

THIRD DIVISION

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

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

D E C I S I O N

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: