



Republic of the Philippines
 Supreme Court
 Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

SEP 08 2016

THIRD DIVISION

MILAGROS HERNANDEZ,
 represented by her Attorney-In-Fact,
 FE HERNANDEZ-ARCEO,
 Petitioner,

G.R. No. 181268

Present:
 VELASCO, JR., J., *Chairperson*
 PERALTA,
 PEREZ,
 REYES, and
 JARDELEZA, JJ.

- versus -

EDWINA C. OCAMPO,
 PHILIPPINE SAVINGS BANK,
 FELICITAS R. MENDOZA,
 METROPOLITAN BANK AND
 TRUST COMPANY, the SHERIFF,
 Regional Trial Court, Biñan, Laguna,
 and the REGISTER OF DEEDS,
 CALAMBA CITY, LAGUNA,

Respondents. Promulgated:

August 15, 2016

Wilfredo V. Lapitan

DECISION

JARDELEZA, J.:

This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Revised Rules of Court from the Decision² dated September 24, 2007 of the Court of Appeals (CA) in CA-G.R. SP. No. 90050, which affirmed the Order³ dated November 30, 2004 of the Regional Trial Court (RTC) of Biñan, Laguna, Branch 24 in Civil Case No. B-6191 for Annulment of Deed of Sale and Transfer Certificates of Title (TCT), and its Resolution⁴ dated January 14, 2008 denying petitioner's Motion for Reconsideration⁵ dated November 20, 2007.

¹ Rollo, pp. 15-28.
² Penned by Associate Justice Andres B. Reyes, Jr., and concurred in by Associate Justices Arcangelita Romilla-Lontok and Ramon M. Bato, Jr. of the Special Sixth Division. *Id.* at 114-124.
³ CA rollo, pp. 28-29.
⁴ Rollo, pp. 39-41.
⁵ *Id.* at 32-37.

J

The Facts

Petitioner Milagros Hernandez (Hernandez) alleges that sometime in 1985, she bought from Romeo Uy An (An) two parcels of land, Lot 8 Block 3 (Lot 8) and Lot 6 Block 3 (Lot 6), both located in Biñan, Laguna,⁶ as evidenced by a deed of sale.⁷ From 1985, she was in continuous, open, and adverse possession of these lots. Until now, her daughter, Fe Hernandez-Arceo and her family occupy them.⁸ Hernandez entrusted the registration of the lots in her name to her son-in-law, Ricardo San Andres. However, he died in 1991 without transferring the titles to Hernandez's name.⁹ At that time, Hernandez was already residing in the United States¹⁰ and was not aware of the non-registration of the lots. Due to old age, she has also not come back to the Philippines for a long time.¹¹

Sometime in 2002, Hernandez and her family were surprised to receive a letter from one Atty. Agapito Carait, who wrote in behalf of respondent Felicitas R. Mendoza (Mendoza), demanding that they vacate Lot 8.¹² Upon investigation, they discovered that the titles to the lots were registered in the names of Mendoza and respondent Edwina Ocampo (Ocampo) by virtue of a Deed of Sale dated April 13, 1989 executed by An. Lot 8 was then covered by TCT No. T-193772 and registered in the name of Mendoza, while Lot 6 was covered by TCT No. T-193773 and registered in the name of Ocampo.¹³

Hernandez and her family also discovered that the lots were mortgaged. Lot 8 was mortgaged with Metropolitan Bank and Trust Company (Metrobank) and Lot 6 was mortgaged with Philippine Savings Bank (PSB).¹⁴

Eventually, the mortgages were extrajudicially foreclosed and the lots were separately sold at public auctions with the two banks emerging as the highest bidders. Corresponding Certificates of Sale for Lot 6 and Lot 8 were issued to PSB and Metrobank, respectively. PSB registered Lot 6 on November 9, 2001¹⁵ and TCT No. T-518364 was issued in its name.¹⁶ Metrobank also registered Lot 8 on May 6, 2003¹⁷ and TCT No. T-550116 was issued in its name.¹⁸

⁶ *Id.* at 17, 115.

⁷ *CA rollo*, pp. 34-35.

⁸ *Rollo*, pp. 115-116.

⁹ *Id.* at 72, 115; *CA rollo*, p. 92.

¹⁰ *Rollo*, pp. 185, 191-192.

¹¹ *Id.* at 284.

¹² *Id.*

¹³ *Rollo*, pp. 284-285.


