SALUD E. MAGSAKAY, PETITIONER, VS. METROPOLITAN BANK & TRUST COMPANY, THE REGIONAL TRIAL COURT, BR. 77, MALOLOS CITY, BULACAN, PRESIDED OVER BY THE HON. JAIME L. DOJILLO, JR., I...

Ponente: DE GUIA-SALVADOR, R., J.

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DE GUIA-SALVADOR, R., J.:

The propriety of the grant of the writ of possession sought by private respondent Metropolitan Bank & Trust Company (Metrobank) is at issue in this petition for certiorari filed pursuant to Rule 65 of the Rules of Civil Procedure, assailing the following issuances of public respondent, the Hon. Jaime L. Dojillo, Presiding Judge, Regional Trial Court, Branch 77, Malolos City (RTC), in LRC Case No. P-71-2012, to wit: (a) Decision dated February 15, 2013;[1] (b) Order dated November 27, 2013;[2] and, (c) Order dated March 4, 2014.[3]

The Facts

The subject matter of the instant suit is a 142-square meter parcel of land situated in Malolos, Bulacan, registered in the name of Rosie Rivera under Transfer Certificate of Title No. T-285927 of the Bulacan provincial registry.[4] To secure the payment of a loan obtained from Metrobank in the sum of Php3,500,000.00,[5] Rivera, through her Attorney-in-Fact, Maritzie B. Magsakay, executed a Deed of Real Estate Mortgage dated July 23, 2009 over the subject realty.[6] In view of Rivera's default on the loan, however, Metrobank filed a petition for extrajudicial foreclosure of mortgage with the Office of the Clerk & Ex-Officio Sheriff of the RTC on December 13, 2010.[7] After compliance with the publication and posting requirements,[8] the property was sold on January 21, 2011 at a public auction during which Metrobank was declared the highest bidder.[9]

Issued a certificate of sale dated February 16, 2011[10] which it caused to be registered with the Registry of Deeds on February 22, 2011,[11] Metrobank filed on February 15, 2012 a petition for issuance of a writ of possession under docket of LRC Case No. P-71-2012 before the RTC. Faulting Rivera and Maritzie with unjustified refusal to heed its demands for the surrender of possession of the property, Metrobank invoked its right as purchaser thereof under Section 7 of Act No. 3135.[12] Finding merit in the petition, public respondent rendered the assailed February 15, 2013 Decision,[13] the decretal portion of which states:

> "WHEREFORE, let the corresponding writ of possession be issued directing the Sheriff of Bulacan or any of his duly authorized deputies to place xxx Metropolitan Bank and Trust Company, in full and absolute physical possession and control of the property covered by TCT No. T-285927 with all its improvements and to eject therefrom mortgagor Rosie K. Rivera and her attorney-in-fact Maritzie Magsakay, their agents, heirs, assigns and such other persons claiming rights under them.
>
> SO ORDERED."[14]

On May 23, 2013, the Spouses Florentino and Salud Magsakay, filed a motion for reconsideration of the foregoing decision. Claiming to be the owners and possessors of the property, the Spouses Magsakay alleged that the deed of sale they ostensibly executed in favor of Rivera which served as basis for the issuance of TCT No.

T-285927 had been forged. Calling attention to the fact that they have, as early as January 20, 2012, filed an action for annulment of mortgage, reconveyance and damages docketed as Civil Case No. 42-M-2012 before Branch 15 of the RTC, the Spouses Magsakay faulted Metrobank for failing to disclose said action in the certificate of non-forum shopping accompanying its petition for issuance of a writ of possession.[15] Over the opposition thereto interposed by Metrobank,[16] the motion for reconsideration was granted in public respondent's Order dated June 17, 2013, on the ground that the Spouses Magsakay appeared to be strangers to the mortgage executed by Rivera and were holding the property adversely against the latter.[17]

In turn claiming to be a mortgagee in good faith which had verified Rivera's claim over the property from, among others, petitioner Salud B. Magsakay herself, Metrobank sought the reconsideration of public respondent's June 17, 2013 order. Maintaining that the proceeds of the loan it extended to Rivera was used to build an apartment on the property where the Spouses Magsakay were even later allowed to stay as tenants, Metrobank argued that the latter were not third parties claiming rights adverse to the former.[18] Finding that the Spouses Magsakay were not innocent third parties whose action to annul the mortgage cannot stay the issuance of the writ of possession in favor of the purchaser who, as current owner of the property, is entitled to the possession thereof, public respondent granted Metrobank's motion for reconsideration in the second assailed order dated November 21, 2013,[19] thus:

