SEVERINO S. CAPIRAL, PETITIONER, VS. SIMEONA CAPIRAL ROBLES AND VICENTE CAPIRAL, RESPONDENTS.

G.R. No. 173628. November 16, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

Assailed in the present petition for review on certiorari under Rule 45 of the Rules of Court are the Decision[1] dated May 29, 2006 and Resolution[2] dated July 20, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 83223. The CA Decision dismissed petitioner's petition for certiorari and affirmed the August 15, 2003 and January 12, 2004 Orders of the Regional Trial Court (RTC) of Malabon City, Branch 74, in Civil Case No. 3430-MN, while the CA Resolution denied petitioner's Motion for Reconsideration.

The following are the factual and procedural antecedents of the instant case:

The instant petition arose from a Complaint for Partition with Damages filed with the RTC of Malabon City by herein respondents against herein petitioner and five other persons, all surnamed Capiral, whom respondents claim to be their co-heirs.[3]

On September 5, 2002, herein petitioner filed a Motion to Dismiss4 on grounds that respondents' Complaint lacked cause of action or that the same is barred by prescription and laches.

In their Opposition to herein petitioner's Motion to Dismiss, private respondents questioned the factual allegations of petitioner and contended that the property subject of the Complaint for Partition is covered by a Transfer Certificate of Title having been duly registered under the Torrens System and as such may not be acquired by prescription. Private respondents also argued that neither is the principle of laches applicable; instead, the doctrine of imprescriptibility of an action for partition should apply.

On February 21, 2003, the RTC issued an Order holding as follows:

> In the subject motion, defendant-movant [herein petitioner] claimed that prior to the death of their [predecessor-in-interest] Apolonio Capiral, he and his aunt, Arsenia Capiral, who died on 26 November 2002, has been in actual possession of the subject property and has been the one paying for its realty tax; that after the death of Apolonio Capiral, defendant movant “repudiated the co-ownership by permanently residing [in] the said property... ... that for more than ten (10) years now, defendant [-movant] has been openly, continuously and exclusively possessing the same in the concept of an owner” thus, the subject property cannot be the subject of the instant action for partition because the same has been acquired by defendant[-movant] .... thru prescription”; and that further, by plaintiffs' inaction for more than ten years in asserting their rights as co-owners, the principle of estoppel bars them from filing the instant complaint.
>
> The Court finds it necessary to set first the subject motion for further hearing for the reception of evidence of the parties pursuant to Sec. 2, Rule 16 of the 1997 Rules of Civil Procedure, x x x
>
> x x x x

> The allegations of defendant-movant that he has already repudiated the co-ownership and that plaintiffs are guilty of laches involve factual issues warranting a hearing on the matters in order for the parties herein, as mandated by the aforequoted rules, to submit their respective evidence on question of facts involved and for the Court to appreciate the same.
>
> WHEREFORE, premised considered, let the instant motion be set for hearing on April 10, 2003 at 8:30 o'clock in the morning.[5]

On August 12, 2003, petitioner filed a Motion to Resolve[6] praying that an Order be issued by the RTC resolving petitioner's Motion to Dismiss.

On August 15, 2003, the RTC issued its first assailed Order[7] denying petitioner's Motion to Resolve.

Petitioner filed a Motion for Reconsideration contending that there is no longer any need to set the case for hearing for the reception of evidence to prove the allegations in the Motion to Dismiss considering that, in their Opposition, herein respondents failed to deny nor rebut the material factual allegations in the said Motion.[8]

However, the RTC, in its second assailed Order dated January 12, 2004, denied petitioner's Motion for Reconsideration.[9]

Subsequently, petitioner filed a special civil action for certiorari with the CA, arguing that the RTC is guilty of grave abuse of discretion in issuing the abovementioned Orders.

On May 29, 2006, the CA promulgated its assailed Decision dismissing the special civil action for certiorari and affirming the disputed Orders of the RTC.

Petitioner filed a Motion for Reconsideration, but the CA denied it via its Resolution dated July 20, 2006.

Hence, the present petition with a sole Assignment of Error, to wit:

> THE COURT OF APPEALS COMMITTED A CLEAR AND REVERSIBLE ERROR WHEN IT HELD THAT THE TRIAL-TYPE HEARING REQUIRED BY THE TRIAL COURT FOR THE RESOLUTION OF THE MOTION TO DISMISS IS IN ACCORD WITH SECTION 2, RULE 16 OF [THE] RULES OF COURT.[10]

Petitioner contends that there is nothing in Section 2, Rule 16 of the Rules of Court which requires a trial-type hearing for the resolution of a motion to dismiss. Petitioner argues that the RTC, in requiring a trial-type hearing deferred the resolution of the subject Motion to Dismiss and, in so doing, violated Section 3, Rule 16 of the Rules of Court.

The Court does not agree.

