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P5.00 bill and later identified it at the trial as the money paid to the accused-appellant in exchange for the two sticks of marijuana

The Court notes that Kalubiran was accused only of selling the two sticks of marijuana under Section 4 of the Dangerous Drugs Act when he should also have been charged with possession of the 17 other sticks found on his person at the time of his arrest. It is unfortunate that he cannot be held to answer for the second offense because he has not been impleaded in a separate information for violation of Section 8 of the said law.

It is futile for Kalubiran to invoke the constitutional presumption of innocence because it has been overcome with overwhelming evidence establishing his guilt. His defense is not only weak; what is worse for him is that the prosecution is clearly strong and has proved his offense beyond the whisper of a doubt.

Persons like the accused-appellant deserve the severe sanctions of the law for the misery they spread among our people, especially the youth, many of whom have forfeited their future because of the evil influence of drugs. The strong arm of the law must never weaken against the onslaughts of this terrible affliction.

WHEREFORE, the appealed judgment is AFFIRMED *in toto.*

SO ORDERED.

*Narvasa (Chairman), Gancayco, Griño-Aquino*, and *Medialdea, JJ.*, concur.

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## FIRST DIVISION

(G.R. No. 85423. May 6, 1991)

## JOSE TABUENA, *petitioner, vs.* COURT OF APPEALS and EMILIANO TABERNILLA, JR., *respondents.*

### SYLLABUS

1. EVIDENCE; EVIDENCE NOT FORMALLY OFFERED CANNOT BE CONSIDERED NOR GIVEN ANY EVIDENTIARY VALUE.-- The mere fact that a particular document is marked as an exhibit does not mean it has thereby

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already been offered as part of the evidence of a party. They were not by such marking formally offered as exhibits. As we said in Interpacific Transit, Inc. v. Aviles, "At the trial on the merits, the party may decide to formally offer (the exhibits) if it believes they will advance its cause, and then again it may decide not to do so at all. In the latter event, such documents cannot be considered evidence, nor can they be given any evidentiary value."

2. ID; ID; RATIONALE OF THE RULE.-- The 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 at the trial.

3. ID; ID; WHEN CONSIDERED ADMISSIBLE AGAINST THE ADVERSE PARTY.-- We did say in People v. Napat-a that even if there be no formal offer of an exhibit, it may still be admitted against the adverse party if, first, it has been duly identified by testimony duly recorded and, second, it has itself been incorporated in the records of the case. But we do not find that these requirements have been satisfied in the case before us.

4. ID; ORIGINAL RECORD OF A CASE ARCHIVED; WHEN CONSIDERED READ INTO THE RECORD OF A CASE PENDING BEFORE A COURT; FAILURE TO ESTABLISH THE CONDITIONS.-- It is clear, though, that this exception is applicable only when, "in the absence of objection," "with the knowledge of the opposing party," or "at the request or with the consent of the parties," the case is clearly referred to or "the original or part of the records of the case are actually withdrawn from the archives" and "admitted as part of the record of the case then pending." These conditions have not been established here. On the contrary, the petitioner was completely unaware that his testimony in Civil Case No. 1327 was being considered by the trial court in the case then pending before it. As the petitioner puts it, the matter was never taken up at the trial and was "unfairly sprung" upon him, leaving him no opportunity to counteract.

5. ID; TAX RECEIPTS AND DECLARATION OF OWNERSHIP; ACCOMPANIED BY ACTUAL POSSESSION SUPPORT CLAIM OF OWNERSHIP.-- While it is true that by themselves tax receipts and declarations of ownership for taxation purposes are not incontrovertible evidence of ownership they become strong evidence of ownership acquired by

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prescription when accompanied by proof of actual possession of the property. It is only where payment of taxes is accompanied by actual possession of the land covered by the tax declaration that such circumstance may be material in supporting a claim of ownership.

6. ID; ACTS ACCOMPANYING CLAIM OF OWNERSHIP.-- All the acts of Damasa Timtiman and Jose Tabuena indicate that they were the owners of the disputed property. Damasa Timtiman and her forebears had been in possession thereof for more that fifty years and indeed, she herself stayed there until she died. She paid the realty taxes thereon in her own name. Jose Tabuena built a house of strong materials on the lot. He even mortgaged the land to the Development Bank of the Philippines and to two private persons who acknowledged him as the owner. These acts denote ownership and are not consistent with the private respondent's claim that the petitioner was only an overseer with mere possessory rights tolerated by Tabernilla.