> "WHEREFORE, the questioned Order dated 17 June 2013 is SET ASIDE and xxx the Court is reiterating its earlier decision, dated 15 February 2013, directing the issuance of a writ of possession commanding the Sheriff of Bulacan or any of his duly authorized deputies to place petitioner Metropolitan Bank and Trust Company, in full and absolute physical possession and control of the property covered by TCT No. T-285927 with all its improvements and to eject therefrom Rosie K. Rivera and her attorney-in-fact Maritzie Magsakay, their agents, heirs, assigns and such other persons claiming rights under them.
>
> SO ORDERED."[20]

Aggrieved, the Spouses Magsakay moved for the reconsideration of the foregoing order on the ground that they were not allowed to ventilate their claim before the RTC. While conceding that the proceedings for the issuance of a writ of possession are summary in nature, the Spouses Magsakay argued that justice demands that they should be given an opportunity to be heard, at least for the proper determination of the issue of whether or not they are strangers to Rivera's transactions.[21] Duly opposed by Metrobank,[22] the Spouses Magsakay's motion for reconsideration was denied for lack of merit in public respondent's third assailed Order dated March 4, 2014.[23] Hence, this petition which, in addition to public respondent and Metrobank, impleaded RTC Sheriff IV Armando DP. Pascual as additional respondent.

The Issues

By herself, petitioner seeks the grant of the petition at bench on the following grounds:

- Public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that petitioner and her husband are not actually third parties whose rights will be prejudiced should the writ of possession awarded to Metrobank be finally implemented.

- Public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that petitioner and her husband have personal knowledge of Metrobank's transaction with Rivera.

- Public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it granted Metrobank's ex-parte petition for writ of possession.[24]

The Court's Ruling

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The petition is bereft of merit.

A writ of possession is simply an order by which the sheriff is commanded by the court to place a person in possession of a real or personal property.[25] "Under Section 7 of Act No. 3135,[26] as amended, a writ of possession may be issued in favor of a purchaser in a foreclosure sale either (1) within the one-year redemption period, upon the filing of a bond; or (2) after the lapse of the redemption period, without need of a bond. Within the one-year redemption period, the purchaser may apply for a writ of possession by filing a petition in the form of an ex parte motion under oath, in the registration or cadastral proceedings of the registered property. The law requires only that the proper motion be filed, the bond approved and no third person is involved. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, however, entitlement to the writ of possession becomes a matter of right. In the latter case, the right of possession becomes absolute because the basis thereof is the purchaser's ownership of the property. "[27]

Classified as ex parte and summary in nature,[28] the proceeding for the issuance of a writ of possession is, strictly, not a suit or a judicial process by which one sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.[29] Explaining the character of said proceedings, the Supreme Court handed down the following pronouncements in the case of De Vera vs. Agloro,[30] to wit:

> "An ex-parte petition for the issuance of a possessory writ under Section 7 of Act 3135 is not, strictly speaking, a 'judicial process' as contemplated in Article 433 of the Civil Code. It is 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 redress of a wrong.' It is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act No. 3135, as amended. It is brought for the benefit of one party only, and without notice to, or consent by any person adversely interested. It is a proceeding where the relief is granted without an opportunity for the person against whom the relief is sought to be heard. No notice is needed to be served upon persons interested in the subject property. Hence, there is no necessity of giving notice to the petitioners since they had already lost all their interest in the property when they failed to redeem the same." (emphasis and underscoring supplied)

Claiming that the supposed sale of the property to Rivera had been forged, petitioner preliminarily call attention to the supposed fact that, alongside her husband, she had filed an action for cancellation of title, annulment of mortgage, reconveyance and damages as early as January 20, 2012. As a party to said suit, Metrobank is faulted by petitioner for failing to mention said action in the certification of non-forum shopping accompanying the petition it filed on February 15, 2012. As correctly pointed out by Metrobank, however, a certificate of non-forum shopping is required only in complaints or other initiatory pleadings[31] and that its petition for issuance of a writ of possession, despite its denomination, is in the nature of a motion in the registration or cadastral proceeding of a registered property.[32] Considering that an ex-parte petition for the issuance of a writ of possession is, strictly speaking, neither a complaint nor initiatory pleading,[33] there clearly was no irregularity when Metrobank failed to mention said earlier suit in the certification of non-forum shopping accompanying its petition.

