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FIRST DIVISION

[G.R. No. 146556. April 19, 2006]

DANILO L. PAREL, *petitioner, vs.* **SIMEON B. PRUDENCIO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; DECLARATION AGAINST INTEREST; RATIONALE.** — The theory under which declarations against interest are received in evidence notwithstanding they are hearsay is that the necessity of the occasion renders the reception of such evidence advisable and, further that the reliability of such declaration asserts facts which are against his own pecuniary or moral interest.

2. **ID.; ID.; ID.; THE BEST EVIDENCE WHICH AFFORDS THE GREATEST CERTAINTY OF THE FACTS IN DISPUTE.** — The affiant, Florentino, who dies in 1989 was petitioner's father and had adequate knowledge with respect to the subject covered by his statement. In said affidavit, Florentino categorically declared that while he is the occupant of the residential building, he is not the owner of the same as it is owned by respondent who is residing in Quezon City. It is safe to presume that he would not have made such declaration unless he believed it to be true, as it is prejudicial to himself as well as to his children's interests as his heirs. A declaration against interest is the best evidence which affords the greatest certainty of the facts in dispute.

3. **ID.; ID.; ID.; TAX RECEIPTS AND DECLARATIONS ARE PROOF THAT THE HOLDER HAS A CLAIM OF TITLE OVER THE PROPERTY.** — We agree with the CA that while tax receipts and declarations are not incontrovertible evidence of ownership, they constitute at least proof that the holder has a claim of the title over the property. The house which petitioner claims to be co-owned by his late father had been consistently declared for taxation purposes in the name of respondent, and this fact, taken with the other circumstances above-mentioned, inexorably

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lead to the conclusion that respondent is the sole owner of the house subject matter of the litigation.

4. ID.; ID.; WEIGHT AND INSUFFICIENCY; ONCE PLAINTIFF MAKES OUT A *PRIMA FACIE* CASE IN HIS FAVOR, THE DUTY OR THE BURDEN OF EVIDENCE SHIFTS TO DEFENDANT TO CONTROVERT PLAINTIFF'S *PRIMA FACIE* CASE. — Respondent having established his claim of exclusive ownership of the subject property, it was incumbent upon petitioner to contravene respondent's claim. The burden of evidence shifted to petitioner to prove that his father was a co-owner of the subject house. We held in *Jison v. Court of Appeals*, to wit: x x x Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's. The concept of "preponderance of evidence refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth.

5. ID.; ID.; PRESENTATION; OFFER OF EVIDENCE; IT IS THE DUTY OF A JUDGE TO REST HIS FINDINGS OF FACTS AND HIS JUDGMENT ONLY AND STRICTLY UPON THE EVIDENCE OFFERED BY THE PARTIES. — A formal offer is necessary because it is the duty of a judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties to the suit. It is a settled rule that the mere fact that a particular document is identified and marked as an exhibit does not mean that it has thereby already been offered as part of the evidence of a party.

6. CIVIL LAW; PROPERTY; THAT NO ONE OF THE WITNESSES SAW THE ALLEGED OWNER DURING THE CONSTRUCTION OF THE HOUSE DOES NOT ESTABLISH THE FACT THAT THE ONE WHO SUPERVISES ITS CONSTRUCTION IS THE CO-OWNER THEREOF. — Petitioner himself testified that it

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was his father who saw the progress of the construction and purchased the materials to be used; and as a young boy he would follow-up some deliveries upon order of his father and never saw respondent in the construction site. The fact that not one of the witnesses saw respondent during the construction of the said house doe not establish that petitioner's father and respondent co-owned the house.

7. ID.; DAMAGES; IT IS PROPER TO ORDER THE OCCUPANT TO PAY THE OWNER OF THE HOUSE A MONTHLY RENTAL FROM THE DATE OF THE EXTRA-JUDICIAL DEMAND; CASE AT BAR. — We also find that the CA did not err in ordering petitioner to pay respondent being the sole owner of the subject house a monthly rental of ₱2,000.00 from April 1988, the date of the extra-judicial demand, until petitioner actually vacates the subject house. Although the CA made no ratiocination as to how it arrived at the amount of ₱2,000.00 for the monthly rental, we find the same to be a reasonable compensation for the use of the ground floor of the subject house which consists of a living room, a dining room, a kitchen and three bedrooms. The rental value refers to the value as ascertained by proof of what the property would rent or by evidence of other facts from which the fair rental value may be determined.

