicated to Loreto and her mother. They claimed that the parcel of land was not accounted for in the probate proceedings but is actually community property of the parties.

The parties, except for petitioner Enrique de la Paz, were admittedly compulsory heirs of Ponciano de la Paz who died in 1916. Loreto was the only legitimate child of Ponciano while: 1) Emilio de la Paz, Jr., is the son of Emilio, a recognized natural child of Ponciano; 2) Manuela de la Paz is the recognized natural child of Ponciano; 3) Natividad de la Paz is the daughter of Emilio, recognized natural child of Ponciano; 4) Margarita de la Paz is the daughter of Wenceslao, a recognized natural child of Ponciano; and 5) Zenaida de la Paz, is the daughter of Augusto, another recognized natural child of Ponciano. As regards petitioner Enrique de la Paz, Loreto denied his claim that he is one of the heirs of Ponciano. The petitioners, however, allege that he is also a compulsory heir of Ponciano, he being the son of Ponciano de la Paz, Jr., the eldest child of the decedent.

The parties failed to arrive at an amicable settlement during pre-trial. Hence, trial on the merits followed.

Loreto took the witness stand. She finished her direct testimony on March 12, 1984.

On April 25, 1984, the petitioners' counsel began his cross-examination of Loreto. The cross-examination was, however, not completed. The petitioners' counsel moved in open court for the continuance of the cross-examination on the ground that he still had to conduct a lengthy cross-examination. (p. 17, Court of

Appeals' rollo).

On May 18, 1984, Loreto's counsel filed a motion for "correction of transcript" due to some errors in the transcript of stenographic notes taken during the direct testimony of Loreto. The motion was granted.

This order granting the correction prompted the petitioners' counsel to manifest that he would not be able to undertake the cross-examination of the witness as scheduled. He asked for the postponement of the May 23, 1984 hearing. The trial court postponed the trial of the case to May 31, 1984 and later to July 5 and 11, 1984. (p. 16, Court of Appeals' rollo)

On August 13, 1984, trial resumed. The petitioners' counsel, however, asked for still another postponement of the cross-examination to give him a chance to go over the stenographic notes. In an order of the same date, the hearing was again postponed. (p. 17, Court of Appeals' rollo)

During the scheduled trial on September 14, 1984, neither the petitioners nor their counsel appeared despite due notice. Loreto's counsel, therefore, filed a motion that she be allowed to present evidence ex parte before a commissioner. The motion was granted and Loreto presented additional evidence ex parte in the afternoon of the same day. On this same date, she finished the presentation of her evidence and submitted her case for decision.

Despite this development, the petitioners upon their motion were allowed to cross-examine Loreto.

On the scheduled hearing set on September 18, 1984, the petitioners' counsel failed to appear, and the cross-examination of Loreto was deferred for the fourth (4th) time. (p. 17, Court of Appeals' rollo)

Finally, on November 7, 1984, the petitioners' counsel resumed his repeatedly postponed cross-examination of Loreto. The cross-examination was, however, cut short and re-scheduled again on motion of the petitioners' counsel.

Unfortunately, Loreto died on December 1, 1984. An amended complaint was filed for the purpose of substituting the respondents, herein, they being the children and heirs of Loreto.

At the resumption of the trial on January 21, 1985, the petitioners moved verbally to strike off the record the entire testimony of Loreto. The motion was denied. A verbal motion for reconsideration was likewise denied.

In view of the petitioners' manifestation that they will appeal the ruling to the appellate court, the trial court issued on January 24, 1985 a more detailed order denying the motion to strike off the record Loreto's testimony. (p. 17, Court of Appeals' rollo).

On February 11, 1985, the trial court issued another order allowing, among other things, the private respondents to present their exhibits. A controversy as to the contents of this February 11, 1985 order will be discussed later.

On February 18, 1985, the petitioners filed a petition with the Intermediate Appellate Court to annul the lower court's orders dated January 24, 1985 and February 11, 1985 and to prohibit the court from further proceeding in Civil Case No. 164-A. The petition for certiorari and prohibition was docketed as AC-G.R. SP No. 05472.

This petition notwithstanding, the lower court continued the proceedings in Civil Case No. 164-A. Thus, on March 29, 1985, the lower court promulgated a decision in Civil Case No. 164-A declaring the private respondents, the children and heirs of Loreto, as the true owners of the subject parcel of land. Damages were also awarded in favor of the private respondents. The dispositive portion of the decision reads:

"IN VIEW OF THE FOREGOING, JUDGMENT is hereby rendered:

"(a) Declaring plaintiffs as the true and lawful owners of the parcel of land covered by Original Certificate of

Title No. 901 of the Register of Deeds of Rizal;

"(b) Ordering the defendants to surrender the owner's duplicate copy of Original Certificate of Title No. 901;

"(c) Directing the Register of Deeds of Rizal, Pasig Branch to cancel Original Certificate of Title No. 901 and to issue a new one in the names of the plaintiffs;

"(d) Ordering the defendants jointly and severally to pay to the plaintiffs Five Hundred Thousand Pesos (P500,000.00) as actual damages, Five Hundred Thousand Pesos (P500,000.00) as moral damages, Five Hundred Thousand Pesos (P500,000.00) as exemplary or corrective damages, Fifty Thousand Pesos (P50,000.00) as attorney's fees, plus the costs; and

"(e) Dismissing the defendants' counterclaim." (pp. 13-14, Rollo)

On June 20, 1985, the appellate court also rendered a decision in AC-G.R. SP No. 05472. The petition was denied due course and dismissed. A motion for reconsideration was denied for lack of merit.

Initially, the petitioners filed only a petition to review on certiorari the appellate court's decision and resolution respectively.

Upon motion of the petitioners, we admitted the amended petition which now seeks to annul the decision of the lower court in Civil Case No. 164-A aside from setting aside the appellate court's decision and resolution in AC-G.R. SP No. 05472.

In another resolution dated January 20, 1986, we gave due course to the petition and considered the respondents' comments as answer.

We first review the challenged decision and order of the appellate court. The petitioners contend that the appellate court committed grave abuse of discretion when it sanctioned the trial court's orders which denied the striking out of the testimony of original plaintiff Loreto de la Paz from the record.

A motion to strike off testimony from the record is an interlocutory order. Well-settled is the rule that interlocutory orders may not be subjects of a petition for certiorari unless issued in patent abuse of discretion. (See *Villalon, Jr. v. Intermediate Appellate Court*, 144 SCRA 443; *Bautista v. Sarmiento*, 138 SCRA 587).

We see no grave abuse of discretion on the part of the trial court when it issued the questioned order. True, we have consistently ruled on the nature of the right of cross-examination, to wit:

"The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. (*Savory Luncheonette v. Lakas ng Manggagawang Pilipino, et al.*, 1975, 62 SCRA 258)."

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"The right of a party to cross-examine the witness of his adversary is invaluable as it is inviolable in civil cases, no less than the right of the accused in criminal cases. The express recognition of such right of the accused in the Constitution does not render the right thereto of parties in civil cases less constitutionally based, for it is an indispensable part of the due process guaranteed by the fundamental law. x x x Until such cross-examination has been finished, the testimony of the witness cannot be considered as complete and may not, therefore, be allowed to form part of the evidence to be considered by the court in deciding the case." (*Bachrach Motor Co., Inc., v. Court of Industrial Relations*, 86 SCRA 27 citing *Savory Luncheonette v. Lakas ng Manggagawang Pilipino, et al.*, supra, *Ortigas, Jr. v. Lufthansa German Airlines*, 64 SCRA 610)

But we have also ruled that it is not an absolute right which a party can demand at all times. This Court has stated that:

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"the right is a personal one which may be waived expressly or impliedly by conduct amounting to a renunciation of the right of cross-examination. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record.

"The conduct of a party which may be construed as an implied waiver of the right to cross-examine may take various forms. But the common basic principle underlying the application of the rule on implied waiver is that the party was given the opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone.