It likewise matters little that the Spouses Magsakay had earlier filed said action which, in addition to seeking the cancellation of Rivera's title over the property, reconveyance and damages, prayed for the nullification of the mortgage executed in favor of Metrobank. The rule is, after all, settled that any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession, hence, an injunction to prohibit the issuance of writ of possession is entirely out of place. Regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice of course to the eventual outcome of said case.[34] Since the judge to whom the application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure,[35] it has been ruled that the ministerial duty of the trial court to issue the writ of possession sought

does not become discretionary upon the filing of a complaint questioning the mortgage.[36]

Neither is the Court inclined to hospitably entertain petitioner's contention that public respondent gravely erred in granting the writ of possession sought by Metrobank without affording her and her husband an opportunity to be heard regarding the nature of their possession of the subject property. The general rule is to the effect that a purchaser in a public auction sale of a foreclosed property is entitled to a writ of possession, the issuance of which is considered the ministerial duty of the trial court upon the filing of the ex parte petition therefor.[37] Pursuant to Section 33,[38] Rule 39 of the Rules of Court, the foregoing rule concededly admits of an exception when the property is possessed by a third party who claims a right adverse to the original debtor-mortgagor,[39] in which case the issuance by the trial court of a writ of possession in favor of the purchaser of said real property ceases to be ministerial and may no longer be done ex parte. While the procedure is for the trial court to order a hearing to determine the nature of the adverse possession, however, the application of the exception requires that the property need not only be possessed by a third party, but also held by the third party adversely to the judgment obligor.[40]

Contrary to petitioner's claim, our perusal of the record shows that public respondent afforded the Spouses Magsakay ample opportunity to be heard on their claim of adverse possession against Rivera. After public respondent's June 17, 2013 grant of the Spouses Magsakay's motion for reconsideration of the February 15, 2013 Decision rendered in the case, it appears that the parties were required to file their respective memoranda for and against the motion for reconsideration, in turn, filed by Metrobank. Against the Spouses Magsakay's claim that they, as supposed owners of the property, had fallen victim to a forgery allegedly perpetrated by Rivera, Metrobank had asserted that the Spouses Magsakay are, in fact, mere tenants of a unit in the apartment Rivera purportedly caused to be built on the property with the use of the proceeds of the mortgage loan extended in her favor. Resolving Metrobank's motion for reconsideration in the assailed Order dated November 21, 2013,[41] public respondent had, in fact, ruled as follows:

> "Evidence submitted by the parties unmistakably show that the xxx Spouses Magsakay are not actually third parties whose rights will be prejudiced should the writ of possession awarded to [Metrobank] be finally implemented. They would not suffer any irreparable damage as they have no to speak of anymore on the lot. What is now standing on the lot is the apartment built by [Rivera] out of the loan obtained by said [Rivera] from [Metrobank].
>
> [The Spouses Magsakay's] ownership over the subject property apparently was already divested and transferred to [Rivera], the person [to] whom they sold the property.
>
> [The Spouses Magsakay] seemed to be aware of the mortgaging of the lot by [Rivera] to [Metrobank] as the house they used to live [in] was allowed to be demolished by them to give way to the construction of said apartment.
>
> It would also appear that [the Spouses Magsakay] vacated the property and returned to it only, according to [Metrobank] itself, as plain lessees of the apartment. [The] Spouses Magsakay may happen to be staying in the apartment by plain tolerance only of [Rivera]."[42]

Evident from the foregoing pronouncements is the fact that the parties were afforded by public respondent ample opportunity to be heard regarding the nature of the Spouses Magsakay's claim of possession. As occupants of the apartment Rivera caused to be built on the property, the Spouses Magsakay's claim of adverse possession against the former was, moreover, correctly discounted by public respondent. By the third party contemplated under Section 33, Rule 39 of the Rules of Court is meant one who possesses the property in his own right and not merely as the successor or transferee of the right of possession of another.[43] To be sure, the Spouses Magsakay had claimed that they were, in fact, illegally divested of ownership of the property thru the forgery allegedly

perpetrated by Rivera. The resolution of said factual issue will, however, be better left for determination in the action for cancellation of title, annulment of mortgage, reconveyance and damages the Spouses Magsakay filed against Rivera, Maritzie and Metrobank, not the proceedings before public respondent which were summary and non-litigious in nature.

