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SECOND DIVISION

[G.R. No. 154115, November 29, 2005]

PHILIP S. YU, PETITIONER, VS. HON. COURT OF APPEALS, SECOND DIVISION, AND VIVECA LIM YU, RESPONDENTS.

D E C I S I O N

TINGA, J.:

This treats of the petition for review on certiorari of the Court of Appeals' Decision and Resolution in CA G.R. SP No. 66252 dated 30 April 2002[1] and 27 June 2002,[2] respectively, which set aside the *Order* of the Regional Trial Court (RTC) of Pasig City[3] dated 10 May 2001, declaring an application for insurance and an insurance policy as inadmissible evidence.

The facts of the case are undisputed.

On 15 March 1994, Viveca Lim Yu (private respondent) brought against her husband, Philip Sy Yu (petitioner), an action for legal separation and dissolution of conjugal partnership on the grounds of marital infidelity and physical abuse. The case was filed before the RTC of Pasig and raffled to Branch 158, presided by Judge Jose R. Hernandez.

During trial, private respondent moved for the issuance of a *subpoena duces tecum* and *ad testificandum*[4] to certain officers of Insular Life Assurance Co. Ltd. to compel production of the insurance policy and application of a person suspected to be petitioner's illegitimate child.[5] The trial court denied the motion.[6] It ruled that the insurance contract is inadmissible evidence in view of Circular Letter No. 11-2000, issued by the Insurance Commission which presumably prevents insurance companies/agents from divulging confidential and privileged information pertaining to insurance policies.[7] It added that the production of the application and insurance contract would violate Article 280[8] of the Civil Code and Section 5 of the Civil Registry Law,[9] both of which prohibit the unauthorized identification of the parents of an illegitimate child.[10] Private respondent sought reconsideration of the *Order*, but the motion was denied by the trial court.[11]

Aggrieved, private respondent filed a petition for certiorari before the Court of Appeals, imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge Hernandez in issuing the 10 May 2001 *Order*.[12] The Court of Appeals summarized the issues as follows: (i) whether or not an insurance policy and its corresponding application form can be admitted as evidence to prove a party's extra-marital affairs in an action for legal separation; and (ii) whether or not a trial court has the discretion to deny a party's motion to attach excluded evidence to the record under Section 40, Rule 132 of the Rules of Court.

[13]

According to the Court of Appeals, private respondent was merely seeking the production of the insurance application and contract, and was not yet offering the same as part of her evidence. Thus, it declared that petitioner's objection to the admission of the documents was premature, and the trial court's pronouncement that the documents are inadmissible, precipitate.[14] The contents of the insurance application and insurance documents cannot be considered as privileged information, the Court of Appeals added, in view of the opinion of the Insurance Commissioner dated 4 April 2001 to the effect that Circular Letter No.11-2000 "was never intended to be a legal impediment in complying with lawful orders".[15] Lastly, the Court of Appeals ruled that a trial court does not have the discretion to deny a party's privilege to tender excluded evidence, as this privilege allows said party to raise on appeal the exclusion of such evidence.[16] Petitioner filed a motion for reconsideration but to no avail.

In the present petition, petitioner argues that the Court of Appeals blundered in delving into errors of judgment supposedly committed by the trial court as if the petition filed therein was an ordinary appeal and not a special civil action. Further, he claims that the Court of Appeals failed to show any specific instance of grave abuse of discretion on the part of the trial court in issuing the assailed *Order*. Additionally, he posits that private respondent had already mooted her petition before the Court of Appeals when she filed her formal offer of rebuttal exhibits, with tender of excluded evidence before the trial court.[17]

For her part, private respondent maintains that the details surrounding the insurance policy are crucial to the issue of petitioner's infidelity and his financial capacity to provide support to her and their children. Further, she argues that she had no choice but to make a tender of excluded evidence considering that she was left to speculate on what the insurance application and policy ruled out by the trial court would contain.[18]

A petition for certiorari under Rule 65 is the proper remedy to correct errors of jurisdiction and grave abuse of discretion tantamount to lack or excess of jurisdiction committed by a lower court.[19] Where a respondent does not have the legal power to determine the case and yet he does so, he acts without jurisdiction; where, "being clothed with power to determine the case, oversteps his authority as determined by law, he is performing a function in excess of jurisdiction."[20]

Petitioner claims that the Court of Appeals passed upon errors of judgment, not errors of jurisdiction, since it delved into the propriety of the denial of the s*ubpoena duces tecum* and *subpoena ad testificandum*. The argument must fail.

While trial courts have the discretion to admit or exclude evidence, such power is exercised only when the evidence has been formally offered.[21] For a long time, the Court has recognized that during the early stages of the development of proof, it is impossible for a trial court judge to know with certainty whether evidence is relevant or not, and thus the practice of excluding evidence on doubtful objections to its materiality should be avoided.[22] As well elucidated in the case of *Prats & Co. v. Phoenix Insurance Co.*:[23]

> Moreover, it must be remembered that in the heat of the battle over which he presides a judge of first instance may possibly fall into error in judging of the relevancy of proof where a fair and logical connection is in fact shown. When such a mistake is made and the proof is erroneously ruled out, the Supreme Court, upon appeal, often finds itself embarrassed and possibly unable to correct the effects of the error without returning the case for a new trial, — a step which this court is always very loath to take. On the other hand, the admission of proof in a court of first instance, even if the question as to its form, materiality, or relevancy is doubtful, can never result in much harm to either litigant, because the trial judge is supposed to know the law; and it is its duty, upon final consideration of the case, to distinguish the relevant and material from the irrelevant and immaterial. If this course is followed and the cause is prosecuted to the Supreme Court upon appeal, this court then has all the material before it necessary to make a correct judgment.

In the instant case, the insurance application and the insurance policy were yet to be presented in court, much less formally offered before it. In fact, private respondent was merely asking for the issuance of *subpoena duces tecum* and *subpoena ad testificandum* when the trial court issued the assailed *Order*. Even assuming that the documents would eventually be declared inadmissible, the trial court was not then in a position to make a declaration to that effect at that point. Thus, it barred the production of the subject documents prior to the assessment of its probable worth. As observed by petitioners, the assailed *Order* was not a mere ruling on the admissibility of evidence; it was, more importantly, a ruling affecting the proper conduct of trial.[24]

Excess of jurisdiction refers to any act which although falling within the general powers of the judge is not authorized and is consequently void with respect to the particular case because the conditions under which he was only authorized to exercise his general power in that case did not exist and therefore, the judicial power was not legally exercised.[25] Thus, in declaring that the documents are irrelevant and inadmissible even before they were formally offered, much less presented before it, the trial court acted in excess of its discretion.

Anent the issue of whether the information contained in the documents is privileged in nature, the same was clarified and settled by the Insurance Commissioner's opinion that the circular on which the trial court based its ruling was not designed to obstruct lawful court orders.[26] Hence, there is no more impediment to presenting the insurance application and policy.

Petitioner additionally claims that by virtue of private respondent's tender of excluded evidence, she has rendered moot her petition before the Court of Appeals since the move evinced that she had another speedy and adequate remedy under the law. The Court holds otherwise.

Section 40, Rule 132 provides:

> Sec.40. Tender of excluded evidence.—If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal