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faith. As a builder in bad faith he has no right to be refunded the value of the building for Article 449 of the Civil Code stipulates:

"Art. 449. He who builds, plant or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity."

The Court of Appeals committed no errors of a legal nature in its decision.

WHEREFORE, the petition is dismissed for lack of merit. Costs against the petitioner.

SO ORDERED.

***Makasiar, Guerrero, Melencio-Herrera, Plana, Escolin, Vasquez, Relova,* and *Gutierrez, Jr., JJ.,* concur.**

***Fernando, C.J.,* on official leave.**

Teehankee (Acting C.J.), Aquino, Concepcion Jr. and *De Castro, JJ.,* took no part.

FIRST DIVISION

[G.R. No. L-38139. May 16, 1983]

TEODORO DOMANICO and CONCEPCION C. DOMANICO, petitioners, *vs.* COURT OF APPEALS and TRINIDAD BAMBA, respondents.

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; INTERVENTION TO PROMOTE EXPEDITION, UNNECESSARY WASTE OF TIME OR TO CLEAR UP OBSCURITY IN A TRIAL OF A CASE, PROPER; RULE SUBJECT TO CERTAIN CAVEAT.— The rule is that a judge may properly intervene in a trial of a case to promote expedition and prevent unnecessary waste of time or to clear up some obscurity. But he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses or a severe attitude on

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his part toward witnesses especially those who are excited or terrified by the unusual circumstances of a trial may tend to prevent the proper presentation of the cause or the ascertainment of the truth in respect thereto.

2. ID.; ID.; ID.; BIAS EXHIBITED BY THE TRIAL JUDGE DID NOT PRECLUDE DEFENDANTS FROM MAKING ADEQUATE PRESENTATION OF THEIR CASE.— In the instant case, whatever apparent bias might have been exhibited by the trial judge showing some impatience against the defendants did not preclude the defense from making an adequate presentation of its side of the case. The Court of Appeals examined the cited testimony carefully and correctly ruled that "the appealed decision was not based on any immaterial matters elicited by the trial judge during his examination of defendant-appellant Domanico."

3. REMEDIAL LAW; NEW TRIAL; NON-EXISTENCE OF ANY ERROR OR IRREGULARITY IN THE RECORDS, GROUND FOR DENIAL OF NEW TRIAL.— We hold that the records do not show any error or irregularity that may be a ground for a new trial. The attitudes and actuations of the trial judge did not deprive the petitioners of a fair chance to present their side of the case. Petitioners were given all the opportunity to present their evidence.

APPEARANCES OF COUNSEL

Jose Lozada Lapak for petitioners.

Edmundo Narra for private respondent.

DECISION

GUTIERREZ, JR., *J.*:

This is a petition for review on certiorari of the decision of the respondent Court of Appeals which affirmed the judgment of the trial court rendered in favor of respondent Trinidad Bamba, as plaintiff in Civil Case No. 1731 lodged before the Court of First Instance of Camarines Norte.

We had earlier denied due course to the petition but upon the petitioner's insistence that they were denied substantial justice because of the allegedly biased participation of the trial judge in the examination of the petitioner, we reconsidered the resolution denying the petition.

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The facts antecedent to this petition were narrated by the Court of Appeals as follows:

"In its Civil Case No. 1713, the Court of First Instance of Camarines Norte rendered judgment, ordering 'the defendants to pay the plaintiff the sum of ₱5,000.00 as plaintiff's share of the profits of the store; likewise ordering the defendants to make the inventory of the store of Stall No. 17, and thereafter, to pay the plaintiff the corresponding value of 1/2 of the inventory goods of the store and also ordering the defendants to pay the plaintiff the sum of ₱500.00 for attorney's fees and incidental expenses as well as to pay the costs, and after the above amounts had been paid to the plaintiff, the partnership between the plaintiff and defendants is ordered dissolved and cancelled.'

