



Mis D C Batt
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Third Division

Republic of the Philippines
Supreme Court
Manila

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SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

SPOUSES SALVADOR BATOLINIO
AND AMOR P. BATOLINIO,
REPRESENTED BY ROY B.
PANTALEON AS ATTORNEY-IN-
FACT,

Petitioners,

G.R. No. 206598

Present:

PERALTA, J., *Chairperson,*
LEONEN,
REYES, A., JR.,
HERNANDO, and
INTING, JJ.

- versus -

Promulgated:

September 4, 2019

Mis D C Batt

SHERIFF JANET YAP-ROSAS AND
PHILIPPINE SAVINGS BANK,

Respondents.

X ----- X

RESOLUTION

INTING, J.:

This Petition for Review on *Certiorari* assails the Decision¹ dated November 27, 2012 of the Court of Appeals (CA), dismissing the petition for *certiorari* filed therewith, and its Resolution² dated April 4, 2013, denying the motion for reconsideration, in CA-G.R. SP No. 117859.

¹ *Rollo*, pp. 73-82; penned by Associate Justice Amelita G. Tolentino, and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser.

² *Id.* at 84-85.

The Antecedents

The present case stemmed from an *Ex Parte* Petition³ for the issuance of a writ of possession filed by Philippine Savings Bank (private respondent). According to private respondent: on October 26, 2007, Nicefora Miñoza (Miñoza) obtained a loan from it in the amount of P5.7 Million;⁴ as security thereof, Miñoza executed a real estate mortgage (REM) over a parcel of land registered under her name, located in Las Piñas City and covered by Transfer Certificate of Title (TCT) No. T-108184⁵ (subject property); Miñoza failed to pay the loan when it fell due; thus, private respondent instituted an extrajudicial foreclosure of the REM; and later, it emerged as the highest bidder at the public auction such that a certificate of sale was eventually issued in its favor and registered with the Registry of Deeds on June 23, 2008. Private respondent added that it demanded from Miñoza and all those persons claiming rights under her to vacate the subject property, but to no avail.

On July 29, 2010, the Regional Trial Court (RTC) of Las Piñas City, Branch 198 granted⁶ the petition and issued the corresponding writ of possession.⁷ In granting the petition, the RTC noted that after the certificate of sale was issued and subsequent to the expiration of the redemption period, private respondent caused the consolidation of title and a new one (TCT No. T-118772) was issued in its name. This being the case, the RTC ruled that the issuance of a writ of possession became a matter of right in favor of private respondent.

Meanwhile, spouses Salvador Batolinio and Amor P. Batolinio (petitioners) filed an Omnibus Motion with Prayer for the Issuance of a Preliminary Mandatory Injunction.⁸ They claimed that they were the owners of the subject property, which was previously covered by TCT No. T-80337 under their name. They stated that in 2003, they mortgaged it to Union Bank of the Philippines (Union Bank), but in September 2007, through a certain Leonila Briones, Yolanda Vargas, and Fedeline Balbis, they decided to sell it to Miñoza for P2.435 Million. Allegedly, the aforesaid sale was subject to these conditions: (1) Miñoza would secure financing from one Velez and Maria Elena Simbulan, who, in turn, would pay petitioners' balance with

³ Id. at 243-248.

⁴ Id. at 249.

⁵ Id. at 191-193.

⁶ Id. at 138-140; penned by Judge Erlinda Nicolas-Alvaro.

⁷ Id. at 136-137.

⁸ Id. at 149-174.

Union Bank; (2) Miñoza would then secure a loan from private respondent for ₱5.5 Million using the same property as collateral; and (3) upon approval of the loan, private respondent would release the proceeds to petitioners.

While petitioners asserted that Miñoza, in cahoots with other people, forged their signatures in the deed of sale and certificate of full payment pertaining to the subject property, they confirmed having executed a letter of guaranty for private respondent to facilitate the loan of Miñoza. At the same time, they stated that they filed an adverse claim on the subject property as well as a civil case⁹ for cancellation of title, specific performance, and damages against Miñoza, among other persons.

