

**PERFECTA CAVILI, PRIMITIVO CAVILI AND QUIRINO CAVILI,
PETITIONERS, VS. HON. TEODORO N. FLORENDO, PRESIDING JUDGE,
BRANCH XXXVI, REGIONAL TRIAL COURT OF NEGROS ORIENTAL,
7TH JUDI...**

G.R. No. 73039. October 09, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review and set aside two orders of the then Court of First Instance of Negros Oriental, namely: (1) the order dated October 11, 1985, disqualifying Perfecta Cavili dela Cruz as a witness in Civil Case No. 6880 entitled "Clarita Cavili, et al. v. Perfecta Cavili, Quirino Cavili, and Primitivo Cavili" and (2) the order dated November 26, 1985, refusing to reconsider the previous orders of disqualification and resetting the reception of evidence for the defendants to December 19 and 20, 1985 with a warning that should defendants' witnesses fail to appear in court on said date, they will be deemed to have waived their right to be witnesses in this case.

The private respondents filed Civil Case No. 6880 with the Court of First Instance of Negros Oriental against herein petitioners for Partition, Accounting, and Damages. After the case was raffled to Branch I presided over by Judge Augusto S. Villarin, summons was issued to the three petitioners, all at Bayawan, Negros Oriental which was the address indicated in the complaint.

After trying to effect service, the process server went back to the court with the following return of service - - "served to Quirino and Primitivo Cavili not contacted, according to Perfecta Cavili, subject persons is (sic) staying in Kabankalan, Negros Occidental."

Meanwhile, Atty. Jose P. Alamillo filed a motion for extension to answer in behalf of the defendants, manifesting the representation of his client Perfecta Cavili that she will inform her brothers Primitivo and Quirino about the case.

The defendants, however, failed to file their answer within the requested period and upon motion of the plaintiffs, the defendants were declared in default, and on October 5, 1979, a judgment by default was promulgated by Judge Augusto S. Villarin.

The records of the case, however, show that a Manifestation was filed by Atty. Jose P. Alamillo informing the court that since he never met Primitivo and Quirino Cavili, who are residents of another province, he desisted from further appearing in the case in their behalf.

On November 7, 1979, Atty. Jose P. Alamillo received a copy of the decision. On December 7, 1979, he filed a motion for new trial in behalf of the defendants on grounds of lack of jurisdiction over the persons of Primitivo and Quirino Cavili who had not been legally served with summons, and, with a meritorious defense that the properties sought to be partitioned have already been the subject of a written partition agreement between the direct heirs of the late Bernado Cavili who are the predecessors of the parties in this case. In an order dated April

23, 1980, the court granted said motion.

The plaintiffs filed a motion for reconsideration of the order granting new trial and at the same time prayed that a writ of execution be issued but only in so far as defendant Perfecta Cavili was concerned.

In an order dated July 21, 1981, Judge Cipriano Vamenta of Branch III of the Court of First Instance of Negros Oriental, to whom the case had been assigned after a re-raffle, set aside the order of April 23, 1980 and directed the execution of the October 5, 1979 decision without qualification ruling that the petitioners' remedy should have been appeal rather than new trial.

Their motion for reconsideration having been denied on August 11, 1981, the defendants, now petitioners, brought the case to this Court through a petition for certiorari, G.R. No. 57771, entitled "Quirino Cavili, et al., Petitioners versus Hon. Cipriano Vamenta, et al., Respondents."

On May 31, 1982, this Court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, Our resolution dismissing the petition is hereby reconsidered; the petition is granted; and the order dated July 21, 1981, is set aside while that of April 23, 1980, is revived. No special pronouncement as to costs." (Rollo, p. 21)

Thereafter, the pre-trial and trial of Civil case No. 6880 was scheduled on October 9, 10, and 11, 1985 before Branch XXXVI of the Regional Trial Court, presided by respondent Judge Teodoro N. Florendo. The defendants, (now petitioners), presented Perfecta Cavili dela Cruz as their first witness. The respondents, through counsel, moved for her disqualification as a witness on the ground that having been declared in default, Perfecta Cavili has lost her standing in court and she cannot be allowed to participate in all proceedings therein, even as a witness. The court, through the respondent judge, sustained the respondents' contention and disqualified her from testifying.

The petitioners, through counsel, moved for a reconsideration of the ruling.

On November 26, 1985, the lower court issued an order denying reconsideration of its Order dated October 11, 1985 disqualifying Perfecta Cavili dela Cruz as a witness in Civil Case No. 6880.

