

MARGARITO U. UNG, PETITIONER-APPELLEE, VS. NATHANIEL AGUILAR, RESPONDENT-APPELLANT.

Ponente: MENDOZA, J.

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MENDOZA, J.:

Before Us is an appeal from the December 12, 2000 Order[1] of the Regional Trial Court, Branch 22, Naga City, disposing the petition for a writ of possession filed by Margarito U. Ung (petitioner-appellee) against Nathaniel Aguilar (respondent-appellant) in this wise:

“x x x the issuance of a writ of possession to a purchaser in an extrajudicial foreclosure is merely a ministerial function of the Court. In this regard, the Court neither exercises its official discretion nor judgment (A.G. Development Corporation vs. Court of Appeals, 281 SCRA 155, Consolidated Rural Bank, Inc. vs. Court of Appeals, 301 SCRA 212). Under Section 7 of Act No. 3135 and Section 35 of Rule 39 of the Rules of Court, the purchaser in a foreclosure sale is entitled to the possession of the property (Arcega v. Court of Appeals, 275 SCRA 176).

WHEREFORE, premises considered, the petitioner being entitled to possession as a consequence of an extrajudicial foreclosure of mortgaged property, let, therefore, a writ of possession issue in favor of petitioner, Margarito Ung with respect to the foreclosed property earlier described now covered by TCT No. 38879 in the name of petitioner.

SO ORDERED.”[2]

As amply summarized by the RTC, the factual milieu of the instant case are as follows:

“It appears that on March 26, 1997, respondent(-appellant), Nathaniel Aguilar, obtained a loan in the amount of ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000.00) from petitioner(-appellee), Margarito Ung. As security for the loan, the former executed a real estate mortgage (Exhs. A, A-1) over the aforementioned property in favor of the latter. On due date, respondent failed to make good his obligation, hence, petitioner foreclosed on the mortgaged property.

A provisional certificate of sale, dated May 7, 1998 (Exh. F), was issued in favor of petitioner being the sole bidder in the auction sale conducted on May 4, 1998. The provisional certificate of sale was registered with the Office of the Register of Deeds of Naga City on April 29, 1999 (Exh. F-1). Thereafter, for failure of the mortgagor to redeem the auctioned property within the period allowed by law, an Affidavit of Consolidation dated May 5, 2000 (Exh. G), was executed by petitioner. On the basis of the foregoing document, the Register of Deeds of Naga City cancelled TCT No. 30344 (Exh. B) in the name of Nathaniel Aguilar and issued a new Transfer Certificate of Title No. 38879 (Exh. H) in the name of Margarito Ung. The City Assessor, likewise, issued tax declaration No. 96-008.5439 for the subject property in the name of margarito Ung (Exh. I).

In Respondent’s Comment, dated October 9, 2000, respondent prayed for the dismissal of the petition or the suspension of the proceedings for the following reasons: a) There is an action pending before RTC Branch 19 involving the same property sought to be possessed with petitioner Ung and respondent Aguilar as defendants, the issue in the latter case being that of ownership of the subject property;

b) The certification on non-forum shopping is false because of the pendency of the case before Branch 19 involving the same property;

c) Respondent is no longer in possession of the property.”[3]

Not in conformity with the December 12, 2000 Order of the trial court, respondent-appellant now seeks relief from this Court via the instant appeal presenting the following---

“ASSIGNMENT OF ERRORS

The Court a quo erred:

- When it proceeded to order that a writ of possession issue in favor of Plaintiff-Appellee Margarito Ung despite the existence of an action pending before RTC Branch 19 in Naga City involving the issue of ownership of the same property sought to be possessed; and
- When it proceeded to order that a writ of possession issue in favor of Plaintiff-Appellee Margarito Ung despite the fact that Defendant-Appellant is not the one in possession of the property sought to be possessed.”[4]

The instant appeal lacks merit.

Jurisprudence uniformly holds that the purchaser in a foreclosure sale is entitled as a matter of right to a writ of possession, after the expiration of the redemption period without the mortgagor exercising the right of redemption, regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure proceedings.[5]

As explicitly stated in the case of Philippine National Bank v. Sanao Marketing Corporation: [6]

“A writ of possession may be issued under the following instances; (1) in land registration proceedings under Section 17 of Act 496; (2) in a 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) in an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135, as amended by Act No. 4118; and (4) in execution sales (last paragraph of Section 39 of the Rules of Court)

x x x x x x x x

x x x. It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of sale. As such, he is entitled to the possession of the property and can demand it any time following the consolidation of ownership in his name and the issuance of a new transfer certificate of title. In such a case, the bond required in Section 7 of Act No. 3135 is no longer necessary. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. X x x.”[7] x x x x x x x x

x x x. If only to stress the writ’s ministerial character, we have, in previous cases, disallowed injunction to prohibit its issuance, just as we have held that the issuance of the same may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.”[8]

The instant case indubitably falls under the third instance mentioned above where in the writ of possession may be issued.