¹⁴ *Id.* at 284.

¹⁵ *Id.* at 245.

¹⁶ *Id.* at 285.

¹⁷ *Id.* at 134.

¹⁸ *Id.* at 285.



On January 18, 2002, PSB filed a petition for the issuance of writ of possession, docketed as LRC Case No. B-3071, before the RTC of Biñan, Laguna, Branch 24.¹⁹ The RTC granted the writ in an Order dated December 22, 2002.²⁰

Meanwhile, Hernandez filed a Complaint for Cancellation of Transfer Certificates of Title, which was raffled to the same RTC, Branch 24. The case, docketed as Civil Case No. B-6191, was filed against Mendoza, Ocampo, Metrobank, PSB, and the Register of Deeds of Calamba.²¹ The summonses were served upon Metrobank and PSB on November 25, 2002.²²

On March 24, 2004, the RTC in LRC Case No. B-3071 issued a Writ of Possession²³ in favor of PSB over the six lots subject of the petition, one of which was Lot 6.²⁴ A Notice to Vacate²⁵ was then issued on August 9, 2005. Both the Writ of Possession and the Notice to Vacate were addressed to Ocampo and her husband, Ricardo Ocampo, as mortgagors.

Hernandez then filed an Urgent Motion to Admit Supplemental Complaint With Motion For Temporary Restraining Order or Preliminary Prohibitory Injunction (Motion for Temporary Restraining Order or Preliminary Injunction)²⁶ in Civil Case No. B-6191 to stop PSB and the Sheriff from enforcing the writ.

On May 20, 2004, Metrobank filed a petition for the issuance of writ of possession docketed as LRC Case No. B-3389 before the same RTC, Branch 24.²⁷ The petition was granted on May 16, 2005, and a Writ of Possession²⁸ dated July 20, 2005 over Lot 8 was issued. Consequently, a Notice to Vacate²⁹ dated August 9, 2005 was also issued. Both the Writ of Possession and the Notice to Vacate were addressed to Mendoza. Although Metrobank was not originally impleaded in Hernandez's Motion for Temporary Restraining Order, it was later included as party respondent in the Compliance³⁰ dated October 2, 2008.³¹

¹⁹ *Id.* at 116, 245.

²⁰ *Id.* at 246.

²¹ *CA rollo*, pp. 90-96.

²² *Rollo*, pp. 57, 136.

²³ *Id.* at 42-45.

²⁴ *Id.* at 43.

²⁵ *Id.* at 46.

²⁶ *CA rollo*, pp. 129-147.

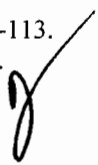
²⁷ *Rollo*, p. 134.

²⁸ *Id.* at 47-48.

²⁹ *Id.* at 49.

³⁰ *Id.* at 111-113.

³¹ *Id.* at 142.



The RTC's Ruling

The RTC denied Hernandez's Motion for Temporary Restraining Order or Preliminary Injunction in an Order³² dated November 30, 2004, the decretal portion of which reads:

WHEREFORE, premises considered, the petition for issuance of Temporary Restraining Order and/or injunction, for lack of merit is DENIED.

SO ORDERED.³³

The RTC ruled that the allegation of fraudulent registration of the titles in the names of Ocampo and Mendoza were evidentiary in nature and thus, must be proven through trial on the merits. It pointed out that PSB relied on the title of the property mortgaged, which was clean and free from any annotation, encumbrance, lien or any adverse claim. The RTC also agreed that the issuance of writ of possession is ministerial to the court after the lapse of one year to redeem the property.³⁴

Hernandez filed a Motion for Reconsideration, but it was also denied by the RTC.³⁵ She thereafter filed a Petition for *Certiorari* with Prayer for Preliminary Injunction³⁶ under Rule 65 of the Revised Rules of Court with the CA.³⁷

The Court of Appeals' Ruling

The CA dismissed the Petition for *Certiorari* in the now assailed Decision dated September 24, 2007, the relevant dispositive portion of which reads:

In sum, We find no grave abuse of discretion on the part of the court *a quo* in denying the issuance of a writ of preliminary injunction.

WHEREFORE, the petition for certiorari is hereby **DISMISSED**.

SO ORDERED.³⁸

The CA ruled that Hernandez was not able to prove a clear and unmistakable right, which is one of the requisites for the issuance of an injunction. Thus:

³² CA *rollo*, pp. 28-29.