Petitioners added that they were third persons claiming rights adverse to Miñoza; thus, they could not be deprived of the possession of the subject property without being heard of their claim first. They further argued that private respondent was not a mortgagee or purchaser for value as it purportedly did not observe due diligence before entering into a mortgage agreement with Miñoza. Lastly, they confirmed receiving a notice to vacate relative to the grant of private respondent's petition for the issuance of a writ of possession.

Ruling of the RTC

In its Order¹⁰ dated December 17, 2010, the RTC denied petitioners' Omnibus Motion. It stressed that since its Decision dated July 29, 2010 already became final and executory, then the issuance of a writ of possession could no longer be enjoined. It added that it was its ministerial duty to issue a writ of possession upon the *ex parte* application of private respondent which had caused the extrajudicial foreclosure of the REM and acquired the subject property in a foreclosure sale. It decreed that the pendency of the civil case filed by petitioners would not bar the issuance of such writ in favor of private respondent.

Undaunted, petitioners filed a petition for *certiorari* with the CA.

⁹ Id. at 208-221.

¹⁰ Id. at 142-143.

As

Ruling of the CA

On November 27, 2012, the CA dismissed the petition.

The CA elucidated that because petitioners sold the subject property to Miñoza through an absolute sale and made no reservation of ownership until its full payment, they parted with their ownership, leaving them without anymore right over the land in dispute. It also explained that petitioners could not be considered third parties whose rights were adverse to Miñoza because of the same reason that they already sold their rights and participation over the property through an absolute sale.

In addition, the CA ruled that petitioners' allegation that private respondent was not a mortgagee or buyer in good faith would not warrant the suspension of the writ of possession because questions on the validity of the mortgage, its foreclosure or sale were not grounds for the denial of the issuance of a writ of possession. Finally, it decreed that until the foreclosure sale was annulled, the issuance of the writ of possession was ministerial.

On April 4, 2013, the CA denied petitioners' motion for reconsideration.

Hence, petitioners filed this Petition raising the following issues:

Issues

- a. xxx [W]hether it was correct for the [CA] to rule that the petitioners do not fall under the category of a "third party who [is] actually holding the property adversely to the judgment obligor" on the ground that the petitioners have already parted with their ownership of the subject property;
- b. Whether it was correct for the [CA] to rule on an issue of fact — though not raised on appeal — which is yet to be determined by a lower court of competent jurisdiction;
- c. Whether it was correct for the [CA] to rule that the issue of [private] respondent xxx being a mortgagee or buyer in good faith or for value does not warrant the suspension of the writ of possession;
- d. Whether the RTC Branch 198 has been impartial or unbiased in adjudicating LRC Case No. LP-09-0030.¹¹

¹¹ Id. at 43-44.

Petitioners contend that the deed of sale they purportedly executed in favor of Miñoza was fraudulent. According to them, due to such forged deed, Miñoza acquired no right over the subject property and she could not convey it to private respondent; and, all transactions subsequent to the sale between her and private respondent are also void. They further claim that they have been in open, exclusive and continuous possession of the subject property which proves that they are its owners.

Petitioners likewise posit that they assert a claim of ownership adverse to that of Miñoza and private respondent. They argue that their rights as third parties cannot be resolved in an *ex parte* proceeding where they were not impleaded or where they did not appear to present their side.

Finally, petitioners maintain that private respondent was not a mortgagee or purchaser in good faith and for value because it did not exercise due diligence required of banking and financial institutions before entering into a mortgage contract with Miñoza. They insist that the fact that the property in dispute was not in possession of Miñoza at the time she contracted the loan should have placed private respondent on guard and prompted it to make a more thorough inquiry into its ownership.