The law is clear. The purchaser, or petitioner-appellee in this case, must first be placed in possession. “The rationale for the mandate is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on the right of ownership.”[9] In the case at bench, petitioner-appellee has sufficiently established his right to the writ of possession. He presented the Real Estate Mortgage contract,[10]

and the Provisional Certificate of Sale which bears the annotation that the same was registered with the Office of the Register of Deeds of Naga City on April 29, 1999.[11] Moreover, it was not disputed that the land in question was not redeemed within one (1) year from the registration of the said Provisional Certificate of Sale. This being the case, petitioner-appellee has acquired absolute right, as purchaser in the foreclosure sale, to the writ of possession. The RTC has the ministerial duty to issue the writ, as it did. It need not exert extra effort of looking into the validity of the mortgage or the manner of its foreclosure.[12]

Notably, as respondent-appellant points out, there is a pending case filed by Joenil F. Ong against herein petitioner-appellee, respondent-appellant, Alfonso Don, Jr./the Sheriff of Camarines Sur, the Register of Deeds of Naga City, and Notary Public Antonio P. Pabileña for Declaration of Nullity of Deed of Absolute Sale, of Mortgage, of Foreclosure, and of Provisional Certificate of Sale; Reconveyance; Damages; with Prayer for Temporary Restraining Order and Preliminary Injunction. The same was docketed as Civil Case No. RTC 2000-0077[13] and was filed by Joenil F. Ong before petitioner-appellee had filed a petition for the issuance of a writ of possession. The trial court where Civil Case No. RTC 2000-0077 was filed is yet to make a finding. We opine and so hold that the pendency of the said case is not a bar to the issuance of the writ of possession. Pending such proceedings whose main concern is the validity of the foreclosure sale, petitioner-appellee, as purchaser in the foreclosure sale, is entitled to the possession of the subject property. Until such time that Civil Case No. RTC 2000-0077 is decided in favor of Joenil F. Ong and against therein defendants, no discretion is left with the RTC, but to issue the writ of possession.

Respondent-appellant cites the case of *Active Wood Products Co., Inc. v. Court of Appeals*[14] supposedly to support his stand that the RTC erred in issuing the December 12, 2000 Order in view of the pendency of another case involving the same property. Respondent-appellant even quoted a portion of the said decision. It appears that the *Active Wood* case, tackles the issue of the propriety of the consolidation of cases. The portion of the said decision quoted by respondent-appellant is misleading.[15]

The other case cited by respondent-appellant, – *Philippine National Bank v. Court of Appeals* case[16] is misplaced, the factual milieu of the said case being different in the case at bar. Firstly, in the *Philippine National Bank (PNB)* case, even before it consented to the mortgage, PNB already knew that a third person is occupying the property. There is no showing of the same situation in the case at bar. Secondly, PNB is not entitled to the writ of possession as possession of the land in question has already been granted by law to the occupant/possessor as tenant of the subject landholding. In this case, legal right of the person who entered the premises of the subject property is yet to be determined.

All told, We find no reversible error committed by the RTC in issuing the assailed Order.

WHEREFORE, the December 12, 2000 Order[17] of the Regional Trial Court, Branch 22, Naga City, is hereby AFFIRMED.

SO ORDERED.

Asuncion, (Chairman) and Tayag, JJ., concur.

[1] Records, pp. 113-114

[2] Records, p. 114

[3] Records, pp. 113-114

[4] Rollo, p. 14

[5] Carpo v. Chua, supra; Philippine National Bank v. Sanao Marketing Corporation, 465 SCRA 287 (2005)

[6] Supra

[7] Emphasis supplied

[8] Emphasis supplied

[9] Philippine National Bank v. Sanao Marketing Corporation, supra

[10] Records, pp. 86-88; Exh. "E-1"

[11] Records, pp. 66-68

[12] Chailese Finance v. Ma, 409 SCRA 250

[13] Records, pp. 51-55

[14] Rollo, p. 16

[15] Rollo, p. 16

[16] See Rollo, pp. 16-17

[17] Records, pp. 113-114

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