³³ *Id.* at 29.

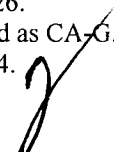
³⁴ *Id.* at 28-29.

³⁵ *Id.* at 70.

³⁶ *Id.* at 2-26.

³⁷ Docketed as CA-G.R. SP. No. 90050. *Rollo*, p. 285.

³⁸ *Id.* at 124.



x x x Since the issue of ownership is the crux in this case, as there were transfer certificates of title in the name of Ocampo and Mendoza while on the other hand the adverse possession as owners are alleged to be exercised by petitioner, there is no unmistakable right yet on the part of petitioner. As she still has to prove that she is the owner, it cannot be said that she has an existing right as the owner and is entitled to the writ of injunction. x x x³⁹

The CA found the TCTs in the names of Ocampo and Mendoza to be superior documents over Hernandez's Deed of Sale executed with An. Absent a finding that the TCTs were fraudulently obtained by Ocampo and Mendoza, the right of Hernandez cannot be considered yet as clear and unmistakable.⁴⁰

The CA also held that while petitioner is correct that there are exceptions to the rule that a writ of possession is ministerial, it cannot nullify the RTC's denial of the writ. The CA pointed out that the principle of non-interference between concurrent and coordinate courts applies in this case since the petition for issuance of preliminary injunction was filed in the same court that issued the writs of possession in two distinct and separate cases. The CA held:

x x x [T]he propriety of the writ of possession cannot be questioned by praying for a preliminary injunction in a case for annulment of the TCTs. And if the TCTs were issued in a judicial proceeding, it can neither be nullified by a co-equal body. The better remedy of petitioner is to directly question the writ of possession and to ask for its nullification with the proper court. x x x⁴¹

Hernandez filed a Motion for Reconsideration⁴² dated November 20, 2007, which was denied by the CA in its Resolution⁴³ dated January 14, 2008. Hence, this petition.

The sole issue presented is whether Hernandez is entitled to the issuance of a writ of preliminary injunction. Hernandez argues that she is not questioning the propriety of the issuance of the writs of possession against Ocampo and Mendoza. She insists that the writs of possession cannot be enforced against her because she was not privy to the foreclosure proceedings; otherwise, her right to due process of law will be violated. Hernandez claims that the writs of possession addressed to specific persons cannot be enforced against her, who is in actual possession of the property, and who has filed a case of annulment of titles based on a right independent of and adverse to the right of those to whom the writs were directed. She


³⁹ *Id.* at 119.

⁴⁰ *Id.* at 119-120.

⁴¹ *Id.* at 123.

⁴² *Id.* at 32-37.

⁴³ *Id.* at 39-41.



cites the settled rule that the issuance of a writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the mortgagor.

Both the respondent banks argue that a preliminary injunction is not the proper remedy because the issuance and enforcement of the writs of possession are ministerial duties of the court. They also argue that the legal requisites that have to be complied with in issuing an injunctive writ were not met since Hernandez does not have any clear and positive right over the properties.

Our Ruling

The petition is unmeritorious.

The writs of possession can be issued and implemented.

A writ of possession is generally understood to be an order whereby the sheriff is commanded to place a person in possession of a real or personal property.⁴⁴ It may be issued in: (1) land registration proceedings under Section 17 of Act No. 496;⁴⁵ (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (3) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135,⁴⁶ as amended by Act No. 4118; and (4) execution sales.

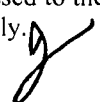
In cases of extrajudicial foreclosure sales of real estate mortgage under Section 7⁴⁷ of Act No. 3135, as amended, the purchaser or the mortgagee who is also the purchaser in the foreclosure sale may apply for a writ of possession either: (1) within the one-year redemption period, upon the filing of a bond; or (2) after the lapse of the redemption period, without

⁴⁴ *Chailease Finance Corporation v. Spouses Ma*, G.R. No. 151941, August 15, 2003, 409 SCRA 250, 252 citing *A.G. Development Corporation v. Court of Appeals*, G.R. No. 111662, October 23, 1997, 281 SCRA 155.

⁴⁵ The Land Registration Act (1902).

⁴⁶ An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed To Real Estate Mortgages (1924).