"It appears from the evidence of plaintiff, that sometime in 1952, at her own initiative, she and defendants formed a partnership, putting up a store at the old market, located in the former Japanese camp site at Larap, J. Panganiban, Camarines Norte. They agreed to invest ₱200.00 each as the initial capital to start their business, plaintiff making the purchases of rice and other goods at the Central Trading in Daet. The necessary license was paid for and issued in the name of plaintiff. She and defendants helped each other in managing the store. When later defendant Teodoro Domanico became sick, he asked plaintiff to 'divide their capital including the profit,' as he was in need of money for medical treatment. At that time the store was worth ₱700.00. When they made the division, 'there were some goods and some cash left.' After defendant Teodoro Domanico had recovered from his sickness, he returned to the store and continued managing it. They used the cash left as capital of the store.

"In 1956, they transferred to a new market operated by the Philippine Iron Mines, Inc., as lessor of the stalls therein. When they transferred to the new market, they put up their store in Stall No. 10, but after two days the market supervisor told them to leave as it was not their place. Plaintiff then suggested to defendants that they pay their obligation and returned the remaining goods to the Central Trading, and in case they would find a place they would continue with their store business. Later, they acquired Stall No. 6 in the same market from spouses Teotimo Lozano and Pura Ramosa. They had their store in that stall for about 10 months.

"Defendant Teodoro Domanico became sick again, this time of stomach trouble. The management of the store was left to plaintiff and his (Teodoro's) wife. After two weeks, Teodoro Domanico saw plaintiff and told her that he would manage the store. As Stall No. 6 was being taken from them, she

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looked for another stall and found Stall No. 17 in the same market, which she acquired from Soledad Esmeña who allowed her to occupy said stall in the meantime that she could not pay her debt of ₱1,400.00 to plaintiff. Soledad Esmeña signed a statement, confirming that fact (Exhibit 'B').

"Plaintiff and defendants occupied Stall No. 17, the latter managing the store they put in that stall and the former participating in the management, 'because I help' - 'I am still a partner.' At that time, defendants told plaintiff not to deduct anything from the profit, but just to get her share from the sale of empty sacks. In the course of time, the goods and merchandise in the store 'became bigger.'

"In 1958, whenever plaintiff went to the store, defendants 'always have sour faces showing that they were not trusting me any more.' One time, when she met defendant Teodoro Domanico at the house of one Rufino Mazo whom they visited as the latter was then sick, plaintiff told him, 'I am already old. If I will be allowed, I want a liquidation. You ask and talk with your wife and whatever your decision would be, I will agree.' Defendant Teodoro Domanico did not say anything.

"The last time she went to the store in 1958, the store was worth ₱5,000.00, 'that is the profit because when we left the (former) Japanese camp we already withdrew our investment.' According to plaintiff, the profit of the store remained in the possession of defendants and she did not receive any share from them. She claims 'that the profit is the one we utilized again as capital.' " (Court of Appeals' decision, pp. 2-4)

. . . . . .

The Court of Appeals found no reversible error in the decision of the trial court and affirmed the same.

The petitioners raised the following alleged errors in their petition for review:

First Assigned Error

THAT THE RESPONDENT COURT OF APPEALS ERRED IN FINDING THAT THE ATTITUDE OF AND ACTUATIONS OF THE TRIAL JUDGE DID NOT DEPRIVE THE PETITIONERS OF A FAIR CHANCE TO AIR THEIR SIDE OF THE CASE.

Second Assigned Error

THAT THE RESPONDENT COURT OF APPEALS ERRED IN SUSTAINING THE FINDINGS AND CONCLUSIONS OF THE TRIAL JUDGE WHOM IT FOUND 'LACKED THE MODERATION EXPECTED OF HIM AS A TRIAL JUDGE.'

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Third Assigned Error

THAT THE RESPONDENT COURT OF APPEALS ERRED IN NOT SETTING ASIDE THE DECISION AND ORDERING A NEW TRIAL TO AFFORD THE PETITIONERS A FAIR CHANCE TO PRESENT THEIR EVIDENCE.

