

**BANGKO MABUHAY (RURAL BANK OF TANZA (CAVITE), INC.,
PETITIONER-APPELLEE, VS. SPOUSES FERNANDO AND PAULINA LYN
TELMO, OPPOSITORS-APPELLANTS.**

Ponente: YBAÑEZ, J.

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YBAÑEZ, J.:

This is an appeal from the Decision dated 17 May 2010 and Order dated 9 August 2010,[1] respectively, of the Regional Trial Court, Branch 15, Naic, Cavite, in LRC Cadm. 459-D-108, for the Issuance of a Writ of Possession, granting the petition and directing the Clerk of Court to issue the corresponding writ of possession in favor of the petitioner.

The Facts

On 20 August 1996, spouses Fernando and Paula Lyn Telmo executed a Promissory Note, in favor of Rural Bank of Tanza (Cavite), Inc., the sum of One Million Six Hundred Thousand Pesos (P1,600,000.00).[2] The loan was secured by a Real Estate Mortgage executed by the said spouses involving two (2) separate parcels of land located in Indang, Cavite, and covered by Declaration of Real Property No. (21184) 20763 and Declaration of Real Property TD No. 14845, respectively, including the building and all improvements thereon.[3]

For failure of the mortgagors to pay their loan obligation despite demands, the mortgagee bank caused the extrajudicial foreclosure of the subject properties. Thus, Rural Bank of Tanza (Cavite), Inc. filed an Application For Foreclosure of Real Estate Mortgage before the Regional Trial Court, Branch 15, Naic, Cavite.[4]

On 28 April 2000, a Notice of Extra-Judicial Sale was issued.[5] On June 5, 2000, an Auction Sale was held involving the subject properties with Rural Bank of Tanza (Cavite), Inc. as the sole and highest bidder.[6]

On 13 June 2000, a Certificate of Sale was issued by the Office of the Ex-Officio Sheriff, Regional Trial Court, Branch 15, Naic, Cavite, in favor of the Rural Bank of Tanza (Cavite), Inc. being the sole and highest bidder for the sum of One Million Six Hundred Thousand Pesos (P1,6000.00).[7] Subsequently, or on 26 June 2001, the President/General Manager of Rural Bank of Tanza (Cavite), Inc. executed an Affidavit of Consolidation after the period of redemption of the foreclosed properties expired on even date.[8]

On 29 August 2003, Bangko Mabuhay (formerly Rural Bank of Tanza (Cavite), Inc.) filed before the Regional Trial Court, Branch 15, Naic, Cavite, a Petition for Issuance of a Writ of Possession involving the two (2) parcels of land including all the improvements thereon.[9] The petition was docketed as LRC Rec. No. CADM-459-D-108.

On 27 January 2004, Spouses Fernando and Paulina Lyn Telmo filed their Comment/Opposition to the petition.[10] On 5 February 2004, Banko Mabuhay filed its Reply to the Comment/Opposition of oppositors-spouses.[11] On 17 February 2004, oppositors-spouses filed a Rejoinder to petitioner's reply.[12] And on 24 February 2004, Banko Mabuhay filed a Sur-Rejoinder.[13]

Thereafter, presentation of evidence ensued.

In a Decision dated 17 May 2000,[14] the trial court granted the petition and directed the Clerk of Court to issued the corresponding Writ of Possession in favor of petitioner Bangko Mabuhay (Rural Bank of Tanza (Cavite), Inc.

The Issues

Before Us, respondents-appellants contend that:

(1) THE DECISION ERRED IN NOT HOLDING THAT PETITIONER-APPELLEE FAILED TO ESTABLISH ITS CLAIM BY PREPONDERANCE OF EVIDENCE.

(2) THE DECISION ERRED IN NOT HOLDING THAT THE PETITION IS FATALLY DEFECTIVE FOR INVALID VERIFICATION.[15]

Our Ruling

The appeal is not meritorious.