Private respondent, on its end, argues, among other things, that petitioners were not adverse claimants because when they already sold the subject property, petitioners no longer hold any valid title over it. It also denies that petitioners are in actual possession of the property in dispute as they did not submit any certification that they reside therein.

Our Ruling

The Petition is without merit.

*Issuance of a writ of possession;
when to apply, requirements*

Section 7 of Act No. 3135,¹² as amended by Act No. 4118,¹³ provides for the manner for the issuance of a writ of possession in extrajudicial foreclosure of REM, to wit:

¹² An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages, March 6, 1924.

¹³ An Act to amend Act numbered Thirty-One-Hundred and Thirty-Five, Entitled "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages", December 7, 1933.

Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance 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 [sic] 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.

Simply put, a successful buyer of a foreclosed property bought at a public auction sale is authorized to apply for a writ of possession (1) during the redemption period upon filing of the corresponding bond; and, (2) after the expiration of the redemption period without any need of a bond.¹⁴

After the lapse of the one-year redemption period, writ of possession is a matter of right; exception

Meanwhile, Section 33, Rule 39 of the Rules of Court, which extends to extrajudicial foreclosure sales,¹⁵ explicitly provides that when no redemption is made within one year from the date of registration of the certificate of sale, the purchaser is already entitled to the possession of the subject property *unless* a third party is holding it adversely to the judgment debtor.¹⁶

¹⁴ See *Hernandez v. Ocampo, et al.*, 792 Phil. 854, 867 (2016).

¹⁵ *Sps. Gallent v. Velasquez*, 784 Phil. 44, 63 (2016).

¹⁶ 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

It bears stressing that a purchaser in an extrajudicial foreclosure becomes the absolute owner of the subject property in case no redemption is made within one year from the registration of the certificate of sale. As the absolute owner, the purchaser is entitled to all the rights of ownership, including the right to possess the property.¹⁷ It, thus, follows that upon proper application and evidence of ownership, the issuance of a writ of possession becomes a ministerial duty of the court except where a third party is holding the property adversely to the judgment debtor. In the latter case, the issuance of a writ of possession is no longer ministerial and may not be done *ex parte* and hearing for the purpose of determining entitlement to possession must be held.¹⁸ Let it be stressed that by third party holding the property by adverse title or right, the Court refers to one who is in possession of the disputed property *in his or her own right* such as a co-owner, a tenant or a usufructuary.¹⁹

In this case, petitioners insist that the RTC improperly issued a writ of possession in favor of private respondent on the contention that they were third parties holding the subject property adverse to the judgment debtor, Miñoza.

Petitioners' contention is untenable.

First, petitioners sold the subject property to Miñoza through a deed of absolute sale. By doing so, they relinquished their title over it in favor of the latter. This also means that from the time that they sold the subject property, petitioners no longer had any right over it and cannot be considered as third parties with an adverse interest from the judgment debtor. *Second*, as pointed out by the CA, the sale was an absolute one; thereby, it was without any reservation of ownership by its previous owners (petitioners). In fact, the interest of the judgment debtor stemmed from petitioners themselves which refutes the very claim of petitioners of a different interest from that of Miñoza.

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 the registration of the sale to redeem the property. x x x

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. (35a)

¹⁷ See *Heirs of Jose Peñaflo, namely: Jose Peñaflo, Jr., and Virginia P. Agatep, represented by Jessica P. Agatep vs. Heirs of Artemio and Lydia Dela Cruz, namely: Marilou, Juliet, Romeo, Ryan, and Arielm, all surnamed Dela Cruz*, G.R. No. 197797, August 9, 2017.

¹⁸ See *China Banking Corp. vs. Spouses Lozada*, 579 Phil. 454, 473-475 (2008).

¹⁹ *Id.* at 478-479.