8. ID.; ID.; ATTORNEY'S FEES; WHEN IT CAN BE AWARDED. — We likewise affirm the CA's award of attorney's fees in favor of respondent Article 2208 of the Civil Code allows the recovery of attorney's fees in cases when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest and in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered which are both shown in the instant case.

APPEARANCES OF COUNSEL

E.L. Gayo & Associates for petitioner.
Padilla Law Office for respondent.

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DECISION

AUSTRIA-MARTINEZ, *J.*:

Before us is a petition for review on *certiorari* filed by Danilo Parel (petitioner) which seeks to set aside the Decision[1] dated March 31, 2000 of the Court of Appeals (CA) which reversed the Decision of the Regional Trial Court (RTC), Branch 60, Baguio, in Civil Case No. 2493-R, a case for recovery of possession and damages. Also assailed is CA Resolution[2] dated November 28, 2000.

On February 27, 1992, Simeon Prudencio (respondent) filed a complaint for recovery of possession and damages against petitioner with the RTC Baguio alleging that: he is the owner of a two-storey residential house located at No. 61 Forbes Park National Reservation near Department of Public Service (DPS) compound, Baguio City; such property was constructed solely from his own funds and declared in his name under Tax Declaration No. 47048; he commenced the construction of said house in 1972 until its completion three years later; when the second floor of said house became habitable in 1973, he allowed petitioner's parents, Florentino (now deceased) and Susan Parel, to move therein and occupy the second floor while the construction of the ground floor was on-going to supervise the construction and to safeguard the materials; when the construction of the second floor was finished in 1975, respondent allowed petitioner's parents and children to transfer and temporarily reside thereat; it was done out of sheer magnanimity as petitioner's parents have no house of their own and since respondent's wife is the older sister of Florentino, petitioner's father; in November 1985, respondent wrote Florentino a notice

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[1] Penned by Associate Justice Corona Ibay-Somera (retired) and concurred in by Associate Justices Portia Aliño-Hormachuelos and Elvi John S. Asuncion; *rollo*, pp. 32-41.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos, concurred in by Associate Justices Martin S. Villarama, Jr. and Elvi John S. Asuncion; *Id.* at 60-61.

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for them to vacate the said house as the former was due for retirement and he needed the place to which petitioner's parents heeded when they migrated to U.S. in 1986; however, without respondent's knowledge, petitioner and his family unlawfully entered and took possession of the ground floor of respondent's house; petitioner's refusal to vacate the house despite repeated demands prompted respondent to file the instant action for recovery of possession. Respondent also asked petitioner for a monthly rental of ₱3,000.00 from April 1988 and every month thereafter until the latter vacates the said premises and surrender possession thereof; and for moral and exemplary damages, attorney's fees and cost of suit.

Petitioner filed his Answer with Counterclaim alleging that: his parents are the co-owners of the said residential house, *i.e.*, the upper story belongs to respondent while the ground floor pertains to petitioner's parents; he is occupying the ground floor upon the instruction of his father, Florentino, with respondent's full knowledge; his parents spent their own resources in improving and constructing the said two-storey house as co-owners thereof; the late Florentino was an awardee of the land on which the house stands and as a co-owner of the house, he occupied the ground floor thereof; the demand to vacate was respondent's attempt to deprive petitioner's parents of their rights as co-owner of the said house; that respondent had filed ejectment case as well as criminal cases against them involving the subject house which were all dismissed. Petitioner asked for the dismissal of the complaint and prayed for damages and attorney's fees.

After trial on the merits, the RTC rendered a Decision[3] dated December 15, 1993, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court hereby declares that the house erected at No. 61 DPS Compound, Baguio City is owned in common by the late Florentino Parel and herein plaintiff Simeon Prudencio and as such the plaintiff cannot evict the defendant as

[3] Penned by Judge Pastor V. de Guzman, Jr.; *Id.* at 81-84.

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heirs of the deceased Florentino Parel from said property, nor to recover said premises from herein defendant.