⁴⁷ Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.



need of a bond.⁴⁸ In *Nagtalon v. United Coconut Planters Bank*,⁴⁹ we explained these two instances when a purchaser can apply for a writ of possession:

During the one-year redemption period, as contemplated by Section 7 of the above-mentioned law, a purchaser may apply for a writ of possession by filing an *ex parte* motion under oath in the registration or cadastral proceedings if the property is registered, or in special proceedings in case the property is registered under the Mortgage Law. In this case, a bond is required before the court may issue a writ of possession.

On the other hand, upon the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale, also upon a proper *ex parte* motion. This time, no bond is necessary for its issuance; the mortgagor is now considered to have lost any interest over the foreclosed property. The purchaser then becomes the owner of the foreclosed property, and he can demand possession at any time following the consolidation of ownership of the property and the issuance of the corresponding TCT in his/her name. It is at this point that the right of possession of the purchaser can be considered to have ripened into the absolute right of a confirmed owner. The issuance of the writ, upon proper application, is a ministerial function that effectively forbids the exercise by the court of any discretion. This second scenario is governed by Section 6 of Act 3135, in relation to Section 35, Rule 39 of the Revised Rules of Court.⁵⁰ (Citations omitted.)

We have consistently held that the duty of the trial court to grant a writ of possession to a purchaser in a public auction is a ministerial function of the court, which cannot be enjoined or restrained, even by the filing of a civil case for the declaration of nullity of the foreclosure and consequent auction sale.⁵¹

Moreover, any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135. Such question cannot be raised to oppose the issuance of the writ, since the proceeding is *ex parte*.⁵²

However, this rule admits of an exception.

The provision of Section 33 of Rule 39 of the Rules of Court relative

⁴⁸ *Tolosa v. United Coconut Planters Bank*, G.R. No. 183058, April 3, 2013, 695 SCRA 138, 145.

⁴⁹ G.R. No. 172504, July 31, 2013, 702 SCRA 615.

⁵⁰ *Id.* at 623-624.

⁵¹ *Nagtalon v. United Coconut Planters Bank*, *supra*.

⁵² *LZK Holdings and Development Corp. v. Planters Development Bank*, G.R. No. 167998, April 27, 2007, 522 SCRA 731, 739.

to an execution sale applies to extrajudicial foreclosure of real estate mortgages by virtue of Section 6 of Act No. 3135, as amended.⁵³ Section 33, Rule 39 of the Rules of Court provides:

Section 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* – If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

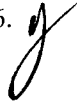
Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. **The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.** (Emphasis supplied.)

From the foregoing, upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment debtor to the property, and its possession shall be given to the purchaser or last redemptioner. It is but logical that Section 33, Rule 39 of the Rules of Court be applied also 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.⁵⁴ The possession of the property, however, will not be given to either the purchaser, redemptioner or third-party-purchaser when a third party is actually holding the property adversely to the judgment debtor. In which case, the issuance of the writ of possession ceases to be *ex-parte* and non-adversarial.

⁵³ *Okabe v. Saturnino*, G.R. No. 196040, August 26, 2014, 733 SCRA 652, 664-665; Section 6, Act No. 3135 provides:

Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors-in-interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

⁵⁴ *Okabe v. Saturnino*, supra at 666.



Thus, where the property levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to conduct a hearing to determine the nature of said possession, *i.e.*, whether or not he is in possession of the subject property under a claim adverse to that of the judgment debtor.⁵⁵

In *Philippine National Bank v. Court of Appeals*⁵⁶ and *Royal Savings Bank v. Asia*,⁵⁷ we held that the obligation of a court to issue an *ex parte* writ of possession in favor of a purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor.⁵⁸ This is because a third party, who is not privy to the debtor, is protected by law and can only be ejected from the premises after he has been given an opportunity to be heard, to comply with the time-honored principle of due process.⁵⁹ We further explained that protecting third party rights finds its basis in the Civil Code, thus:

Art. 433. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

Under the aforequoted provision, one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The term “judicial process” could mean no less than an ejectment suit or reivindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated.

An *ex-parte* petition for issuance of a possessory writ under Section 7 of Act No. 3135 is not, strictly speaking, a “judicial process” as contemplated above. Even if the same may be considered a judicial proceeding for the enforcement of one’s right of possession as purchaser in a foreclosure sale, it is not an ordinary suit filed in court, by which one party “sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.”

