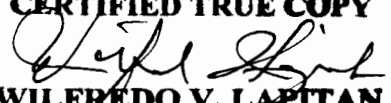




Republic of the Philippines
 Supreme Court
 Manila

CERTIFIED TRUE COPY

 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
 APR 08 2015

THIRD DIVISION

NORMA V. JAVATE,
 Petitioner,

G.R. No. 187606

Present:

- versus -

VELASCO, JR., J., *Chairperson,*
 PERALTA,
 VILLARAMA, JR.,
 REYES, and
 JARDELEZA, JJ.

SPOUSES RENATO J. TIOTUICO
and LERMA C. TIOTUICO,
 Respondents.

Promulgated:

March 9, 2015

X----------X

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* seeking to reverse and set aside the Decision¹ and Resolution² of the Court of Appeals (CA), dated December 18, 2008 and April 13, 2009, respectively, in CA-G.R. SP No. 104833.

The facts are as follows:

Petitioner was the owner of a one thousand square meter parcel of land in Mabalacat, Pampanga, which she mortgaged to Guagua Rural Bank (*Bank*) as security for the loan she obtained from the said Bank. Petitioner failed to pay her obligation and the Bank foreclosed the mortgage. The

¹ Penned by Associate Justice Romeo F. Barza, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Arcangelita M. Romilla-Lontok, concurring; Annex "A" to Petition, *rollo* pp. 25-31.

² Annex "C" to Petition, *id.* at 44-45.



subject lot was sold at public auction where the Bank was the highest bidder. A certificate of sale was then issued in favor of the Bank. After the one-year redemption period has expired without petitioner having redeemed the disputed property, the Bank consolidated its ownership over the same. As a consequence, the title covering the said lot was canceled, and in lieu thereof, a new title was issued in the name of the Bank. Subsequently, herein respondent spouses bought the subject lot from the Bank. A new title was later issued in the name of respondent spouses.

On December 9, 2004, respondent spouses filed a Petition for the Issuance of a Writ of Possession with the Regional Trial Court (RTC) of Angeles, City, Pampanga. On July 15, 2005, the RTC ruled in respondent spouses' favor and ordered the issuance of the writ prayed for. Petitioner appealed the RTC order on August 11, 2005.

Prior to the resolution of petitioner's appeal, respondent spouses filed a motion for the issuance of a writ of possession pending appeal. On March 28, 2006, the RTC issued an Order granting respondent spouses' motion. Petitioner filed a motion for reconsideration but the RTC denied it.

Petitioner then filed a petition for *certiorari* with the CA questioning the issuance of the above writ.³ In its Decision which was promulgated on March 18, 2008, the CA denied petitioner's petition. Petitioner's subsequent motion for reconsideration was likewise denied.

Petitioner then filed a petition for review on *certiorari* with this Court, which was docketed as G.R. No. 185266.⁴ On June 8, 2009, this Court's First Division issued a Resolution denying the petition for review on *certiorari* for petitioner's failure to sufficiently show that the CA committed any reversible error in the challenged CA decision and resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction. A motion for reconsideration was filed by petitioner, but the Court in a Resolution dated August 24, 2009 denied the motion. Thereafter, the Court issued an Entry of Judgment, stating that the decision in G.R. No. 185266 had become final and executory on October 8, 2009.

Meanwhile, on April 1, 2008, respondent spouses filed with the RTC a motion to implement the Writ of Possession which was earlier issued by the said court. In its Order dated June 27, 2008, the RTC granted respondent spouses' motion. Petitioner filed a motion for reconsideration, but the RTC denied it in its Order dated August 4, 2008.

³ Docketed as CA-G.R. SP No. 94772.

⁴ Entitled *Norma V. Javate v. Spouses Renato J. Tiotuico and Lerma C. Tiotuico*.

Petitioner then filed with the CA a special civil action for certiorari ascribing grave abuse of discretion on the part of the RTC in allowing the implementation of the questioned writ.⁵ In the presently assailed Decision, the CA dismissed petitioner's *certiorari* petition. The CA found that petitioner has resorted to the filing of a petition for *certiorari* as a scheme to delay the implementation of the disputed writ of possession. In any case, the CA held that, as owners of the subject property, respondents are entitled to its possession as a matter of right and that the issuance of the questioned writ is merely a ministerial function on the part of the RTC.

Petitioner filed a Motion for Reconsideration, but the CA denied it in its Order dated April 13, 2009.

Hence, the present petition for review on *certiorari* raising a sole issue, to wit:

Whether or not the respondents are entitled, as a matter of right, to the issuance of a writ of possession when they merely bought the subject property through private transaction and NOT through land registration proceedings, judicial foreclosure and extrajudicial foreclosure.⁶

Petitioner's basic contention is that respondents cannot obtain possession of the subject lot by the mere expedient of filing a petition for the issuance of a writ of possession. Petitioner argues that under the law, the Bank, being the buyer of the disputed lot during foreclosure sale, is the only one who is entitled, as a matter of right, to the issuance of the said writ; that respondents, being subsequent buyers of the subject property, should instead, resort to the appropriate judicial remedy, which is ejectment or *accion reivindicatoria* in order to gain possession thereof.

The Court does not agree.

Petitioner is correct in saying that respondents must resort to “judicial process” in order for them to obtain possession of the disputed lot. However, petitioner is wrong in positing that the only appropriate judicial actions or proceedings that should have been taken by respondents are either ejectment or a reivindicatory suit. On the other hand, respondents were correct in asking the court to issue a writ of possession.

