

SECOND DIVISION

[G.R. No. 161817, July 30, 2004]

**DANIEL D. CELINO, PETITIONER, VS. HEIRS OF ALEJO AND
TERESA SANTIAGO, RESPONDENTS.**

R E S O L U T I O N

TINGA, J.:

Before us is a petition for review of the *Decision*^[1] of the Court of Appeals promulgated on 28 October 2002 and its *Resolution*^[2] promulgated on 14 January 2004 denying petitioner's *Motion for Reconsideration*.

The case stemmed from an action for Quieting of Title, Recovery of Possession and Damages with Prayer for the Issuance of a Writ of Preliminary Mandatory Injunction filed by the heirs of Alejo and Teresa Santiago against herein petitioner Daniel Celino.^[3] Petitioner filed a *Motion to Dismiss*,^[4] alleging that complainant Juliet Santiago did not have the legal capacity to sue, since she did not have the corresponding written authority to represent her co-plaintiffs, and since the *Complaint* failed to state a cause of action. The trial court, presided by Judge Antonio C. Reyes, denied the said motion on the ground that the issues posed by petitioner could best be resolved during the trial.^[5] It likewise denied petitioner's motion for reconsideration.^[6]

Thereafter, pre-trial was held. There, plaintiff Juliet Santiago presented through counsel, a copy of the Special Power of Attorney^[7] executed by Virginia S. Robertson and Gloria S. Tinoyan, two of the plaintiffs in the *Complaint*, authorizing counsels Juan Antonio R. Alberto III and Alexander A. Galpo to represent them in the pre-trial of the case. Likewise submitted was a Special Power of Attorney^[8] executed by Romeo Santiago, Juliet Santiago and Larry Santiago in favor of above-named counsels to represent them in the pre-trial conference.

Trial ensued and plaintiffs therein, now respondents, presented their evidence. Petitioner filed a *Demurrer to Evidence*,^[9] still on the ground of Juliet Santiago's alleged lack of legal capacity to sue. Petitioner claimed that the evidence presented by Santiago should not be admitted since she failed to present any evidence of authority to file the complaint for and in behalf of her co-plaintiffs. In an *Order* dated 29 April 2002,^[10] Judge Reyes denied the *Demurrer*, stating that Juliet Santiago had submitted the necessary authorization. On 10 July 2002, the Judge denied petitioner's *Motion for Reconsideration*^[11] for lack of merit.^[12]

Petitioner thereafter filed a *Petition For Review on Certiorari*,^[13] seeking to nullify and set aside the 29 April 2002 and the 10 July 2002 orders of the trial court. In its *Decision* dated 28 October 2003, the Court of Appeals dismissed the petition, stating

that petitioner's allegation of lack of legal capacity to sue is not the ground contemplated by the Rules of Court to support an adverse party's *Demurrer to Evidence*.^[14] Thereafter, petitioner filed his *Motion for Reconsideration*,^[15] which was denied for lack of merit.^[16]

Petitioner now submits the following issues:

I. WHETHER OR NOT A DEMURRER TO EVIDENCE UNDER RULE 33 OF THE REVISED RULES OF COURT MAY BE RESORTED TO WHEN CLEARLY THE COMPLAINT (SIC) HAS NO AUTHORITY TO SUE FOR AND IN BEHALF OF HER CO-PLAINTIFFS.

II. WHETHER OR NOT THE COMPLAINT MAY BE DISMISSED FOR FAILURE OF CO-PLAINTIFFS TO EXECUTE AND SIGN THE CERTIFICATION AGAINST NON-FORUM SHOPPING.^[17]

A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence and is presented after the plaintiff rests his case.^[18] It is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue.^[19] The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case.^[20] Thus, as correctly held by the Court of Appeals, lack of legal capacity to sue is not a proper ground for a demurrer to evidence, pertaining as it does to a technical aspect, and it having nothing to do with the evidence on the merits of the complaint. Consequently, petitioner's *Demurrer to Evidence* and *Motion for Reconsideration* should be denied, as the trial court did.

Anent the second issue, we hold that the *Complaint* may not be dismissed on account of the failure of the other plaintiffs to execute and sign the certification against non-forum shopping.

Respondents herein are co-owners of two parcels of land owned by their deceased mother. The properties were allegedly encroached upon by the petitioner. As co-owners of the properties, each of the heirs may properly bring an action for ejectment,^[21] forcible entry and detainer,^[22] or any kind of action for the recovery of possession of the subject properties. ^[23] Thus, a co-owner may bring such an action, even without joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all.^[24] However, if the action is for the benefit of the plaintiff alone, such that he claims the possession for himself and not for the co-ownership, the action will not prosper.^[25]

It is clear from the *Complaint* that the same was made precisely to recover possession of the properties owned in common, and as such, will redound to the benefit of all the co-owners. Indeed, in the verification of the *Complaint*, Juliet Santiago claimed that she caused the preparation and the filing of the said pleading as a co-owner of the subject properties and as a representative of the other plaintiffs. Hence, the instant case may prosper even without the authorization from Juliet Santiago's co-plaintiffs.