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"The case of the herein petitioner, Savory Luncheonette, easily falls within the confines of the jurisprudence given above. Private respondents through their counsel, Atty. Amante, were given not only one but five opportunities to cross-examine the witness, Atty. Morabe, but despite the warnings and admonitions of respondent court for Atty. Amante to conduct the cross-examination or else it will be deemed waived, and despite the readiness, willingness, and insistence of the witness that he be cross-examined, said counsel by his repeated absence and/or unpreparedness failed to do so until death sealed the witness' lips forever. By such repeated absence and lack of preparation on the part of the counsel of private respondents, the latter lost their right to examine the witness, Atty. Morabe, and they alone must suffer the consequences. The mere fact that the witness died after giving his direct testimony is no ground in itself for excluding his testimony from the record so long as the adverse party was afforded an adequate opportunity for cross-examination but through fault of his own failed to cross-examine the witness." (Savory Luncheonette v. Lakas ng Manggagawang Pilipino, supra; at pp. 263-267)

In the case at bar, the petitioners' failure to cross-examine Loreto was through no fault of the respondents. As can be gleaned from the record, Loreto was available for cross-examination from the time she finished her direct testimony on March 12, 1984 to November 7, 1984, the last scheduled hearing of the case before her death on December 1, 1984. The petitioners not only kept on postponing the cross-examination but at times failed to appear during scheduled hearings. The postponement of the trial on May 23, 1984 to a later date due to the correction of the stenographic notes of Loreto's testimony may be justified, but the same cannot be said for the subsequent postponements requested by the petitioners. The scheduled trials before November 7, 1984, did not push through, because of the petitioners' fault. It may also be recalled that at the scheduled hearing on September 14, 1984 neither the petitioners nor their counsel appeared leading to the presentation of evidence ex parte. And also during the scheduled hearing on September 18, 1984, when the petitioners were allowed to cross-examine Loreto despite the fact that the case was already deemed submitted for decision, the petitioners again failed to appear.

Under these circumstances, we rule that the petitioners had waived their right to cross-examine Loreto. Through their own fault, they lost their right to cross-examine Loreto. Her testimony stands.

As regards the petition to set aside the trial court's decision, the pivotal issue hinges on the contents of the February 11, 1985 order. The petitioners argue that Presiding Judge Benedicto "arbitrarily and whimsically changed without notice to either party, the tenor of the order it dictated in open court, apart from injecting facts that did not and could not have transpired on February 11, 1985, acts apparently calculated to deprive petitioners, as in fact they were deprived of their right to present evidence in their behalf." (p. 38, Rollo).

According to the petitioners, the trial court issued two conflicting versions of the February 11, 1985 order. The

order dictated in open court on February 11, 1985 states:

"In view of the manifestation of the counsel for the plaintiff that he is formally re-offering in evidence all documentary exhibits and testimonial evidence presented and it appearing that the transcript taken during the ex-parte hearing is already available and availed of by counsel for the defendant, he is hereby given ten (10) days from today to file his objections after which this case will be deemed submitted for resolution. In view of the fact that he will appeal the order of this court denying his motion to strike out from the record, the testimony of the plaintiff, Loreto de la Paz, the presentation of the evidence of the defendants is hereby held in abeyance." (p. 29, Court of Appeals' rollo)

while the signed order dated February 11, 1985 states, to wit:

"In view of the manifestation of the counsel for the plaintiff that he is formally re-offering in the evidence all documentary exhibits and testimonial evidence presented and after their admission he will rest his case and it appearing that the transcript taken during the ex-parte hearing has been long available and availed of by counsel for the defendants, he is hereby given ten (10) days from today to file his objections thereto after which action will be taken on the admission of said exhibits. The said period having lapsed without defendants' counsel filing his comments on the admission of the exhibits A to Z and the sub-marked exhibits are admitted in evidence for Plaintiffs, Defendants' counsel forthwith manifested that he will appeal to the Intermediate Court of Appeals (sic) the ruling of this Court denying his Motion to Strike off from the records the entire testimony of Plaintiff Loreto de la Paz who was partly cross-examined already but who died thus his cross examination could not be completed. Said counsel then refused to present evidence in behalf of defendants on the ground that he intended to appeal as already alluded above the Order of this court denying the Motion in question. The court has ruled in its Order of January 21, 1983 that inspite of the attitude of Counsel the trial shall pro-ceed as scheduled.