Third, considering that the sale of real property is an effective mode of transferring ownership, it follows that there is sufficient reason to conclude that petitioners have *no* independent right over the subject property.²⁰

No violation of due process of law

Based on the foregoing disquisitions, petitioners cannot be deemed as third parties who were not privy to the debtor. They are not entitled to protection and may be removed from the subject property without violating their right to due process of law.²¹

Petitioners were no strangers to the transaction between private respondent and Miñoza. By their own account, they themselves confirmed that they decided to sell their property to Miñoza and that they were well aware of the mortgage that Miñoza and private respondent had entered into. Despite these assertions, petitioners may avail themselves of legal remedies should they maintain their entitlement to the subject property, that is, by filing an independent and separate action,²² which they already did when they filed an action for cancellation of title against Miñoza, among other persons.

It is also of equal importance to note that petitioners' right to due process was not violated considering that by its very nature, an *ex parte* application for a writ of possession involves a proceeding for the benefit of one party without necessarily giving notice to any adverse party. It is summary in nature and a mere incident in the transfer of title. It does not bar any purported adverse party from filing a case for annulment of mortgage or foreclosure.²³ At the same time, "not even a pending action to annul the mortgage or the foreclosure sale will by itself stay the issuance of a writ of possession x x x. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case."²⁴ Under these circumstances,

²⁰ See *Heirs of Jose Peñaflor, namely: Jose Peñaflor, Jr., and Virginia P. Agatep, represented by Jessica P. Agatep v. Heirs of Artemio and Lydia Dela Cruz, namely: Marilou, Juliet, Romeo, Ryan, and Arielm, all surnamed Dela Cruz*, supra note 17.

²¹ See *Hernandez v. Ocampo*, supra note 14, at 870.

²² Id. at 873-874.

²³ See *Madriaga, Jr. v. China Banking Corporation*, 691 Phil. 770, 778-779 (2012).

²⁴ *Sps. Gallent v. Velasquez*, supra note 15.

the issue that private respondent was not a purchaser or mortgagee in good faith will not prevent the issuance of a writ of possession in its favor given that this issue is one that may be subject of a different proceeding, not the one involving the application for a writ of possession.

To recapitulate, the right of private respondent to the possession of the subject property was fully established. As the buyer in the foreclosure sale and to which the title to the property was already issued, private respondent's right over it is absolute, which the court must facilitate into delivering. In this regard, there being sufficient factual and legal bases in issuing the writ of possession in favor of private respondent, the CA correctly found that the RTC committed no grave abuse of discretion and there is no reason for the issuance of a writ of *certiorari* against the trial court.

WHEREFORE, the Petition is **DENIED**. The Decision dated November 27, 2012 and the Resolution dated April 4, 2013 of the Court of Appeals in CA-G.R. SP No. 117859 are **AFFIRMED**.

SO ORDERED.

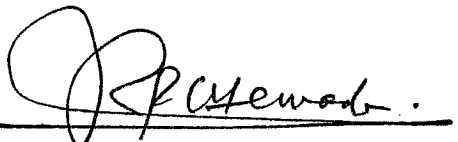

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice



MARVIC M.V.F. LEONEN
 Associate Justice

Reyes
ANDRES B. REYES, JR.
 Associate Justice


RAMON PAUL L. HERNANDO
 Associate Justice

ATTESTATION

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

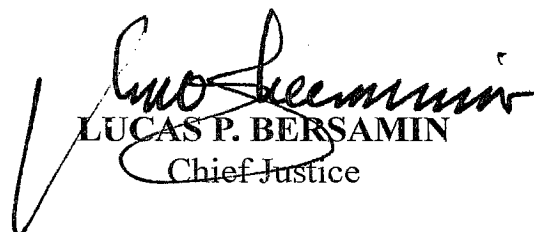

DIOSDADO M. PERALTA
 Associate Justice
 Chairperson, Third Division

CERTIFICATION

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

CERTIFIED TRUE COPY

Misa DC Batt
MISAELO DOMINGO C. BATTUNG III
 Deputy Division Clerk of Court,
 Third Division


LUCAS P. BERSAMIN
 Chief Justice

OCT 31 2019.