

TWENTIETH DIVISION

[CA-G.R. CEB CV NO. 01307, June 16, 2014]

**ISIDRO D. DUBRIA, REPRESENTED BY HIS ATTORNEY-IN-FACT,
DANILO D. REMEGIO, PLAINTIFF-APPELLANT, VS. VIRGILIA
SUMUGAT- FEND, DEFENDANT-APPELLEE.**

D E C I S I O N

QUIJANO-PADILLA, J.:

This is an appeal from the Decision^[1] dated November 25, 2005 of the Regional Trial Court, 6th Judicial Region, Branch 13, Culasi Antique in Civil Case No. C-136 for Quieting of Title, Annulment of Documents, Reconveyance and Damages.

The Facts

Plaintiff-appellant Isidro D. Dubria [Isidro] bought from his father a parcel of lot denominated as Lot 858-B situated at Barangay Jalandoni, Culasi, Antique with an area of 2,000 square meters and is registered as TCT No. T-17796.^[2]

Sometime in 1990, he accepted a job offer at California, USA. During one of his visits to the Philippines, particularly on March 19, 2002, he discovered at the Office of the Register of Deeds, Entry No. 257027 wherein a Deed of Sale purportedly executed by him on December 17, 1994 in favor of his first cousin, Virgilia Sumugat-Fend [Virgilia] herein defendant-appellee for a consideration of P20,000.00^[3] was annotated on his title.

Due to the execution of that Deed of Sale, Lot 858-B was transferred to Virgilia and was registered in the latter's name as TCT No. T-23545 on March 14, 2002.^[4] The tax declaration of said land was likewise transferred in the name of Virgilia.^[5]

Upon Isidro's discovery of the annotation and transfer on March 19, 2002, he immediately filed an adverse claim. The said claim was annotated on the title of Virgilia bearing Entry No. 257103.^[6] He vehemently denied having executed the said Deed of Sale on December 17, 1994 considering that on the said date he was still in California as evidenced by his company payroll and the entries reflected on his passport. As such, the said deed of sale was a product of forgery.

When Virgilia refused to reconvey the land to Isidro, the latter filed the instant suit for Quieting of Title, Annulment of Documents, Reconveyance and Damages.

Virgilia in her answer negated the allegation of fraud claiming that the signature of Isidro was genuine as well as the signatures of their witnesses and which instrument was duly notarized by a notary public thereby belying the existence of forgery. As a *bona fide* transferee and a title holder, she can validly exercise her rights as owner

of the subject lot such as to sell, lease, mortgage or encumber the same.

She prayed for the dismissal of the complaint because being a resident of Austria, Europe, the RTC had not acquired jurisdiction over her person. Records show that substituted service of summons was immediately resorted to by the sheriff by serving a copy of the complaint to Virgilia's sister instead of availing of the extraterritorial service of summons in accordance with the Rules of Court. Since the same was not observed the court did not acquire jurisdiction.

After the issues were joined on October 27, 2003 both Isidro^[7] and Virgilia^[8] filed their respective pre-trial briefs. Thereafter, the RTC issued its pre-trial order^[9] with a sole admission as to the identity of the land.

On August 25, 2004, Virgilia filed a Motion for Judicial Determination of Whether the Honorable Court has Properly Acquired Jurisdiction over the Person of the Defendant.^[10] Thereafter Isidro filed his Comment^[11] thereto. The RTC in its Resolution^[12] denied Virgilia's motion because by filing an answer instead of solely contesting the jurisdiction of the court, in effect, she is said to have voluntarily submitted herself to the jurisdiction of the court.

Subsequent to the presentation of plaintiff-appellant's testimonial evidence, Exhibits "1" to "10"^[13] and their sub-markings were offered by plaintiff-appellant, which were all admitted by the court *a quo*.^[14] The markings of the exhibits are numeric because plaintiff-appellant Isidro is the defendant in Civil Case No. C-073 for Quieting of Title and Recovery of Possession with Damages and Prayer for a Writ of Preliminary Injunction filed by Virgilia against him, which case was raffled in the same RTC, Branch 13 and the said offer was likewise made for his documentary exhibits in the said case.

The court *a quo* in its Decision, dismissed the complaint of plaintiff-appellant for lack of merit for failing to establish by preponderance of evidence the material allegations in his complaint. The dispositive portion of the court's decision, reads:

"WHEREFORE, premises considered, plaintiff not having established by preponderance of evidence to support the material allegations of his Complaint, that the Deed of Sale, Exhibit "D", is a forgery, plaintiff's Complaint is hereby dismissed for lack of merit.