Likewise, the plaintiff is ordered to:

(a) pay the defendant in the total sum of ₱20,000.00 for moral and actual damages;
(b) pay the defendant ₱20,000.00 in Attorney's fees and ₱3,300.00 in appearance fees;
(c) pay the costs of this suit.[4]

The RTC found the following matters as conclusive: that petitioner's father was an allocatee of the land on which the subject house was erected, as one of the lowly-paid government employees at that time when then Mayor Luis Lardizabal gave them the chance to construct their own house on said reservation; that respondent failed to show proof of any contract, written or oral, express or implied, that the late Florentino and his family stayed on the house not as co-owners but as mere lessees, nor any other proof that would clearly establish his sole ownership of the house; and, that the late Florentino was the one who gathered the laborers for the construction of the house and paid their salaries. Thus, the RTC ruled that co-ownership existed between respondent and petitioner's father, Florentino.

The RTC concluded that respondent and petitioner's father agreed to contribute their money to complete the house; that since the land on which said house was erected has been allocated to petitioner's father, the parties had the understanding that once the house is completed, petitioner's father could keep the ground floor while respondent the second floor; the trial court questioned the fact that it was only after 15 years that respondent asserted his claim of sole ownership of the subject house; respondent failed to disprove that petitioner's father contributed his own funds to finance the construction of the house; that respondent did not question (1) the fact that it was the deceased Florentino who administered the construction of the house as well as the one who supplied the materials; and

[4] *Id.* at 84.

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(2) the fact that the land was in Florentino's possession created the impression that the house indeed is jointly owned by respondent and Florentino.

The RTC did not give credence to the tax declaration as well as the several documents showing the City Assessor's assessment of the property all in respondent's name since tax declarations are not conclusive proof of ownership. It rejected the affidavit executed by Florentino declaring the house as owned by respondent saying that the affidavit should be read in its entirety to determine the purpose of its execution; that it was executed because of an advisement addressed to the late Florentino by the City Treasurer concerning the property's tax assessment and Florentino, thought then that it should be the respondent who should pay the taxes; and that the affidavit cannot be accepted for being hearsay.

Aggrieved by such decision, respondent appealed to the CA. In a Decision dated March 31, 2000, the CA reversed the trial court and declared respondent as the sole owner of the subject house and ordered petitioner to surrender possession of the ground floor thereof to respondent immediately. It also ordered petitioner to pay respondent a monthly rental of ₱2,000.00 for use or occupancy thereof from April 1988 until the former actually vacates the same and the sum of ₱50,000.00 as attorney's fees and cost of suit.

The CA found as meritorious respondent's contention that since petitioner failed to formally offer in evidence any documentary evidence, there is nothing to refute the evidence offered by respondent. It ruled that the trial court's statement that "defendants' occupancy of the house is due to a special power of attorney executed by his parents most specially the deceased Florentino Parel who is in fact a co-owner of said building" is wanting of any concrete evidence on record; that said power of attorney was never offered, hence, could not be referred to as petitioner's evidence to support his claim; that except for the bare testimonies of Candelario Regua, the carpenter-foreman, that it was Florentino who constructed the house and Corazon Garcia, the former *barangay* captain, who

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testified that the lot was allocated to petitioner's father, there was no supporting document which would sufficiently establish factual bases for the trial court's conclusion; and that the rule on offer of evidence is mandatory.

The CA found the affidavit dated September 24, 1973 of Florentino, petitioner's father, stating that he is not the owner of the subject house but respondent, as conclusive proof of respondent's sole ownership of the subject house as it is a declaration made by Florentino against his interest. It also found the tax declarations and official receipts representing payments of real estate taxes of the questioned property covering the period 1974 to 1992 sufficient to establish respondent's case which constitute at least proof that the holder has a claim of title over the property.

Petitioner's motion for reconsideration was denied in a Resolution dated November 28, 2000.