7. ID; FACTUAL FINDINGS OF THE INFERIOR COURTS HELD NOT CONFORMABLE TO THE EVIDENCE ON RECORD.-- It is the policy of this Court to accord proper deference to the factual findings of the courts below and even to regard them as conclusive where there is now showing that they have been reached arbitrarily. The exception is where such findings do not conform to the evidence on record and appear indeed to have no valid basis to sustain their correctness. As in this case.

APPEARANCES OF COUNSEL

*Ramon Dimen* for petitioner.
*Dionisio A. Hernandez* for private respondent.

## DECISION

CRUZ, *J.:*

The petitioner faults the decision of the trial court, as affirmed by the respondent court, for lack of basis. It is argued that the lower courts should not have taken into account evidence not submitted by the private respondent in accordance with the Rules of Court.

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The subject of the dispute is a parcel of residential land consisting of about 440 square meters and situated in Poblacion, Makato, Aklan. In 1973, an action for recovery of ownership thereof was filed in the Regional Trial Court of Aklan by the estate of Alfredo Tabernilla against Jose Tabuena, the herein petitioner. After trial, judgment was rendered in favor of the plaintiff and the defendant was required to vacate the disputed lot.[1]

As the trial court found, the lot was sold by Juan Peralta, Jr. sometime in 1926 to Alfredo Tabernilla while the two were in the United States. Tabernilla returned to the Philippines in 1934, and Damasa Timtiman, acting upon her son Juan's instruction, conveyed the subject land to Tabernilla. At the same time, she requested that she be allowed to stay thereon as she had been living there all her life. Tabernilla agreed provided she paid the realty taxes on the property, which she promised to do, and did. She remained on the said land until her death, following which the petitioner, her son and half-brother of Juan Peralta, Jr., took possession thereof. The complaint was filed when demand was made upon Tabuena to surrender the property and he refused, claiming it as his own.

The trial court rejected his defense that he was the absolute owner of the lot, which he inherited from his parents, who acquired it even before World War II and had been living thereon since then and until they died. Also disbelieved was his contention that the subject of the sale between Peralta and Tabernilla was a different piece of land planted to coconut trees and bounded on three sides by the Makato River.

Tabuena appealed to the respondent court, complaining that, in arriving at its factual findings, the trial court *motu proprio* took cognizance of Exhibits "A", "B" and "C," which had been marked by the plaintiff but never formally submitted in evidence. The trial court also erred when, to resolve the ownership of the subject lot, it considered the proceedings in another case involving the same parties but a different parcel of land.

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[1] *Rollo*, pp. 59-72; decided by Judge Gerardo M.S. Pepito.

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The said exhibits are referred to in the pre-trial order as follows:

Plaintiff proceeded to mark the following exhibits: Exh. "A," letter dated October 4, 1921 addressed in Makato, Capiz, Philippines; Exh. "A-1," paragraph 2 of the letter indicating that the amount of P600.00 - the first P300.00 and then another P300.00 has interest since October 4, 1921; Exh. "A-2," is paragraph 3 of the letter; Exh. "B," a Spanish document; Exh. "C," deed of conveyance filed by Tomasa Timtiman and Alfredo Tabernilla in 1923; and Exh. "C-1," paragraph 4 of Exh. "C."

In sustaining the trial court, the respondent court held that, contrary to the allegations of the appellant, the said exhibits were in fact formally submitted in evidence as disclosed by the transcript of stenographic notes, which it quoted at length.[2] The challenged decision also upheld the use by the trial court of testimony given in an earlier case, to bolster its findings in the second case.

We have examined the record and find that the exhibits submitted were not the above-described documents but Exhibits "X" and "Y" and their sub-markings, which were the last will and testament of Alfredo Tabernilla and the order of probate. It is not at all denied that the list of exhibits does not include Exhibits "A," "B" and "C." In fact, the trial court categorically declared that "Exhibits `A,' `A-1,' `A-2,' `B,' `C,' and `C-1' were not among those documents or exhibits formally offered for admission by plaintiff-administratrix." This is a clear contradiction of the finding of the appellate court, which seems to have confused Exhibits "A," "B" and "C" with Exhibits "X" and "Y," the evidence mentioned in the quoted transcript.

Rule 132 of the Rules of Court provides in Section 35 thereof as follows:

Sec. 35. *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.