Relative to the first and second assignments of errors, the respondent Court of Appeals ruled that:

"The criticisms and complaint against the trial judge have the support of the record. He lacked the moderation expected of him as a trial judge." (Decision of Court of Appeals, p. 13)

Petitioners argue that with the findings of the respondent court that the criticisms of the trial judge have the support of the record it becomes clear that the petitioners have not been tried by a fair and impartial judge and thereby were unduly deprived of their right to due process. Where a party to a case was not given a fair trial, the petitioners state that a new trial should have been ordered.

We quote the portions of the testimony upon which the petitioners base this petition:

" 'ATTY. ARNOBIT:

" '. . ..

" 'Q Is the market in the Japanese camp still existing today?
" 'A No more.

" 'Q Where was it transferred, if it was transferred?
" 'A It was transferred to the main camp.

" 'Q What year was that?
" 'A 1956

" 'COURT:

Incompetent.

" 'ATTY. ARNOBIT:

He is aware because he is selling in that market.

" 'ATTY. NARRA:

That becomes now immaterial as to where the store is located. The fact is there is partnership.

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" 'COURT:

Objection sustained.

" '. . ..

" 'Q When, for the first time, did you start your business in the new market?

" 'A I started in 1956.

" 'Q When for the first time, did you start your business in the new market?

" 'A I started in 1956

" 'Q When you started in 1956, did you have any goods remaining coming from the Japanese camp market?

" 'ATTY. NARRA:

That has been admitted that the partnership existed and there was a store, and he transferred to the public market.

" 'ATTY. ARNOBIT:

What happened to the goods that remained when you transferred to the public market?

" 'ATTY. NARRA:

We object, because that becomes misleading. The goods were transferred to the main camp.

" 'ATTY. ARNOBIT:

Precisely, we are trying to find out what happened to the goods.

" 'ATTY. NARRA:

It is very leading.

" 'COURT:

Objection sustained.

" 'ATTY. ARNOBIT:

Were you in partnership with the plaintiff herein?

" 'ATTY. NARRA:

Counsel is impeaching his witness.

" 'COURT:

Objection sustained.

" '. . ..

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" 'COURT:

Go to the point.

" 'Q If the business was good, what was the reason why in 1956, you have to terminate the partnership between you and the plaintiff?

" 'A Because when the old market was removed from the Japanese Camp, we were not able to get a place anymore in the new market.

" 'Q Is it not a fact that after you transferred you bought the store of Cabales'?

" 'A I was able to buy it.

" 'Q And the business continued and as a matter of fact, it expanded'?

" 'A But in my name already, because the partnership was already terminated.

" 'Q How did you terminate the partnership'?

" 'A We divide and liquidated.

" 'Q When you first entered into a partnership, did you put down or draft an article of partnership between you and the plaintiff?

" 'A There is.

" 'Q Where is it'?

" 'A It is not existing now.

" 'Q Where is the original agreement of partnership or the articles'?

" 'A It was burned in Larap during the fire.

" 'Q When you terminated the partnership did you reduce that also in writing'?

" 'A No more.

" 'Q Did you make a liquidation of all the assets and liabilities of the partnership'?

" 'A We had a liquidation when we divided here in Daet.

" 'Q You did not reduce that into writing'?

" 'A No more.

" 'Q Will you tell the Court why is it that when you entered into a partnership, you made it into writing and when you terminated it in the height of making good profit and the business is progressing, you did not care to write down the termination of your partnership and liquidation'?

" 'A Because both party (sic) knew that our partnership was already terminated.

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" 'Q You are not answering my question. You answer my question.

" 'A Because I did not know that she will do this to me because of my confidence.

" 'Q What is this termination of this partnership? Was this suggested by you or this was suggested by the plaintiff?

" 'A By both of us.

" 'Q But, at the time you parted, according to you, not according to the plaintiff, the business was a going concern and as a matter of fact, it was making profits?