Hence, this petition.

Petitioner Perfecta Cavili's competence as a witness is put in issue by the private respondents.

Section 18, Rule 130 of the Revised Rules of Court states who are qualified to be witnesses. It provides:

"Section 18. Witnesses; their qualifications. - Except as provided in the next succeeding section, all persons who, having organs of sense, can perceive, and perceiving, can make known their perception to others, may be witnesses. Neither parties nor other persons interested in the outcome of a case shall be excluded; nor those who have been convicted of crime; nor any person on account of his opinion on matters of religious belief."

The generosity with which the Rule allows people to testify is apparent. Interest in the outcome of a case, conviction of a crime unless otherwise provided by law, and religious belief are not grounds for disqualification.

Sections 19 and 20 of Rule 130 provide for specific disqualifications. Section 19 disqualifies those who are mentally incapacitated and children whose tender age or immaturity renders them incapable of being witnesses. Section 20 provides for disqualification based on conflicts of interest or on relationship. Section 21 provides for disqualifications based on privileged communications. Section 15 of Rule 132 may not be a rule on disqualification of witnesses but it states the grounds when a witness may be impeached by the party against whom he was called.

There is no provision of the Rules disqualifying parties declared in default from taking the witness stand for non-disqualified parties. The law does not provide default as an exception. The specific enumeration of disqualified witnesses excludes the operation of causes of disability other than those mentioned in the Rules. It is a maxim of recognized utility and merit in the construction of statutes that an express exception, exemption, or saving clause excludes other exceptions. (In *Re Estate of Enriquez*, 29 Phil. 167) As a general rule, where there are express exceptions these comprise the only limitations on the operation of a statute and no other exception will be implied. (Sutherland on Statutory Construction, Fourth Edition, Vol. 2A, p. 90) The Rules should not be interpreted to include an exception not embodied therein.

The respondents, however, cite Section 2, Rule 18 on Defaults, to wit:

"Section 2. Effect of order of default. - Except as provided in section 9 of Rule 13, a party declared in default shall not be entitled to notice of subsequent proceedings nor to take part in the trial."

They advance the argument that to allow Perfecta Cavili to stand as witness would be to permit a party in default "to take part in the trial."

An explanation of the Rule is in order.

Loss of standing in court is the consequence of an order of default. Thus, a party declared in default is considered out of court and cannot appear therein, adduce evidence, and be heard and for that reason he is not entitled to notice. (Rule 18, Rules of Court; *Lim Toco v. Go Fay*, 80 Phil. 166) However, "loss of standing" must be understood to mean only the forfeiture of one's rights as a party litigant, contestant or legal adversary. A party in default loses his right to present his defense, control the proceedings, and examine or cross-examine witnesses. He has no right to expect that his pleadings would be acted upon by the court nor may he object to or refute evidence or motions filed against him. There is nothing in the rule, however, which contemplates a disqualification to be a witness or a deponent in a case. Default does not make him an incompetent.

As opposed to a party litigant, a witness is merely a beholder, a spectator or onlooker, called upon to testify to what he has seen, heard, or observed. As such, he takes no active part in the contest of rights between the parties. Cast in the limited role of witness, a party in default cannot be considered as "taking part in the trial". He remains suffering the effects of an order of default.

A party in default may thus be cited as a witness by his co-defendants who have the standing and the right to present evidence which the former may provide. The incidental benefit giving the party in default the opportunity to present evidence which may eventually redound to his advantage or bring about a desired result, through his co-defendants, is of minor consequence.

Of greater concern or importance in allowing the presence of Perfecta Cavili as a witness in the case at bar, is the preservation of the right of petitioners Quirino and Primitivo Cavili to secure the attendance of witnesses and the production of evidence in their behalf. To reject Perfecta Cavili's presentation of testimonial evidence would be to treat Primitivo and Quirino as if they too were in default. There is no reason why the latter should also be made to bear the consequences of Perfecta's omission. Moreover, we cannot deprive Quirino and Primitivo of the only instrument of proof available to them, as Perfecta alone has been in possession and administration of the property in question and more than anybody else she can provide vital evidence to buttress their claim.

WHEREFORE, in view of the foregoing, the petition is hereby GRANTED. The order of the respondent court disqualifying Perfecta Cavili dela Cruz as a witness in Civil Case No. 6880 is hereby SET ASIDE. The case is remanded to the court a quo for further proceedings. The temporary restraining order issued on January 6, 1986 is LIFTED.

SO ORDERED.

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

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