It should be emphasized that an *ex-parte* petition for issuance of a writ of possession is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act 3135, as amended. Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court, any property brought within the ambit of the act is foreclosed by the filing of a petition, not

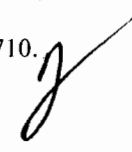
⁵⁵ *Id.*

⁵⁶ G.R. No. 135219, January 17, 2002, 374 SCRA 22.

⁵⁷ G.R. No. 183658, April 10, 2013, 695 SCRA 511.

⁵⁸ *Id.* at 518, citing *Barican v. Intermediate Appellate Court*, G.R. No. L-79906, June 20, 1988, 162 SCRA 358.

⁵⁹ *Id.* at 517, citing *Unchuan v. Court of Appeals*, G.R. No. L-78775, May 31, 1988, 161 SCRA 710.



with any court of justice, but with the office of the sheriff of the province where the sale is to be made.

As such, a third person in possession of an extrajudicially foreclosed realty, who claims a right superior to that of the original mortgagor, will have no opportunity to be heard on his claim in a proceeding of this nature. It stands to reason, therefore, that such third person may not be dispossessed on the strength of a mere *ex-parte* possessory writ, since to do so would be tantamount to his summary ejectment, in violation of the basic tenets of due process.⁶⁰ (Citation omitted.)

As stated, under the law, the third party's possession of the property is legally presumed to be pursuant to a just title, which may only be overcome by the purchaser in a judicial proceeding for recovery of the property. It is only through such a judicial proceeding that the nature of the adverse possession by the third party is determined, according such third party due process and the opportunity to be heard.⁶¹

The question now is whether Hernandez is a third party in possession of the property claiming a right adverse to that of the debtor/mortgagor. We rule in the negative. Who holds actual possession of the property in this case is uncertain and disputed.

In *Gopiao v. Metropolitan Bank & Trust Co.*,⁶² we ruled that there should be **certainty** of possession before applying the exception to the general rule in issuing writs of possession. Thus:

x x x The present case cannot be said to be identically analogous to any of the exceptions discussed above. While the facts of the foregoing rulings are similar to that of the instant case, there remains one crucial difference: the certainty of possession. In all three cases cited by the petitioner, the fact that the subject property was actually in the possession of the adverse third party is undisputed. x x x

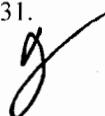
In contrast, petitioner's possession of the subject properties in this case is questionable. As correctly observed by the courts below, petitioner failed to substantiate his possession with sufficient evidence. x x x

Equally telling is that the titles covering the subject properties depict no trace of petitioner's claim. The findings of the trial court reveal that the unnotarized Deed of Sale is nowhere to be found on the dorsal side of the titles. There is likewise no notice or adverse claim annotated or inscribed at the back of the same. Upon

⁶⁰ *Philippine National Bank v. Court of Appeals*, *supra* note 56 at 31-32.

⁶¹ *Development Bank of the Philippines v. Prime Neighborhood Association*, G.R. Nos. 175728 & 178914, May 8, 2009, 587 SCRA 582, 597.

⁶² G.R. No. 188931, July 28, 2014, 731 SCRA 131.



verification at the Office of the Register of Deeds for the Province of Pampanga, Municipal Assessor and Treasurer's Office, respondent bank found out that the subject titles and latest tax declarations covering the disputed properties were still registered under the names of the Spouses Legaspi without any annotation on the same as to the existence of a sale between said spouses and petitioner.⁶³ (Emphasis supplied.)

Hernandez claims actual possession of the lots involved since 1985 through her daughter. However, in their comments, both banks alleged that they are mortgagees in good faith. They both alleged that they conducted ocular inspection on the lots and found both lots unoccupied.⁶⁴ They likewise made verifications with the Registry of Deeds of Calamba, Laguna, Municipal Assessor, and Treasurer's office, and found out that the TCTs and tax declarations were still registered in the name of Ocampo and Mendoza, without any annotations as to the existence of any encumbrances or liens, including adverse claims.⁶⁵ Following the case of *Gopiao*, the exception to the general rule does not apply in this case; hence, the issuance of the writs of possession continues to be ministerial.

However, we note that Hernandez is not without any remedy. A third person, who is not the judgment debtor, or his agent, can vindicate his claim to a property levied through the remedies of (1) *terceria*⁶⁶ to determine whether the sheriff has rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor and (2) an independent "separate action."

By the *terceria*, the officer shall not be bound to keep the property and could be answerable for damages. A third-party claimant may also resort to

⁶³ *Id.* at 141-142.