Hence, the instant petition for review on *certiorari* with the following Assignment of Errors:

1. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING RESPONDENT AS THE OWNER OF THE BUILDING AT 61 FORBES PARK NATIONAL RESERVATION, NEAR DPS COMPOUND, BAGUIO CITY, NOTWITHSTANDING THE FINDING OF THE REGIONAL TRIAL COURT OF CO-OWNERSHIP BETWEEN THE LATE FLORENTINO PAREL AND RESPONDENT;
2. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ORDERING PETITIONER TO SURRENDER POSSESSION OF THE GROUND FLOOR OF THE SUBJECT BUILDING TO RESPONDENT;
3. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ORDERING PETITIONER TO PAY RESPONDENT ₱2,000.00/MONTH FOR USE OR OCCUPANCY OF THE SUBJECT PREMISES FROM APRIL 1988 UNTIL PETITIONER ACTUALLY VACATES THE SAME;
4. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ORDERING PETITIONER TO PAY TO RESPONDENT ₱50,000.00 ATTORNEY'S FEES AND COSTS OF SUIT;

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5. THE HONORABLE COURT OF APPEALS ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION.[5]

Petitioner concedes that while his former counsel failed to make a formal offer of his documentary evidence before the trial court and that the court shall consider no evidence which has not been formally offered, he maintains that the said rule is not absolute, citing the case of *Bravo, Jr. v. Borja*;[6] that his documentary evidence which were not formally offered in evidence were marked during the presentation of the testimony of petitioner's witnesses and were part of their testimonies; that these evidence were part of the memorandum filed by him before the trial court on July 12, 1993.

Petitioner insists that even in the absence of the documentary evidence, his testimony as well as that of his witnesses substantiated his claim of co-ownership of the subject house between his late father and respondent as found by the trial court.

Petitioner argues that the CA erred in finding the affidavit of petitioner's father declaring respondent as owner of the subject house as conclusive proof that respondent is the true and only owner of the house since the affidavit should be read in its entirety to determine the purpose for which it was executed.

Petitioner further contends that since he had established his father's co-ownership of the subject house, respondent has no legal right to eject him from the property; that he could not be compelled to pay rentals for residing in the ground floor of the subject house; that respondent should bear his own expenses and be adjudged liable for damages which petitioner sustained for being constrained to litigate.

The principal issue for resolution is whether petitioner was able to prove by preponderance of evidence that his father was a co-owner of the subject two-storey residential house.

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[5] *Id.* at 15-16.

[6] G.R. No. 65228, February 18, 1985, 134 SCRA 466.

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The issue raised by petitioner is mainly factual in nature. In general, only questions of law are appealable to this Court under Rule 45. However, considering that the findings of the RTC and CA are contradictory, the review of the case is in order.[7]

We agree with the CA that respondent had shown sufficient evidence to support his complaint for recovery of possession of the ground floor of the subject house as the exclusive owner thereof. Respondent presented the affidavit dated September 24, 1973 executed by Florentino and sworn to before the Assistant City Assessor of Baguio City, G.F. Lagasca, which reads:

> I, FLORENTINO PAREL, 42 years of age, employee, and residing at Forbes Park, Reservation No. 1, after having been sworn to according to law depose and say:
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> That he is the occupant of a residential building located at Forbes Park, Reservation No. 1, Baguio City which is the subject of an advicement addressed to him emanating from the Office of the City Assessor, Baguio City, for assessment and declaration for taxation purposes;
>
> That *I am not the owner of the building* in question;
>
> That *the building in question is owned by Mr. Simeon B. Prudencio who is presently residing at 55 Hyacinth, Roxas District, Quezon City.*
>
> Further, affiant say not.[8] (italics supplied)

Section 38 of Rule 130 of the Rules of Court provides:

> SEC. 38. *Declaration against interest.* – The declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to the declarant's own interest, that a

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[7] *Heirs of Miguel Franco v. Court of Appeals*, G.R. No. 123924, December 11, 2003, 418 SCRA 60, 67. Among the exceptional circumstances that would compel the Supreme Court to review the findings of fact of the lower courts is when the findings of fact are conflicting. *See e.g.*, *Sacay v. Sandiganbayan*, 226 Phil. Rep. 496, 510 (1986).

[8] Records, p. 154.

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reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors-in-interest and against third persons.