All told, finally, the issuance of the writ of possession in favor of the latter would, as above-discussed, still be subject to the outcome of said case.[44] Indeed, the mere fact that that Metrobank's "presumed right of ownership as purchaser of the property is contested and made the basis of another action does not by itself mean that the proceedings for issuance of a writ of possession will become groundless. The presumed right of ownership and the right of possession should be respected until and unless another party successfully rebuts that presumption in an action for nullification of the foreclosure proceedings. As such, and in connection with the issuance of a writ of possession, the grant of a complaint for nullification of foreclosure proceedings is a resolutory condition, not a suspensive condition."[45] Given that the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made,[46] public respondent clearly committed no grave abuse of discretion when he granted Metrobank's petition for issuance of a writ of possession.

As a remedy of last recourse and a limited form of review,[47] certiorari under Rule 65 of the 1997 Rules of Civil Procedure is, finally, designed to cure errors of jurisdiction[48] or grave abuse of discretion[49] and cannot, for these reasons, be used to inquire into the correctness of the evaluation of the evidence which served as bases for the questioned findings and conclusions. Grave abuse of discretion is in the context of petitions for certiorari like the one at bench is understood to be such capricious and whimsical exercise of jurisdiction as is equivalent to lack of jurisdiction.[50] It is tantamount to an evasion of a positive duty or to virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility.[51] For failure of petitioner to demonstrate the grave abuse of discretion she imputes against public respondent, the Court finds no reason to disturb, much less to nullify, the assailed orders.

WHEREFORE, premises considered, the instant petition for certiorari is DENIED for lack of merit.

SO ORDERED.

Rosario, and Dimagiba, JJ., concur.

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[1] Rollo, pp. 50-53.

[2] Ibid., pp. 107-108.

[3] Id., p. 120

[4] Id., pp. 38-40

[5] Id., pp. 28-33

[6] Id., pp. 144-146

[7] Id., pp. 38-40

[8] Id., pp. 43-44

[9] Id., p. 45

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[10] Id.

[11] Id., p. 37

[12] Id., pp. 18-21

[13] Id., pp. 50-53

[14] Id., p. 53

[15] Id., pp. 192-196

[16] Id., pp. 62-71

[17] Id., pp. 78-81

[18] Id., pp. 82-87

[19] Id., pp. 107-108

[20] Id., p. 108

[21] Id., pp. 54-60

[22] Id., pp. 62-71

[23] Id., p. 120

[24] Id., pp. 6-7

[25] Silverio, Jr. vs. Filipino Business Consultants, Inc., G.R. No. 13312, August 12, 2005

[26] SECTION 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 Sec. 194 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 court shall, upon the filing of such petition, collect the fees specified in par. 11 of Sec 114 of Act No. 496, 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.

[27] Spouses Tolosa vs. United Coconut Planters Bank, G.R. No. 183058, April 3, 2013

[28] Fernandez vs. Espinosa, G.R. No. 156421, April 14, 2008

[29] PNB vs. Court of Appeals, G.R. No. 135219, January 17, 2002

[30] 448 SCRA 203

[31] Ancheta vs. Metropolitan Bank & Trust Company, Inc., G.R. No. 16310, September 16, 2005

[32] Arquiza vs. Court of Appeals, 459 SCRA 753

[33] Supra, at Note 31

[34] Spouses Ong vs. Court of Appeals, G.R. No. 121494, June 8, 2000

[35] Idolor vs. Court of Appeals, 490 Phil. 808, 814

[36] Metropolitan Bank and Trust Company vs. Tan, G.R. No. 159934, 26 June 2008

[37] BPI Family Savings Bank vs. Golden Power Diesel Sales Center, Inc., G.R. No. 176019, January 12, 2011

[38] Section 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. — xxx xxx xxx

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.

[39] China Banking Corp. vs. Spouses Ordinario, G.R. No. 121943, March 24, 2003

[40] Supra, at Note 37

[41] Rollo, pp. 107-108

[42] Id.

[43] Madriaga vs. China Banking Corporation, G.R. No. 192377, July 25, 2012

[44] Supra, at Note 34

[45] Espinosa vs. United Overseas Bank Phils., G.R. No. 175380, March 22, 2010

[46] Saguan vs. Philippine Bank of Communications, G.R. No. 159882, November 23, 2007

[47] Barangay Blue Ridge "A" of Quezon City vs. Court of Appeals, 319 SCRA 48, 51

[48] Diaz vs. Diaz, 331 SCRA 302, 317

[49] Leonardo vs. National Labor Relations Commission, 333 SCRA 589, 602

[50] Nepomuceno vs. Court of Appeals, 303 SCRA 679, 682

[51] J.L. Bernardo Construction vs. Court of Appeals, 324 SCRA 24, 34

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