⁶⁴ *Rollo*, pp. 70 & 151.

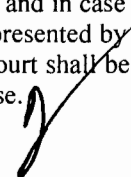
⁶⁵ *Id.* at 70-71 & 151.

⁶⁶ Section 16, Rule 39 of the Rules of Court provides:

Sec. 16. *Proceedings where property claimed by third person.* — If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and copy thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.



an independent “separate action,” the object of which is the recovery of ownership or possession of the property seized by the sheriff, as well as damages arising from wrongful seizure and detention of the property despite the third-party claim. If a “separate action” is the recourse, the third-party claimant must institute in a forum of competent jurisdiction an action, distinct and separate from the action in which the judgment is being enforced, even before or without need of filing a claim in the court that issued the writ. Both remedies are cumulative and may be availed of independently of or separately from the other.⁶⁷

In this case, Hernandez has already filed a separate action of annulment of title, which was a separate and distinct action from the *ex parte* petitions for issuance of writ of possession filed by PSB and Metrobank. It is in this action of annulment of title that Hernandez filed her urgent motion for issuance of a writ of temporary restraining order or preliminary injunction.

On that issue of injunction, PSB and Metrobank argue that the RTC, Branch 24 cannot enjoin itself from enforcing the writ of possession it earlier issued. The CA agreed with the respondent banks and ruled that if a writ of preliminary injunction is issued to stay the effects of the writ of possession, it would be an interference of a co-equal body. While this may not be technically correct, as there was only one court involved here,⁶⁸ we uphold the more relevant principle behind an injunctive writ.

Hernandez’s entitlement to the injunctive writ hinges on her *prima facie* right to the properties subject of Civil Case No. B-6191. However, her claims of possession and ownership are belied by the banks’ own claims. From these alone, it is clear that Hernandez failed to discharge the burden of showing a clear and unmistakable right to be protected. Where the complainant’s right or title is doubtful or disputed, injunction is not proper. The possibility of irreparable damage without proof of actual existing right is not a ground for an injunction.⁶⁹

The RTC is also correct in denying the motion to enjoin the implementation of the writs of possession because equally pertinent is the rule that courts should avoid issuing a writ of preliminary injunction, which in effect, would dispose of the main case without trial.⁷⁰

The ground relied upon by the trial court in not issuing the writ of preliminary injunction in this case is its doubt over petitioner’s allegations of bad faith on the part of Mendoza and Ocampo in the acquisition and titling of the properties, and on the part of the banks for allowing the mortgage of

⁶⁷ *China Banking Corporation v. Ordinario*, G.R. No. 121943, March 24, 2003, 399 SCRA 430, 435-436.

⁶⁸ See *Royal Savings Bank v. Asia*, *supra* note 57.

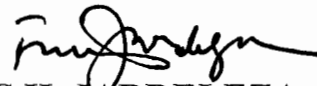
⁶⁹ *Medina v. Greenfield Development Corporation*, G.R. No. 140228, November 19, 2004, 443 SCRA 150, 159.

⁷⁰ *Id.* at 161, citing *Searth Commodities Corp. v. Court of Appeals*, G.R. No. 64220, March 31, 1992, 207 SCRA 622, 629-630.

the properties. If the RTC were to grant the motion on these grounds, it would be virtually recognizing petitioner's claim that the deeds of conveyances and the titles are a nullity without further proof to the detriment of the doctrine of presumption of validity in favor of these documents. As we have stated in *Medina v. Greenfield Development Corporation*,⁷¹ there would, in effect, be a prejudgment of the main case and a reversal of the rule on the burden of proof since the courts would be assuming propositions, which claimants are inceptively duty bound to prove.


WHEREFORE, the Petition is **DENIED**. The Decision dated September 24, 2007 of the Court of Appeals in CA-G.R. SP. No. 90050 is hereby **AFFIRMED**.

SO ORDERED.



FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice




BIENVENIDO L. REYES
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.

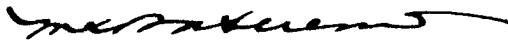
⁷¹ *Id.*



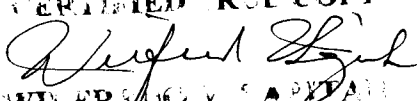
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified 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

CERTIFIED TRUE COPY

WILFREDO V. SAPITAN
 Division Clerk of Court
 Third Division

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