The focal issue of this case is whether the issuance of the writ of possession over the properties subject of the foreclosure of the real estate mortgage is proper.

Oppositors-appellants contend that the trial court committed an error in not holding that the petitioner-appellee is not entitled to a writ of possession because the auction sale failed to comply with the provisions of Section 2, Act No. 3135, as amended,[16] and Section 6, Republic Act 7353.[17] Oppositors-appellants further contend that the auction sale should have been conducted in the Municipal Building of Indang, Cavite, and not in the Hall of Justice of Naic, Cavite. Oppositors-appellants also contend that there was lack of certificate of posting, no proof of publication and the consolidation of ownership is premature.

We are not persuaded.

The time-honored precept is that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, the writ of possession becomes a matter of right.[18] The right of the purchaser to the possession of the foreclosed property becomes absolute upon the expiration of the redemption period. The basis of this right to possession is the purchaser's ownership of the property. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right and its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function.[19]

In the present case, title to the said properties have been consolidated and issued in the name of petitioner-appellee as oppositors-appellants failed to redeem the subject properties within the one year redemption period. Thus, the issuance of the writ of possession in favor of the petitioner-appellee bank became a matter of course and the trial court has no discretion on the matter.

While the oppositors-appellants question the regularity and and validity of the foreclosure, the same cannot be raised as a justification for opposing the petition for the issuance of the writ of possession. The said issues may be raised and determined only after the issuance of the writ of possession. The judge with whom an application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure. The writ issues as a matter of course. "The rationale for the rule is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on the right of ownership." [20] To underscore

this mandate, Section 8 of Act No. 3135 gives the debtor-mortgagor the right to file a petition for the setting aside of the foreclosure sale and for the cancellation of a writ of possession in the same proceedings where the writ was issued within 30 days after the purchaser-mortgagee was given possession. The court's decision thereon may be appealed by either party, but the order of possession shall continue in effect during the pendency of the appeal.[21]

Clearly then, until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, the issuance of a writ of possession remains the ministerial duty of the trial court. The same is true with its implementation; otherwise, the writ will be a useless paper judgment — a result inimical to the mandate of Act No. 3135 to vest possession in the purchaser immediately.[22]

WHEREFORE, the Decision dated 17 May 2010 and Order dated 9 August 2010, respectively, of the Regional Trial Court, Branch 15, Naic, Cavite, in LRC Cadm. 459-D-108, are AFFIRMED.

SO ORDERED.

Dimaampao, (Chairperson), and Sadang, JJ., concur.

[1] Records, pp. 129-123 and p. 129.

[2] Records, Exhibit C, p. 86.

[3] Records, Exhibit B, p. 85.

[4] Records, Exhibit D, p. 87.

[5] Records, Exhibit E, p. 88.

[6] Records, Exhibit G, p. 90.

[7] Records, Exhibit H, p. 91.

[8] Records, Exhibit I, p. 92.

[9] Records, pp. 1-9.

[10] Records, pp. 21-25.

[11] Records, pp. 29-

[12] Records, pp. 3537.

[13] Records, pp. 40-42.

[14] Ibid., pp. 120-123.

[15] Rollo, p. 10 of the Brief for the Respondents-Appellants.

[16] Section 2. Said sale cannot be made legally outside of the province in which the property sold is situated; and in case the place within said province in which the sale is to be made is subject to stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated.

[17] Section 6. Loans or advances extended by rural banks organized and operated under this Act shall be primarily for the purpose of meeting the normal credit needs of farmers, fishermen or farm families owning or

cultivating land dedicated to agricultural production as well as the normal credit needs of cooperatives and merchants.

