

THIRD DIVISION

[G.R. NO. 133154, December 09, 2005]

JOWEL SALES, PETITIONER, VS. CYRIL A. SABINO, RESPONDENT

D E C I S I O N

GARCIA, J.:

Assailed and sought to be set aside in this petition for review on certiorari under Rule 45 of the Rules of Court are the following issuances of the Court of Appeals (CA) in *CA-G.R. SP No. 44078*, to wit:

1. Decision^[1] dated January 20, 1998, affirming an earlier order of the Regional Trial Court, Branch 152, National Capital Judicial Region, which admitted the deposition of one Buaneres Corral as part of respondent's evidence in an action for damages; and
2. Resolution^[2] dated March 22, 1998, denying petitioner's motion for reconsideration.

Briefly, the facts may be stated as follows:

On February 20, 1995, in the Regional Trial Court (RTC) at Pasig City, Metro Manila, herein respondent Cyril A. Sabino filed an amended complaint^[3] for damages against, among others, herein petitioner Jowel Sales, driver of the vehicle involved in the accident which ultimately caused the death of respondent's son, Elbert.

Before any responsive pleading could be filed, respondent, as plaintiff *a quo*, notified the defendants that he will take the deposition of one Buaneres Corral before the Clerk of Court, RTC- Pasig City.

On December 27, 1995 and resumed on January 3, 1996, the deposition on oral examination of Buaneres Corral was taken before the Clerk of Court of Pasig, in the presence and with the active participation of petitioner's counsel, Atty. Roldan Villacorta, who even lengthily cross-examined the deponent. In the course of trial, respondent had the deposition of Buaneres Corral marked as her Exhibits "DD"^[4] and "EE"^[5], with submarkings.

Upon conclusion of her evidentiary presentation, respondent made a Formal Offer of Exhibits,^[6] among which are Exhibits "DD" and "EE". Likewise offered in evidence as Exhibit "BB"^[7] is a certification from the Bureau of Immigration attesting to the May 28, 1996 departure for abroad of Buaneres Corral *via* Flight No. PR 658.

Petitioner opposed the admission of Exhs. "DD" and "EE" and even asked that they be expunged from the records on the ground that the jurisdictional requirements for

their admission under Section 4, Rule 23 of the Rules of Court, *infra*, were not complied with. He also downplayed the evidentiary value of Exhibit "BB" for reasons he would repeat in this petition.

In its order of February 3, 1997,^[8] the trial court admitted, among other evidence, respondent's Exhibits "DD", "EE" and "BB". With his motion for reconsideration^[9] having been denied by the court in its subsequent order of March 25, 1997,^[10] petitioner went on *certiorari* to the Court of Appeals in *CA-G.R. SP No. 44078*, imputing grave abuse of discretion on the part of the trial court in admitting in evidence the deposition in question (Exhibits "DD" and "EE").

As stated at the threshold hereof, the appellate court, in the herein assailed decision dated January 20, 1998,^[11] upheld the trial court and effectively denied due course to and dismissed petitioner's recourse, explaining, *inter alia*, that petitioner's active participation, through counsel, during the taking of subject deposition and adopting it as his own exhibits, has thereby estopped him from assailing the admissibility thereof as part of respondent's evidence. His motion for reconsideration having been denied by the appellate court in its equally assailed resolution of March 22, 1998, petitioner is now with us *via* the instant petition, raising the following issues of his own formulation:

1. Whether or not the requirements of Section 4, Rule 24 (now Section 3) of the Revised Rules of Court were satisfied by the respondent when it presented a certification attesting to the fact that deponent has left the country but silent as to whether or not at the time his deposition was offered in evidence is in the Philippines
2. Whether or not the petitioner in cross-examining the deponent during the taking of his deposition waived any and all objections in connection therewith.^[12]

The petition lacks merit.

Section 4, Rule 23^[13] of the Rules of Court, upon which petitioner mounts his challenge to the admission in evidence of the subject deposition, pertinently reads:

SEC. 4. Use of depositions.- At the trial . . . any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any of the following provisions:

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(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: **(1) that the witness is dead; or (2) that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; or (3) that the**