" 'A Yes, it was making profits.

" '. . ..

" 'COURT:

From the start of the business, Mr. Domanico, did you buy any license to operate the business?

" 'A Yes, sir.

" 'Q In whose name was it placed?

" 'A In my name.

" 'Q Not in the name of the partnership?

" 'A No, sir.

" 'Q So the partnership has no partnership name?

" 'A In our partnership, it was in her name.

" 'Q What do you mean to say, no partnership name or in your name?

" 'A There is none.

" 'Q When did you first purchase a license for the business?

" 'A In 1953.

" '. . ..

" 'Q What is the volume of business that you have in that place from 1953 to the present, what is the average?

" 'A It is only small.

" 'Q How much gross sale do you realize every year?

" 'A I could not estimate now because of the length of time.

" 'Q Do you have any daily sales report as required by the Bureau of Internal Revenue?

" 'A We have.

" 'Q Last year, what was your gross sale?

" 'A I had a gross sale of ₱3,000.00 plus.

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" 'Q Selling rice in that side of the store according to Exhibits E and E-1 to E-4?
" 'A Yes, sir.

" 'Q So, you are a tax evader?
" 'A That income is true.

" 'Q What is your license here? Do you understand what is gross sales?
" 'A Well it is about ₱10,000 gross sales.

" 'Q Do you file any income tax return?
" 'A I am filing but I am not paying yet.

" 'Q How many years have you started to file your income tax?
" 'A Four years already.

" 'Q And you have not paid any tax yet?
" 'A None yet.' (T.s.n., pp. 34-38; 49-51; 54-57, hearing of May 19, 1971)."

Petitioners submit that the foregoing incidents are incontrovertible proof demonstrating how the trial court interferred in the proceedings to obstruct and impede the petitioners in the presentation of their evidence.

The rule is that a judge may properly intervene in a trial of a case to promote expedition and prevent unnecessary waste of time or to clear up some obscurity. But he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial may tend to prevent the proper presentation of the cause or the ascertainment of the truth in respect thereto. (People *v.* Catindihan, 97 SCRA 196; See also Paragraph 14, Canons of Judicial Ethics, Administrative Order No. 162 dated August 1, 1946, 42 O.G. 1803):

" 'Judges are not mere referees like those of a boxing bout, only to watch and decide the results of a game; they should have as much interest as counsel in the orderly and expeditious presentation of evidence, calling attention of counsel to points at issue that are overlooked, directing them to ask the question that would elicit the facts on the issues involved, clarifying ambiguous remarks by witnesses, etc. (Ventura *vs.* Judge Yatco, 105 Phil. 287, 294, and also cited in People *v.* Catindihan, *supra.*)

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In the instant case, whatever apparent bias might have been exhibited by the trial judge showing some impatience against the defendants did not preclude the defense from making an adequate presentation of its side of the case. The Court of Appeals examined the cited testimony carefully and correctly ruled that "the appealed decision was not based on any immaterial matters elicited by the trial judge during his examination of defendant-appellant Domanico."

Relative to the third assignment of error the petitioners allege that the respondent Court of Appeals erred in not ordering a new trial to afford the petitioners a fair chance to present their evidence.

We hold that the records do not show any error or irregularity that may be a ground for a new trial. The attitudes and actuations of the trial judge did not deprive the petitioners of a fair chance to present their side of the case. Petitioners were given all the opportunity to present their evidence.

WHEREFORE, the petition for review on certiorari is hereby denied for lack of merit. The decision of the respondent Court of Appeals is affirmed.

SO ORDERED.

Teehankee (Acting C.J.), Plana and *Vasquez, JJ.*, concur.

Melencio-Herrera and *Relova, JJ.*, on leave.

EN BANC

[G.R. No. 51797. May 16, 1983]

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, *vs.* JOSE VERDAD alias ALFREDO VERDAD, defendant-appellant.