

SECOND DIVISION

[G.R. No. 155483, April 27, 2007]

**HEIRS OF PEDRO PASAG, REPRESENTED BY EUFREMIO PASAG;
HEIRS OF MARIA PASAG, REPRESENTED BY EPIFANIA LUMAGUI;
HEIRS OF JUANITA PASAG, REPRESENTED BY ASUNCION
ORTIOLA; HEIRS OF ISIDRO PASAG, REPRESENTED BY VIRGINIA
P. MENDOZA; HEIRS OF BASILIO PASAG, REPRESENTED BY
MILAGROSA P. NABOR; AND HEIRS OF FORTUNATA PASAG,
REPRESENTED BY FLORENTINA S. MEMBRERE, PETITIONERS, VS.
SPS. LORENZO AND FLORENTINA PAROCHA, PRISCILLA P.
ABELLERA, AND MARIA VILORIA PASAG, RESPONDENTS.**

DECISION

VELASCO JR., J.:

The rule on formal offer of evidence is not a trivial matter. Failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, as in this case, any evidence that has not been offered shall be excluded and rejected.

The Case

The present Petition for Review on Certiorari under Rule 45 seeks the annulment of the February 15, 2002 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 68544, and its September 6, 2002 Resolution^[2] denying petitioners' Motion for Reconsideration. In effect, petitioners entreat this Court to nullify the February 24, 2000 Resolution of the Urdaneta City Regional Trial Court (RTC), Branch 45 in Civil Case No. U-5743, granting the demurrer to evidence filed by respondents and dismissing their Complaint, which ruling was upheld by the CA.

The Facts

The instant case arose from a Complaint for Declaration of Nullity of Documents and Titles, Recovery of Possession and Ownership, Reconveyance, Partition and Damages filed by petitioners at the Urdaneta City RTC of Pangasinan against respondents. Petitioners alleged a share over three (3) properties owned by respondents, which formed part of the estate of petitioners' deceased grandparents, Benito and Florentina Pasag. They averred that Benito and Florentina Pasag died intestate, thus, leaving behind all their properties to their eight (8) children—Pedro, Isidro, Basilio, Severino, Bonifacio, Maria, Juanita, and Fortunata. However, Severino, the predecessor of respondents, claimed in an affidavit of self-adjudication that he is the sole, legal, and compulsory heir of Benito and Florentina Pasag. Consequently, he was able to appropriate to himself the properties covered by Original Certificates of Title (OCT) Nos. 2983 and 1887. Thereafter, Severino executed a deed of absolute sale over the said properties in favor of his daughter, respondent Florentina Parocha.

Moreover, petitioners alleged that Severino used the same affidavit of self-adjudication to secure a free patent over an agricultural land that had long been under the possession of Benito and Florentina Pasag.

In denying the material allegations in the Complaint, respondents averred in their Answer that the properties left behind by the spouses Benito and Florentina Pasag had already been partitioned among their eight (8) surviving children. They claimed that the parcels of land covered by OCT Nos. 2983 and 1887 are Bonifacio's share of which he later on renounced in a Quitclaim Deed in favor of his brother, Severino. As regards the parcel of land covered by OCT No. P-20607, respondents asserted that the said land had been in Severino's possession and occupation since 1940, thus, giving him the right to apply for and be granted a free patent over it. Having complied with the requirements of law, Severino's title had now become indefeasible.

The trial of the case commenced on March 19, 1996. On March 9, 1999, petitioners rested their case and were granted ten (10) days within which to submit their formal offer of documentary exhibits. However, petitioners failed to submit the said pleading within the required period.

On April 19, 1999, petitioners asked the trial court to give them until May 11, 1999 to submit their offer of evidence; and it subsequently granted their motion. However, on May 11, 1999, they again failed to submit their offer of evidence and moved for another extension of five (5) days.

Unfortunately, petitioners still failed to submit their formal offer of evidence within the extended period. Consequently, in its June 17, 1999 Order,^[3] the trial court deemed waived petitioners' right to make their formal offer of evidence.

On July 27, 1999, petitioners moved for the admission of their offer of evidence. On September 1, 1999, however, the trial court issued an Order^[4] denying petitioners' formal offer of evidence for their "consistent failure"^[5] to submit it.

On October 28, 1999, respondents filed a Motion to Dismiss on Demurrer to Evidence.

On February 24, 2000, in its Resolution,^[6] the trial court granted respondents' demurrer to evidence and ordered the dismissal of the Complaint. Petitioners' Motion for Reconsideration was denied for lack of merit.