The theory under which declarations against interest are received in evidence notwithstanding they are hearsay is that the necessity of the occasion renders the reception of such evidence advisable and, further that the reliability of such declaration asserts facts which are against his own pecuniary or moral interest.[9]

The affiant, Florentino, who died in 1989 was petitioner's father and had adequate knowledge with respect to the subject covered by his statement. In said affidavit, Florentino categorically declared that while he is the occupant of the residential building, he is not the owner of the same as it is owned by respondent who is residing in Quezon City. It is safe to presume that he would not have made such declaration unless he believed it to be true, as it is prejudicial to himself as well as to his children's interests as his heirs.[10] A declaration against interest is the best evidence which affords the greatest certainty of the facts in dispute.[11] Notably, during Florentino's lifetime, from 1973, the year he executed said affidavit until 1989, the year of his death, there is no showing that he had revoked such affidavit even when a criminal complaint for trespass to dwelling had been filed by respondent against him (Florentino) and petitioner in 1988 regarding the subject house which the trial court dismissed due to the absence of evidence showing that petitioner entered the house against the latter's will and held that the remedy of respondent was to file an action for ejectment;[12] and even when

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[9] *Evidence*, Ricardo J. Francisco, Vol. VII, Part I, 1997 edition, p. 554, citing 20 Am. Jur. 468.

[10] *Del Mundo v. Court of Appeals* , G.R. No. L-25788, April 30, 1980, 97 SCRA 373, 380.

[11] *Supra* note 7, citing *Noda v. Cruz-Arnaldo*, G.R. No. 57322, June 22, 1987, 151 SCRA 227.

[12] Records, p. 199.

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a complaint for unlawful detainer was filed against petitioner and his wife also in 1988 which was subsequently dismissed on the ground that respondent's action should be an *accion publiciana* which is beyond the jurisdiction of the Municipal Trial Court.[13]

Moreover, the building plan of the residential house dated January 16, 1973 was in the name of respondent and his wife. It was established during petitioner's cross-examination that the existing structure of the two-storey house was in accordance with said building plan.[14]

Notably, respondent has been religiously paying the real estate property taxes on the house declared under his name since 1974.[15] In fact, petitioner during his cross-examination admitted that there was no occasion that they paid the real estate taxes nor declared any portion of the house in their name.[16]

We agree with the CA that while tax receipts and declarations are not incontrovertible evidence of ownership, they constitute at least proof that the holder has a claim of title over the property.[17] The house which petitioner claims to be co-owned by his late father had been consistently declared for taxation purposes in the name of respondent, and this fact, taken with the other circumstances above-mentioned, inexorably lead to the conclusion that respondent is the sole owner of the house subject matter of the litigation.

Respondent having established his claim of exclusive ownership of the subject property, it was incumbent upon petitioner to contravene respondent's claim. The burden of evidence shifted

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[13] *Id.* at pp. 346-347.

[14] TSN, March 10, 1993, pp.30-34.

[15] Records, p. 167 to 181; exhibits "N", "N-1" to "N-18".

[16] TSN, April 21, 1993, pp. 12-13.

[17] *Director of Lands v. Intermediate Appellate Court*, G.R. No. 68946, May 22, 1992, 209 SCRA 214, 227.

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to petitioner to prove that his father was a co-owner of the subject house.

We held in *Jison v. Court of Appeals*, to wit:[18]

xxx Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's. The concept of "preponderance of evidence" refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth.[19]

In this case, the records show that although petitioner's counsel asked that he be allowed to offer his documentary evidence in writing, he, however, did not file the same.[20] Thus, the CA did not consider the documentary evidence presented by petitioner. Section 34 of Rule 132 of the Rules of Court provides:

Section 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

A formal offer is necessary because it is the duty of a judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties to the suit.[21] It is a settled rule that the mere fact that a particular document is

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[18] 350 Phil. 138 (1998).

[19] *Id.* at 173.

[20] Records, p. 318.

[21] Francisco, *Comments on the Rules of Court,* Vol. VI, 1980 edition, p. 123, citing *U.S. v. Solana*, 33 Phil. 582 (1916) and *Dayrit v. Gonzalez*, 7 Phil. 182 (1906).