"Thus, at the hearing today said Counsel failed to proceed with the trial to present his evidence. This case shall be deemed submitted for Resolution." (p. 31, Court of Appeals' rollo)

It is to be noted that in the dictated version of the February 11, 1985 order, the petitioners were given ten (10) days from February 11, 1985 to file their objections after which the case will be submitted for resolution and that the presentation of evidence for the petitioners was held in abeyance.

However, in the other version, the case was declared as already deemed submitted for resolution.

It is this second version of the February 11, 1985 order which the trial court used as justification for its promulgation of the March 29, 1985 decision in Civil Case No. 164-A.

The record clearly shows that this second version of the February 11, 1985 order was issued without the knowledge of the parties. In fact, on March 14, 1985, the respondents filed an urgent motion to consider the case submitted for decision with the following allegations: 1) that in the hearing of February 11, 1985, the petitioners were required to submit their comment or objection to respondents' offer of evidence and they were given ten (10) days from said date within which to do so, and thereafter to present their evidence; and 2) that notwithstanding the lapse of more than thirty (30) days, the respondents have not submitted their comment or objection to petitioners' offer of evidence much less have they taken any move to present their evidence. (pp. 32-33, Court of Appeals' rollo). The respondents would not have filed this motion if the case was already deemed submitted for decision pursuant to the second version of the February 11, 1985 order. Furthermore, the respondents do not rebut these allegations.

The trial court committed a grave abuse of discretion in issuing the order dated February 11, 1985, the contents of which conflict with another order of the same date dictated in open court during the hearing of the case on February 11, 1985.

The issuance of this second version of the February 11, 1985 order prejudiced the petitioners' cause. They were deprived of their right to present evidence in their behalf.

Consequently, the decision of the trial court in Civil Case No. 164-A must be declared null and void.

Another issue raised by the petitioners centers on whether or not the trial court committed grave abuse of discretion in rendering judgment in Civil Case No. 164-A despite the pendency of the petition which sought to inhibit it from further proceeding with the case.

The appellate court did not restrain the trial court until April 22, 1985 after the petitioners presented the certified copy of the February 11, 1985 order. (p. 35, Court of Appeals rollo). The trial court did not abuse its discretion or commit reversible error. It is within its sound discretion to either proceed with the case in the absence of the prayed-for restraining order or refrain from acting on the case until the higher court decides the matter elevated to it. The circumstances of each case dictate what action shall be taken.

The final issue raised by the petitioners is with regard to the damages awarded the respondents by the trial court.

In their complaint, the respondents asked for the following damages: 1) at least P150,000.00 as actual damages; 2) P200,000.00 as moral damages; and 3) P50,000.00 as attorney's fees plus exemplary damages which may be deemed just and equitable in the premises. The trial court awarded to the respondents the following: P500,000.00 as actual damages; P500,000.00 as moral damages; P500,000.00 as exemplary damages; P50,000.00 as attorney's fees and costs.

The questioned decision, however, is silent as to how the court arrived at these damages. Nowhere in the decision did the trial court discuss the merit of the damages prayed for by the petitioners. There should be clear factual and legal bases for any award of considerable damages. (See *Rubio v. Court of Appeals*, 141 SCRA 488).

WHEREFORE, the amended petition is partly DENIED in that the questioned decision and resolution of the Intermediate Appellate Court, now Court of Appeals in AC-G.R. SP No. 05472 are AFFIRMED. The petition is GRANTED in part. The questioned decision of the then Court of First Instance of Rizal in Civil Case No. 164-A is SET ASIDE as null and void. The successor Regional Trial Court is directed to conduct further proceedings and to receive the evidence of the petitioners in Civil Case No. 164-A.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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