Petitioners appealed the case to the CA.

The Ruling of the Court of Appeals

Affirming the ruling of the trial court, the CA held that petitioners failed to prove their claim by a preponderance of evidence. It observed that "no concrete and substantial evidence was adduced by [petitioners]"^[7] to substantiate their allegation that Severino, the predecessor of respondents, fraudulently executed an affidavit of self-adjudication in order to exclude petitioners from the settlement of the estate of Benito and Florentina Pasag.

The Issues

Petitioners submit the following issues for our consideration:

I.

The Hon. Court of Appeals committed reversible error in affirming the Decision of the Court a quo despite the gross negligence of their counsel thus depriving their rights to due process.

II.

The Court of Appeals committed reversible error in affirming the Decision of the trial court instead of remanding the case for further proceedings to clearly establish their respective claims on the subject properties.^[8]

Simply stated, the issues revolve on the propriety of the following: (1) waiver of petitioners' offer of documentary evidence; and (2) dismissal of the Complaint on a demurrer to evidence.

The Court's Ruling

The petition has no merit.

Waiver of the Offer of Evidence

The Rules of Court provides that "the court shall consider no evidence which has not been formally offered."^[9] A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial.^[10] Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence.^[11] On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.^[12]

Strict adherence to the said rule is not a trivial matter. The Court in *Constantino v. Court of Appeals*^[13] ruled that the formal offer of one's evidence is deemed waived after failing to submit it within a considerable period of time. It explained that the court cannot admit an offer of evidence made after a lapse of three (3) months because to do so would "condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice."^[14]

Applying the aforementioned principle in this case, we find that the trial court had reasonable ground to consider that petitioners had waived their right to make a formal offer of documentary or object evidence. Despite several extensions of time to make their formal offer, petitioners failed to comply with their commitment and allowed almost five months to lapse before finally submitting it. Petitioners' failure to comply with the rule on admissibility of evidence is anathema to the efficient, effective, and expeditious dispensation of justice. Under the Rule on guidelines to be

observed by trial court judges and clerks of court in the conduct of pre-trial and case of deposition and discovery measures,^[15] it is provided that:

On the last hearing day allotted for each party, he is required to make his formal offer of evidence after the presentation of his last witness and the opposing party is required to immediately interpose his objection thereto. Thereafter the judge shall make the ruling on the offer of evidence in open court. However, the judge has the discretion to allow the offer of evidence in writing in conformity with Section 35, Rule 132[.]

On the other hand, Section 35 of Rule 132 of the Rules of Court provides that "documentary and object evidence shall be offered after the presentation of a party's testimonial evidence." It requires that "such offer shall be done orally unless allowed by the Court to be done in writing.

"The pre-trial guidelines and Sec. 35 of Rule 132 jointly considered, it is made clear that the party who terminated the presentation of evidence must make an oral offer of evidence on the very day the party presented the last witness. Otherwise, the court may consider the party's documentary or object evidence waived. While Sec. 35 of Rule 132 says that the trial court may allow the offer to be done in writing, this can only be tolerated in extreme cases where the object evidence or documents are large in number—say from 100 and above, and only where there is unusual difficulty in preparing the offer.

The party asking for such concession should however file a motion, pay the filing fee, set the date of the hearing not later than 10 days after the filing of the motion,^[16] and serve it on the address of the party at least three (3) days before the hearing.^[17] In short, it is a litigated motion and cannot be done *ex parte*. Counsels for parties should not however rely on the benevolence of the trial court as they are expected to have thoroughly and exhaustively prepared for all possible pieces of evidence to be presented and the purposes for which they will be utilized. As a matter of fact, the draft of the offer of evidence can already be prepared after the pre-trial order is issued, for, then, the counsel is already fully aware of the documentary or object evidence which can be put to use during trial. Remember that under the pre-trial guidelines, the trial court is ordered to integrate in the pre-trial order the following directive:

No evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been identified below and pre-marked during the pre-trial. Any other evidence not indicated or listed below shall be considered waived by the parties. However, the Court, in its discretion, may allow introduction of additional evidence in the following cases: (a) those to be used on cross-examination or re-cross-examination for impeachment purposes; (b) those presented on re-direct examination to explain or supplement the answers of a witness during the cross-examination; (c) those to be utilized for rebuttal or sur-rebuttal purposes; and (d) those not available during the pre-trial proceedings despite due diligence on the part of the party offering the same.^[18]

It is apparent from the foregoing provision that both parties should obtain, gather, collate, and list all their respective pieces of evidence—whether testimonial,