⁵ Docketed as G.R. No. 104833.

⁶ *Rollo*, p. 14.

In the recent case of *Okabe v. Saturnino*,⁷ the RTC issued a writ of possession to enable a third-party purchaser to obtain possession of the subject property which was extrajudicially foreclosed. This Court, applying the rules on execution sale in a suppletory manner, sustained the issuance of the said writ and held as follows:

X X X X

It is but logical that Section 33, Rule 39 of the Rules of Court be applied to cases involving extrajudicially foreclosed properties that were bought by a purchaser and later sold to third-party-purchasers after the lapse of the redemption period. **The remedy of a writ of possession, a remedy that is available to the mortgagee-purchaser to acquire possession of the foreclosed property from the mortgagor, is made available to a subsequent purchaser, but only after hearing and after determining that the subject property is still in the possession of the mortgagor.** Unlike if the purchaser is the mortgagee or a third party during the redemption period, a writ of possession may issue *ex-parte* or without hearing. In other words, if the purchaser is a third party who acquired the property after the redemption period, a hearing must be conducted to determine whether possession over the subject property is still with the mortgagor or is already in the possession of a third party holding the same adversely to the defaulting debtor or mortgagor. **If the property is in the possession of the mortgagor, a writ of possession could thus be issued.** Otherwise, the remedy of a writ of possession is no longer available to such purchaser, but he can wrest possession over the property through an ordinary action of ejectment.

To be sure, immediately requiring the subsequent purchaser to file a separate case of ejectment instead of a petition for the issuance of a writ of possession, albeit not *ex-parte*, will only prolong the proceedings and unduly deny the subsequent purchaser of possession of the property which he already bought. (Emphasis supplied)

In the instant case, while respondents' petition for the issuance of a writ of possession was filed *ex-parte*, a “*hearing*” was, nonetheless, conducted when the RTC gave petitioner her day in court by giving her the opportunity to file various pleadings to oppose respondent's petition. “*To be heard*” does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.⁸

Moreover, there is no dispute that petitioner remained in possession of the subject property prior to the issuance of the questioned writ of possession. It is, thus, clear that respondents' resort, as a subsequent or third-party purchaser, to the petition for the issuance of a writ of possession is proper.

⁷ G.R. No. 196040, August 26, 2014.

⁸ *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, 524 Phil. 524, 529 (2006).

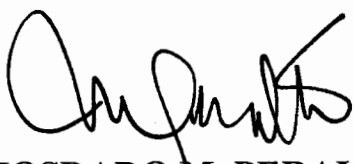
Indeed, the Court's pronouncement in *Okabe* regarding a subsequent purchaser's right to a writ of possession finds support in a previous ruling of this Court. In *Roxas v. Buan*,⁹ this Court has held that a writ of possession obtained by a mortgagee-purchaser in a foreclosure sale, after the expiration of the redemption period, may be enforced against the successor-in-interest of the mortgagor. Conversely, this Court finds logic in ruling that the successor-in-interest of the mortgagee-purchaser in a foreclosure sale, who already obtained title over the foreclosed property, may be issued a writ of possession as against the mortgagor who remains in possession of the subject property.

It may not be amiss to reiterate the Court's assertion in *Okabe* that to immediately require the subsequent purchaser to file a separate case of ejectment instead of a petition for the issuance of a writ of possession will only prolong the proceedings and unduly deny the subsequent purchaser of possession of the property which he already bought, as his right to such possession is simply a natural and necessary incident of his right as an absolute owner of the property.

Finally, it bears to point out at this stage that the Court agrees with the CA that petitioner's certiorari petition filed with the CA questioning the implementation of the subject writ of possession is a mere ploy to simply delay such implementation considering that the writ was issued almost ten (10) years ago. Petitioner was already given her day in court when she was earlier given the opportunity to file a suit to question the legality of the issuance of the writ, which case eventually reached this Court and was decided against petitioner. Thus, when this Court, in *GR. No. 185266*, upheld the trial court's issuance of the writ of possession in favor of the respondents, which judgment had become final and executory, there is no recourse other than to immediately proceed with the implementation of the writ, otherwise, the same will be a useless paper judgment.¹⁰ Verily, we find that the CA did not err in upholding the trial court's order to implement the writ of possession issued in respondents' favor.

WHEREFORE, the instant petition is **DENIED**. The Decision of the Court of Appeals, dated December 18, 2008, and its Resolution dated April 13, 2009 in CA-G.R. SP No. 104833, are **AFFIRMED**.

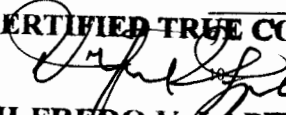
SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

CERTIFIED TRUE COPY


G.R. No. L-53798, November 8, 1988, 167 SCRA 43.

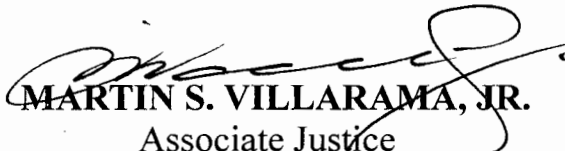
Bank of the Philippine Islands v. Spouses Tarampi, 594 Phil. 198, 206 (2008).


WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

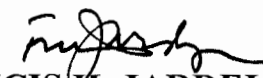
APR 08 2015

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

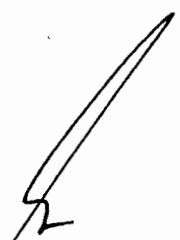

MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice

2019 AUG 23 11:02 AM
COURT OF APPEALS
RECORDS SECTION
1000