Contrary to petitioner’s contention, insofar as hearings on a motion to dismiss are concerned, Section 2, Rule 16 of the Rules of Court sanctions trial-type proceedings in the sense that the parties are allowed to present evidence and argue their respective positions before the court, thus:

> Sec. 2. Hearing of Motion. - At the hearing of the motion, the parties shall submit their arguments on the questions of law and their evidence on the questions of fact involved except those not available at that time. Should the case go to trial, the evidence presented during the hearing shall automatically be part of the evidence of the party presenting the same.

In Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation,[11] this Court had occasion to rule that the issues raised in a motion to dismiss have to be determined in accordance with the evidence and facts presented, not on the basis of unsubstantiated allegations and that the courts could not afford to dismiss a

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litigant's complaint on the basis of half-baked conclusions with no evidence to show for it. In emphasizing the need for a formal hearing, this Court held that the demand for a clear factual finding to justify the grant or denial of a motion to dismiss cannot be dispensed with.[12] To this end, Section 2, Rule 16 of the Rules of Court allows not only a hearing on the motion to dismiss, but also for the parties to submit their evidence on the questions of fact involved, which may be litigated extensively at the hearing or hearings on the motion.[13] During the said hearings, the parties are allowed to submit their respective evidence, and even rebut the opposing parties' evidence.[14] The hearings should provide the parties the forum for full presentation of their sides.[15] Moreover, from the trial court's perspective, the extent of such hearings would depend on its satisfaction that the ground in filing the motion to dismiss has been established or disestablished.[16]

In the present case, petitioner's ground in filing his Motion to Dismiss is that he has been openly, continuously and exclusively possessing the subject property in the concept of an owner for more than ten years and that he has explicitly repudiated his co-ownership of the subject property with his co-heirs. Evidence is quite obviously needed in this situation, for it is not to be expected that said ground, or any facts from which its existence may be inferred, will be found in the averments of the complaint.[17] When such a ground is asserted in a motion to dismiss, the general rule governing evidence on motions applies.[18] The rule is embodied in Section 7, Rule 133 of the Rules of Court which provides that "[w]hen 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."

However, in the present case, there was no affidavit or any other documentary evidence attached to petitioner's Motion to Dismiss as proof of the averments contained therein. Thus, the RTC is justified in directing the conduct of further hearings to ascertain petitioner's factual allegations in its motion.

Indeed, unlike a motion to dismiss based on the failure of the complaint to state a cause of action, which may be resolved solely on the basis of the allegations of the complaint, the Motion to Dismiss filed by petitioner raised an affirmative defense that he has long been in possession of the disputed property as an owner and that he has repudiated his co-ownership of the subject property with private respondents and the other co-heirs. The motion thus posed a question of fact that should be resolved after due hearing.[19]

Neither may the trial court's act of setting the case for hearing in order to receive evidence be considered as a move to defer the resolution of petitioner's Motion to Dismiss. As discussed above, Section 2, Rule 16 is explicit in allowing the conduct of hearings and the reception of evidence on the questions of fact involved in the motion to dismiss.

Contrary to petitioner's asseveration, what is prohibited by the second paragraph of Section 3, Rule 16 of the same Rules is the deferment until trial of the resolution of the motion to dismiss itself.[20] Under the circumstances obtaining in the instant case, the assailed Orders of the RTC may not be construed as tantamount to deferring action on the motion to dismiss until trial is conducted.

In sum, the Court finds no error on the part of the CA in holding that the RTC did not commit grave abuse of discretion in issuing its assailed Orders.

WHEREFORE, the petition is DENIED. The May 29, 2006 Decision and the July 20, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 83223 are AFFIRMED. Let the records of this case be remanded to the Regional Trial Court of Malabon City, Branch 74, for further proceedings with dispatch.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Perez,[*] and Mendoza, JJ., concur.

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[*] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152, dated November 11, 2011.

[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Edgardo P. Cruz and Rosalinda Asuncion-Vicente, concurring; rollo, pp. 48-53.

[2] Id. at 55.

[3] Records, pp. 3-6.

[4] Id. at 28-35.

[5] Id. at 44-45.

[6] Id. at 91-92.

[7] Id. at 99.

[8] Id. at 103-107.

[9] Id. at 125-126.

[10] Rollo, p. 33.

[11] G.R. No. 152228, September 23, 2005, 470 SCRA 650.

[12] Id. at 662.

[13] Id.

[14] Id. at 663.

[15] Id.

[16] Id.

[17] Merrill Lynch Futures, Inc. v. CA, G.R. No. 97816, July 24, 1992, 211 SCRA 824, 834.

[18] Id.

[19] Heirs of Nepomucena Paez v. Torres, G.R. No. 104314, February 2, 2000, 324 SCRA 403, 412.

[20] Marquez v. Baldoz, G.R. No. 143779, April 4, 2003, 400 SCRA 669, 675.

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