The mere fact that a particular document is marked as an exhibit does not mean it has thereby already been offered as part of the evidence of a party. It is true that Exhibits "A," "B" and "C" were marked at the pre-trial of the case below, but this was only for the purpose of identifying them at that time. They were not by such

[2] *Ibid.*, pp. 27-29; Gonzaga-Reyes, J., *ponente*, with Bellosillo and Marigomen, JJ., concurring.

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marking formally offered as exhibits. As we said in Interpacific Transit, Inc. *v.* Aviles,[3] "At the trial on the merits, the party may decide to formally offer (the exhibits) if it believes they will advance its cause, and then again it may decide not to do so at all. In the latter event, such documents cannot be considered evidence, nor can they be given any evidentiary value."

Chief Justice Moran explained the rationale of the rule thus:

> . . . The 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 at the trial.[4]

We did say in People *v.* Napat-a[5] that even if there be no formal offer of an exhibit, it may still be admitted against the adverse party if, first, it has been duly identified by testimony duly recorded and, second, it has itself been incorporated in the records of the case. But we do not find that these requirements have been satisfied in the case before us. The trial court said the said exhibits could be validly considered because, even if they had not been formally offered, one of the plaintiff's witnesses, Cunegunda Hernandez, testified on them at the trial and was even cross-examined by the defendant's counsel. We do not agree. Although she did testify, all she did was identify the documents. Nowhere in her testimony can we find a recital of the contents of the exhibits.

Thus, her interrogation on Exhibit "A" ran:

ATTY. LEGASPI: What is this Exh. "A" about?

A: The translation of the letter.

Q: What is the content of this Exh. "A", the letter of the sister of Juan Peralta to Alfredo Tabernilla?

Court: The best evidence is the document. Proceed.[6]

She also did not explain the contents of the other two exhibits.

The respondent court also held that the trial court committed no reversible error in taking judicial notice of Tabuena's testimony in a

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[3] 186 SCRA 385.

[4] Moran, Comments on the Rules of Court, Vol. 6, 1970 Ed., p. 21.

[5] 179 SCRA 403.

[6] TSN, April 17, 1980, p. 32.

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case it had previously heard which was closely connected with the case before it. It conceded that as a general rule "courts are not authorized to take judicial notice, in the adjudication of cases pending before them, of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been heard or are actually pending before the same judge."[7] Nevertheless, it applied the exception that:

> . . . in the absence of objection, and as a matter of convenience to all 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 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; or when the original record of the former case or any part of it, is actually withdrawn from the archives by 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.[8]

It is clear, though, that this exception is applicable only when, "in the absence of objection," "with the knowledge of the opposing party," or "at the request or with the consent of the parties," the case is clearly referred to or "the original or part of the records of the case are actually withdrawn from the archives" and "admitted as part of the record of the case then pending." These conditions have not been established here. On the contrary, the petitioner was completely unaware that his testimony in Civil Case No. 1327 was being considered by the trial court in the case then pending before it. As the petitioner puts it, the matter was never taken up at the trial and was "unfairly sprung" upon him, leaving him no opportunity to counteract.

The respondent court said that even assuming that the trial court improperly took judicial notice of the other case, striking off all reference thereto would not be fatal to the plaintiff's cause because "the said testimony was merely corroborative of other evidences submitted by the plaintiff." What "other evidences"? The trouble with this justification is that the exhibits it intends to corroborate, to

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[7] *Rollo*, p. 25.

[8] U.S. *v.* Claveria, 29 Phil. 527.

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wit, Exhibits "A," "B" and "C," have themselves not been formally submitted.

Considering the resultant paucity of the evidence for the private respondent, we feel that the complaint should have been dismissed by the trial court for failure of the plaintiff to substantiate its allegations. It has failed to prove that the subject lot was the same parcel of land sold by Juan Peralta, Jr. to Alfredo Tabernilla and not another property, as the petitioner contends. Even assuming it was the same lot, there is no explanation for the sale thereof by Juan Peralta, Jr., who was only the son of Damasa Timtiman. According to the trial court, "there is no question that before 1934 the land in question belonged to Damasa Timtiman." Juan Peralta, Jr. could not have validly conveyed title to property that did not belong to him unless he had appropriate authorization from the owner. No such authorization has been presented.