Loans may be granted by rural banks on the security of lands without Torrens Title where the owner of private property can show five (5) years or more of peaceful, continuous and uninterrupted possession in concept of owner; or of portions of friar land estates or other lands administered by the Bureau of Lands that are covered by sales contracts and the purchasers have paid at least five (5) years installment thereon, without the necessity of prior approval and consent by the Director of Lands; or of portions of other estates under the administration of the Department of Agrarian Reform or other governmental agency which are likewise covered by sales contracts and the purchasers have paid at least five (5) years installment thereon, without the necessity of prior approval and consent of the Department of Agrarian Reform or corresponding governmental agency; or of homesteads or free patent lands pending the issuance of titles but already approved, the provisions of any law or regulations to the contrary notwithstanding: Provided, That when the corresponding titles are issued, the same shall be delivered to the Register of Deeds of the province where such lands are situated for the annotation of the encumbrance: Provided, further, That in the case of lands pending homestead or free patent titles, copies of notices for the presentation of the final proof shall also be furnished the creditor rural bank and, if the borrower applicants fail to present the final proof within thirty (30) days from date of notice, the creditor rural bank may do so for them at their expense: Provided, furthermore, That the applicant for homestead or free patent has already made improvements on the land and the loan applied for is to be used for further development of the same or for other productive economic activities: Provided, finally, That the appraisal and verification of the status of a land is a full responsibility of the rural bank and any loan granted on any land which shall be found later to be within the forest zone shall be for the sole account of the rural bank.

The foreclosure of mortgages covering loans granted by rural banks and executions of judgment thereon involving real properties levied upon by a sheriff shall be exempt from the publications in newspapers now required by law where the total amount of loan, excluding interest due and unpaid, does not exceed One hundred thousand pesos (P100,000) or such amount as the Monetary Board may prescribe as may be warranted by prevailing economic conditions. It shall be sufficient publication in such cases if the notices of foreclosure and execution of judgment are posted in the most conspicuous area of the municipal building, the municipal public market, the rural bank, the barangay hall, and the barangay public market, if any, where the land mortgaged is situated during the period of sixty (60) days immediately preceding the public auction or execution of judgment. Proof of publication as required herein shall be accomplished by an affidavit of the sheriff or officer conducting the foreclosure sale or execution of judgment and shall be attached with the records of the case: Provided, That when a homestead or free patent is foreclosed, the homesteader or free patent holder, as well as his heirs shall have the right to redeem the same within one (1) year from the date of foreclosure in the case of land not covered by a Torrens Title or one (1) year from the date of the registration of the foreclosure in the case of land covered by a Torrens Title: Provided, finally, That in any case, borrowers, especially those who are mere tenants, need only to secure their loans with the produce corresponding to their share.

A rural bank shall be allowed to foreclose lands mortgaged to it including lands covered by Republic Act No. 6657 (Comprehensive Agrarian Reform Law of 1988), as amended: Provided, That said lands shall be subject to the retention limits provided under Republic Act No. 6657.

Rural banks which are not qualified to acquire or hold land in the Philippines shall be allowed to bid and take part in foreclosure sales of real property mortgaged to them, as well as to avail of enforcement and other proceedings, and accordingly to take possession of the mortgaged property, for a period not exceeding five (5)-years from actual possession: Provided, That in no event shall title to the property be transferred to such rural bank. In case

the rural bank is the winning bidder, it shall, during the said five (5)-year period, transfer its rights to a qualified Philippine national, without prejudice to a borrower's rights under applicable laws. Should a rural bank be not able to transfer such property within the five (5)-year period, the rural bank shall be penalized one-half (1/2) of one percent (1%) per annum of the price at which the property was foreclosed until the rural bank is able to transfer the property to a qualified Philippine national.

[18] National Housing Authority vs. Augusto Basa, Jr., Luz Basa and Eduardo S. Basa, G.R. No. 149121, April 20, 2010.

[19] Maria Torbela, et al. vs. Spouses Andres T. Rosario and Lena Duque-Rosario and Banco Filipino Savings and Mortgage Bank, G.R. No. 140528, December 7, 2011.

[20] Spouses Charlie Fortaleza and Ofelia Fortaleza vs. Spouses Raul Lapitan and Rona Lapitan, G.R. No. 178288, August 15, 2012.

[21] Ibid.

[22] Ibid.

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