No pronouncement as to cost.^[15]"

Thus, plaintiff-appellant comes to Us on appeal with the following assignment of errors, to wit:

"I. WITH ALL DUE RESPECT THE RTC ERRED IN NOT DECLARING THE DEED OF ABSOLUTE SALE DATED DECEMBER 17, 1994 NULL AND VOID AB INITIO;

II. WITH ALL DUE RESPECT THE RTC ERRED IN NOT DECLARING PLAINTIFF-APPELLANT THE RIGHTFUL OWNER OF LOT NO. 868-B;

III. WITH ALL DUE RESPECT, THE RTC ERRED IN NOT ORDERING THE

DEFENDANT-APPELLEE TO RECONVEY IN FAVOR OF THE PLAINTIFF-APPELLANT LOT NO. 868-B; AND

IV. WITH ALL DUE RESPECT, THE RTC ERRED IN DISMISSING THE COMPLAINT IN THE ABOVE ENTITLED CASE.^[16]"

Our Ruling

Before addressing the issues raised on appeal, We find it imperative to address the procedure employed by the court *a quo*.

We gathered that plaintiff-appellant in the appealed case docketed as Civil Case No. C-136 became the defendant in Civil Case No. C-073 in a Quieting of Title and Recovery of Possession case instituted by Virgilia, herein defendant-appellee which was heard in the same RTC, Branch 13. These cases were never consolidated.

In the questioned order of the RTC, it dispensed with the testimony of defendant-appellee in the instant case and *motu proprio* adopted the testimony she gave in Case No. C-073. A portion of the decision, reads:

"From the Record of the above-entitled inherited cases, Civil Case No. 073 and Civil Case No. 136, it appears that the cause of action in Civil Case No. 073 constitutes the bulk of evidence for the defense in Civil Case No. 136. The heart of the matter boils down to the issue:

The validity of the document executed on December 17, 1994 by Isidro Dubria in favor of Virgilia Sumugat-Fend involving the registered land, Lot No. 868-B, Culasi Cadastre.

Defendant in this case, Civil Case No. 073, Danilo Remegio, became the attorney-in-fact for the plaintiff in the filing of Civil Case No. 136. So much so that Danilo Remegio was subjected to the direct and cross examination in Civil Case No. 073 and vice versa in Civil Case No. 136 regarding the document of sale executed by Isidro Dubria in favor of Virgilia Sumugat Fend conveying the registered land Lot No. 868-B. Except that in Civil Case 136 the witness Isidro Dubria corroborated the bulk of the testimony of Danilo Remegio on the circumstances surrounding the execution of the Deed of Sale dated December 17, 1994 and the denial of Isidro Dubria of his signature therein.

The same documentary evidence used as the cause of action in the instant Civil Case No. 073 is the same document that constitutes the bulk of evidence for the defendant in Civil Case 136. With the admission of the common documentary evidence in the Civil Case 073 and in Civil Case 136, it would be an idle repetitious ceremony or a monotonous repetition for the plaintiff Virgilia Sumugat Fend to sing the same song she sang in Civil Case 073, to be sang again as a defendant in Civil Case 136 over the lyrics and tune of Lot No. 868-B and the document dated December 17, 1994."

The RTC should not have taken judicial notice of the testimony of Virgilia given in another case pending before it being in violation of the Rules of Procedure.

Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them. Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support. The principle is based on convenience and expediency in securing and introducing evidence on matters which are not ordinarily capable of dispute and are not *bona fide* disputed.^[17]

The foundation for judicial notice may be traced to the civil and canon law maxim, *manifesta (or notoria) non indigent probatione*. The taking of judicial notice means that the court will dispense with the traditional form of presentation of evidence. In so doing, the court assumes that the matter is so notorious that it would not be disputed.^[18]

In adjudicating the case on trial, the general rule is that courts are not authorized to take judicial notice of the contents of the records of other cases even when said cases have been tried or are pending in the same court or before the same judge.^[19] This rule, however, admits of exceptions. As early as *United States v. Claveria*^[20], the Supreme Court has stated: "In the absence of objection and as a matter of convenience, a court may properly treat all or part of the original record of a former case filed in its archives, as read into the record of a case pending before it, when, with the knowledge of the opposing party, reference is made to it for that purpose by name and number or in some other manner by which it is sufficiently designated."^[21]

As a matter of convenience to all the parties, a court may properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge of, and absent an objection from, the adverse party, reference is made to it for that purpose, by name and number or in some other manner by which it is sufficiently designated; or when the original record of the former case or any part of it, is actually withdrawn from the archives at the court's direction, at the request or with the consent of the parties, and admitted as a part of the record of the case then pending.^[22]

From the foregoing jurisprudential guideline, We find that the court *a quo*'s taking of judicial notice of the testimony given by Virgilia in another case is improper. A thorough review of the records reveal that Virgilia or Isidro did not request the court *a quo* to take judicial notice of the testimony given by the former in another case which was pending in the same court. Likewise, nowhere in the records did it show that Isidro, being the adverse party, had knowledge that the court *a quo* is taking judicial notice of the testimony of Virgilia or that of her witnesses, as a consequence, he was not able to tender any objection thereto.

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.^[23] In taking judicial notice of the testimony of Virgilia or her witnesses without the knowledge and consent of Isidro, his constitutional right to cross-examine the witnesses against him was transgressed. On the other hand, Virgilia is deprived of the right to rebut the testimony presented by Isidro.