

## FIRST DIVISION

[ G.R. No. 135920, October 26, 2001 ]

**ENCARNACION, RUFINA, MATEA, LAUREANA, FRANCISCO,+  
MARINA, AND RICARDO, ALL SURNAMED ESPIRITU, THE HEIRS  
OF FLORA ESPIRITU, NAMELY MERCEDES, RODOLFO, CHARITO,  
CERILO, EFREN AND ADELAIDA, ALL SURNAMED TRINIDAD,  
PETITIONERS, VS. SEVERINA REALTY CORPORATION, AND THE  
REGISTER OF DEEDS OF PARANAQUE, RESPONDENTS.**

### DECISION

**PARDO, J.:**

#### The Case

The case is an appeal from the decision of the Court Appeals<sup>[1]</sup> setting aside the orders of the trial court denying petitioners' motion to dismiss the complaint and ordering its dismissal on the grounds of prescription and *res judicata*.

#### The Facts

The facts, as found by the Court of Appeals, are as follows:

"The late Daniel Espiritu was one of the co-owners *pro-indiviso* of lots 1, 2, 3, and 4 of Plan PSU-167606-B consisting of about 10,510 square meters (hereafter called subject property). By virtue of a document denominated deed of sale dated 07 April 1969 purportedly executed by private respondents, subject property was sold for value to Investment and Development, Inc. Investment and Development, Inc. in turn purportedly sold the subject property to petitioner by virtue of a deed of sale dated 07 March 1979. Thereafter, petitioner filed an application for land registration of the subject property in LRC No. Pq-561-P with the then Court of First Instance of Rizal, Branch 29, stationed at Pasay City. In due course and after proceedings held, the said court in its decision dated 18 September 1981 ordered the issuance of Decree No. N-187142 and OCT No. 116 covering subject property, in the name of petitioner. The Land Registration Commission on 04 January 1983 issued OCT No. 116.

"As earlier mentioned, private respondents commenced Civil Case No. 96-0111 by filing a complaint on 27 February 1996. Notices of *lis pendens* were annotated on 01 March 1996 on the various TCTs arising from OCT No 116.

"On verbal motion of counsel of petitioner that a preliminary hearing be

held on its affirmative/special defenses as grounds for motion to dismiss and over the objection of counsel of private respondents, respondent Judge scheduled a hearing for it. On the basis of petitioner's manifestation that its evidence are merely documentary, the trial court gave it 15 days to file said evidence and a like period for private respondents to file their evidence. Petitioner herein made its formal offer of documentary evidence in support of its motion to dismiss. On the other hand, private respondents presented four witnesses in the persons of 1.) Atty. Roque O. Santos; 2.) Encarnacion Espiritu; 3.) Alejandro G. Gallos; and, 4.) Ricardo Espiritu.

"On 15 July 1997, respondent Judge issued the first questioned order denying petitioner's motion to dismiss, "for lack of factual and legal basis." Petitioner's motion for reconsideration subsequently filed suffered the same fate in respondent judge's order dated 07 October 1997. Hence, this petition citing as grounds for nullifying the questioned orders, the following.

"a.) That the Hon. Respondent Judge acted with grave abuse of discretion tantamount to lack of jurisdiction or excess of jurisdiction in holding in his Order dated July 15, 1997, that the contention of defendant now petitioner Severina Realty Corporation that the Court has no jurisdiction to hear and decide the within action, is clearly without basis, further holding that it is not simply exercising to annul the judgment of co-equal and coordinate court;

"b) That the respondent Judge also acted with grave abuse of discretion, tantamount to excess of jurisdiction in holding in said order July 15, 1997 that on the issue of RES JUDICATA, it appears that the cause of action in LRC No. Pq-561-P and in the present controversy are not identical, the former being an action in REM since it was directed on the land in question and the latter is an action in personam since it is a suit against the defendant.

"c) That the respondent Judge also acted with grave abuse of discretion, tantamount to lack of jurisdiction or excess of jurisdiction, in holding in his said order dated July 15, 1997, that the issue of prescription, New Civil Code provides that an action prescribed by mere lapse of time fixed by the law, that same code states that if the contract is void *ab initio*, action or defense for declaration of inexistence of the contract does not prescribe;

"d) The respondent Judge acted with grave abuse of discretion, tantamount to excess of jurisdiction or lack of jurisdiction, in holding with respect to want of cause action, the Court disagree with the defendant corporation."<sup>[2]</sup>

On July 26, 1996, the trial court issued an order denying petitioners' motion for production of document since the same is neither in the possession nor control of Severina.<sup>[3]</sup>

On July 29, 1996, at the pre-trial Severina orally moved that a hearing on her affirmative defenses be conducted, as if a motion to dismiss had been filed, which petitioner opposed.

The trial court conducted hearings. Severina simply presented documents consisting of the decision in LRC Case No. Pq-561-P.

On July 15, 1997, the trial court issued an order denying Severinas' affirmative and special defenses, the dispositive portions of which reads:

"In the light of the foregoing, the Affirmative/Special defenses interposed by herein defendant Corporation is hereby DENIED for lack of factual and legal basis.

"SO ORDERED."<sup>[4]</sup>

On October 28, 1997, respondents filed with the Court of Appeals a petition for *certiorari* to nullify the orders of the trial court.<sup>[5]</sup>

After due proceedings, on June 19, 1998, the Court of Appeals promulgated a decision, the dispositive portion of which reads:

"WHEREFORE, the orders dated 15 July 1997 and 7 October 1997 are hereby SET ASIDE and the complaint in Civil Case No. 96-0111 entitled "ENCARNACION, MATEA, LAUREANA, FRANCISCO, RUFINA, MARINA and RICARDO, all surnamed ESPIRITU, the Heirs of FLORA ESPIRITU, namely: MERCEDES, RODOLFO, CHARITO, CERILLO, EFREN and ADELAIDA, all surnamed TRINIDAD, Plaintiffs, versus SEVERINA REALTY CORPORATION and the REGISTER OF DEEDS OF PARANAQUE, Defendants," is ordered DISMISSED.

"SO ORDERED."<sup>[6]</sup>

Hence, this petition.<sup>[7]</sup>

### The Issues

Petitioners raise the following issues:<sup>[8]</sup>

1. Whether or not the Court of Appeals erred in dismissing Civil Case No. 96-0111, on the ground of prescription of action; and
2. Whether or not the Court of Appeals erred in ruling that the complaint is barred by *res judicata*

According to petitioners, the Court of Appeals overlooked that lapse of time is not