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identified and marked as an exhibit does not mean that it has thereby already been offered as part of the evidence of a party.[22]

Petitioner insists that although his documentary evidence were not formally offered, the same were marked during the presentation of the testimonial evidence, thus it can properly be taken cognizance of relying in *Bravo, Jr. v. Borja*.[23]

Such reliance is misplaced. In *Bravo Jr.*, we allowed evidence on minority by admitting the certified true copy of the birth certificate attached to a motion for bail even if it was not formally offered in evidence. This was due to the fact that the birth certificate was properly filed in support of a motion for bail to prove petitioner's minority which was never challenged by the prosecution and it already formed part of the records of the case. The rule referred to in the *Bravo* case was Section 7 of Rule 133 of the Rules of Court which provides:

> Section 7. *Evidence on motion.*— When a motion is based on facts not appearing of record, the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

and not Section 34 of Rule 132 of the Rules of Court which is the one applicable to the present case.

Even assuming *arguendo* that the documentary evidence of petitioner should be considered in his favor, the evidence showing that respondent had filed civil and criminal cases against petitioner which were dismissed as well as the alleged Special Power of Attorney of petitioner's parents whereby they authorized petitioner to stay in the ground floor of the house, did not establish co-ownership of Florentino and respondent of the subject house.

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[22] *People v. Gecomo*, 324 Phil. 297, 318 (1996); *Tabuena v. Court of Appeals*, 274 Phil. 51, 55 (1991).

[23] *Supra* note 6.

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The testimonies of petitioner and his witnesses failed to show that the subject house is co-owned by petitioner's father and respondent.

Candelario Regua merely testified that he was hired by petitioner's father, Florentino, to construct the residential building in 1972;[24] that he listed the materials to be used for the construction which was purchased by Florentino;[25] that he and his men received their salaries every Saturday and Wednesday from Florentino or his wife, respectively;[26] that he had not met nor seen respondent during the whole time the construction was on-going.[27] On cross-examination, however, he admitted that he cannot tell where the money to buy the materials used in the construction came from.[28]

Corazon Garcia merely testified that Florentino started building the house when he was allocated a lot at DPS compound, that she knew Florentino constructed the subject house[29] and never knew respondent.[30] The bare allegation that Florentino was allocated a lot is not sufficient to overcome Florentino's own affidavit naming respondent as the owner of the subject house.

Petitioner himself testified that it was his father who saw the progress of the construction and purchased the materials to be used;[31] and as a young boy he would follow-up some deliveries upon order of his father[32] and never saw respondent in the construction site. The fact that not one of the witnesses saw respondent during the construction of the said house does not establish that petitioner's father and respondent co-owned the house.

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[24] TSN, February 24, 1993, pp. 9-11.

[25] *Id.* at 11

[26] *Id.* at 12.

[27] *Id.* at 12-14.

[28] *Id.* at 23.

[29] TSN, March 10, 1993, pp. 10-11.

[30] *Id.* at 13.

[31] *Id.* at 29.

[32] *Id.*

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We also find that the CA did not err in ordering petitioner to pay respondent being the sole owner of the subject house a monthly rental of ₱2,000.00 from April 1988, the date of the extra-judicial demand, until petitioner actually vacates the subject house. Although the CA made no ratiocination as to how it arrived at the amount of ₱2,000.00 for the monthly rental, we find the same to be a reasonable compensation for the use of the ground floor of the subject house which consists of a living room, a dining room, a kitchen and three bedrooms. The rental value refers to the value as ascertained by proof of what the property would rent or by evidence of other facts from which the fair rental value may be determined.[33]

We likewise affirm the CA's award of attorney's fees in favor of respondent. Article 2208 of the Civil Code allows the recovery of attorney's fees in cases when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest[34] and in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered[35] which are both shown in the instant case.

WHEREFORE, the decision of the Court of Appeals dated March 31, 2000 and its Resolution dated November 28, 2000 are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Callejo, Sr., and *Chico-Nazario, JJ.,* concur.

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[33] *Asian Transmission Corporation v. Canlubang Sugar Estates*, G.R. No. 142383, August 29, 2003, 410 SCRA 202, 223 citing *Herpolsheimer v. Christopher*, 111 N.W. 359 (1907).

[34] Art. 2208 (2).

[35] Art. 2208 (11).