It is true that tax declarations are not conclusive evidence of ownership, as we have held in many cases. However, that rule is also not absolute and yields to the accepted and well-known exception. In the case at bar, it is not even disputed that the petitioner and his predecessors-in-interest have possessed the disputed property since even before World War II. In light of this uncontroverted fact, the tax declarations in their name become weighty and compelling evidence of the petitioner's ownership. As this Court has held:

While it is true that by themselves tax receipts and declarations of ownership for taxation purposes are not incontrovertible evidence of ownership they become strong evidence of ownership acquired by prescription when accompanied by proof of actual possession of the property.[9]

It is only where payment of taxes is accompanied by actual possession of the land covered by the tax declaration that such circumstance may be material in supporting a claim of ownership.[10]

The tax receipts accompanied by actual and continuous possession of the subject parcels of land by the respondents and their parents before them for more than 30 years qualify them to register title to the said subject parcels of land.[11]

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[9]Republic v. Court of Appeals, 131 SCRA 533.

[10]Heirs of Celso Amarante v. Court of Appeals, 185 SCRA 585.

[11]Samson v. Court of Appeals, 141 SCRA 194.

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The Court can only wonder why, if Alfredo Tabernilla did purchase the property and magnanimously allowed Damasa Timtiman to remain there, he did not at least require her to pay the realty taxes in *his* name, not hers. The explanation given by the trial court is that he was not much concerned with the property, being a bachelor and fond only of the three dogs he had bought from America. That is specious reasoning. At best, it is pure conjecture. If he were really that unconcerned, it is curious that he should have acquired the property in the first place, even as *dacion en pago*. He would have demanded another form of payment if he did not have the intention at all of living on the land. On the other hand, if he were really interested in the property, we do not see why he did not have it declared in his name when the realty taxes thereon were paid by Damasa Timtiman or why he did not object when the payments were made in her own name.

In comparison, all the acts of Damasa Timtiman and Jose Tabuena indicate that they were the owners of the disputed property. Damasa Timtiman and her forebears had been in possession thereof for more than fifty years and, indeed, she herself stayed there until she died.[12] She paid the realty taxes thereon in her own name.[13] Jose Tabuena built a house of strong materials on the lot.[14] He even mortgaged the land to the Development Bank of the Philippines and to two private persons who acknowledged him as the owner.[15] These acts denote ownership and are not consistent with the private respondent's claim that the petitioner was only an overseer with mere possessory rights tolerated by Tabernilla.

It is the policy of this Court to accord proper deference to the factual findings of the courts below and even to regard them as conclusive where there is no showing that they have been reached arbitrarily. The exception is where such findings do not conform to the evidence on record and appear indeed to have no valid basis to sustain their correctness. As in this case.

The conclusions of the trial court were based mainly on Exhibits "A," "B" and "C," which had not been formally offered as

[12] *Rollo*, p. 64.
[13] Exh. "7".
[14] *Rollo*, pp. 39-40.
[15] Exhs. "12", "13" and "14".

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evidence and therefore should have been totally disregarded, conformably to the Rules of Court. The trial court also erred when it relied on the evidence submitted in Civil Case No. 1327 and took judicial notice thereof without the consent or knowledge of the petitioner, in violation of existing doctrine. Thus vitiated, the factual findings here challenged are as an edifice built upon shifting sands and should not have been sustained by the respondent court.

Our own finding is that the private respondent, as plaintiff in the lower court, failed to prove his claim of ownership over the disputed property with evidence properly cognizable under our adjudicative laws. By contrast, there is substantial evidence supporting the petitioner's contrary contentions that should have persuaded the trial judge to rule in his favor and dismiss the complaint.

WHEREFORE, the petition is GRANTED. The appealed decision is REVERSED and SET ASIDE, with costs against the private respondent. It is so ordered.

*Narvasa (Chairman), Gancayco, Griño-Aquino* and *Medialdea, JJ.*, concur.

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**FIRST DIVISION**

(G. R. No. 86364. May 6, 1991)

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee vs.* LOPE ANDAYA, *accused-appellant.***

**SYLLABUS**

1. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF TRIAL JUDGE; CONCLUSIVE WITH SUPREME COURT.--** It is the policy of this Court to defer to the factual findings of the trial judge, who has the advantage of directly observing the witnesses on the stand and to determine by their demeanor whether they are telling or distorting the truth. Unless they come within the accepted exceptions, such findings are regarded as conclusive even upon this Court, which can examine