CARMELITA RAMOS, PETITIONER, VS. KEPPEL MONTE BANK AND NERI G. LOY, RESPONDENTS.

Ponente: CRUZ, J.

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CRUZ, J.:

On March 12, 2001, a writ of execution was issued against Project Movers Realty and Development Corporation (or "PMRDC") and Mario Villamor for the satisfaction of the judgment by compromise dated November 10, 1999 rendered by the Regional Trial Court (or "RTC") of Quezon City (Branch 222) in Civil Case No. Q-97-32611 entitled "Monte de Piedad and Savings Bank (now Keppel Monte Bank) vs. Project Movers Realty and Development Corp. and Mario Villamor".

Pursuant to the writ of execution, that parcel of land (or "subject property") located at No. 969 Pedro Gil St., Paco, Manila and covered by Transfer Certificate of Title (or "TCT") No. 205458 in the name of PMRDC was levied upon by branch sheriff Neri G. Loy (or "sheriff") on March 23, 2001.

On November 14, 2001, the sheriff issued a Notice of Sale on Execution of Real Property announcing that the subject property would be sold at public auction on December 7, 2001, at 9:30 a.m., at the Manila City Hall. The notice was published in the November 22 and 29, 2001 and December 6, 2001 issues of "The Foreign Post", a newspaper of general circulation.

At the public auction, Keppel Monte Bank (or "Keppel"), formerly Monte de Piedad and Savings Bank, the judgment creditor, was the highest bidder. Consequently, a Certificate of Sale over the subject property was issued to Keppel on December 10, 2001.

As PMRDC failed to redeem the subject property within redemption period, Keppel consolidated its title therein, resulting in the issuance of TCT No. 259401 in its name on May 26, 2003.

On September 22, 2004, a writ of possession over the subject property was issued in favor of Keppel. Pursuant to said writ, notices to vacate dated October 19, 2004 and January 31, 2005 were served by the sheriff on Carmelita Ramos (or "petitioner") as occupant of the subject property.

To thwart the enforcement of the abovementioned writ of possession and notices to vacate, petitioner filed the instant petition (as amended) for injunction and damages, with an application for preliminary injunction and temporary restraining order, against Keppel and the sheriff (or "respondents", when collectively). She claimed that she is the lessee of the subject property per Contract of Lease dated July 2, 2002 she executed with First Apollo Realty Development Corporation (or "First Apollo"), as lessor, but was not given notice of the levy and that, consequently, the levy and notices to vacate are null and void. She added that the Notice of Levy/Attachment was issued way back on November 14, 1997, or beyond the five-year period for execution of a final and executory judgment as prescribed by Sec. 6, Rule 39 of the 1997 Rules of Civil Procedure; and that the writ of possession is not available as there was no extrajudicial foreclosure of mortgage pursuant to Act No. 3135, as amended.

For its part, Keppel maintains that the levy and sale in execution of the subject property are valid, such acts being

presumed to have been regularly performed by the sheriff; that assuming petitioner was not notified of the levy, such omission merely constitutes a formal defect which was cured by the notice given regarding the execution sale on December 7, 2001; and that having failed to timely object to the execution proceedings, petitioner is estopped from assailing the validity of the levy and sale of the subject property.

Anent petitioner's claim that the judgment by compromise can no longer be enforced by mere motion, Keppel points out that the compromise agreement in Civil Case No. Q-97-32611 was approved by the RTC on November 10, 1999 and that, upon its motion, a writ of execution was issued on March 12, 2001; that pursuant to said writ, a notice of levy was issued in respect to the subject property on March 23, 2001 and the execution sale was held on December 7, 2001; and that the levy and sale of the subject property at public auction were conducted within the five-year period for executing the RTC's final judgment by motion. Opposing petitioner's prayer for preliminary injunction, Keppel asserts that the latter has no right to possess the subject property and, therefore, is not entitled to injunctive relief.

At the outset, We observe that the petition did not implead, as public respondent, the judge who issued the assailed writ of possession (Sec. 5, Rule 65, id.). But even if we are to disregard this procedural infirmity, the petition must still fail.

Sec. 9 (b), Rule 39, id., outlines the procedure for satisfaction of a money judgment by levy:

> Sec. 9. Execution of judgments for money, how enforced. –
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> (a) x x x.
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> (b) Satisfaction by levy. – If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.
>
> x x x
>
> Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment."

The foregoing provision should be correlated with Sec. 5, Rule 57, id., which states:

> "Sec. 5. Manner of attaching property. – The sheriff enforcing the writ shall without delay and with all reasonable diligence attach, to await judgment and execution in the action, only so much of the property in the Philippines of the party against whom the writ is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless the former makes a deposit with the court from which the writ is issued, or gives a counter-bond executed to the applicant, in an amount equal to the bond fixed by the court in the order of attachment or to the value of the property to be attached, exclusive of costs. No levy on attachment pursuant to the writ issued under Section 2 hereof shall be enforced unless it is preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint, the application for attachment, the applicant's affidavit and bond, and the order and writ of attachment, on the defendant within the Philippines.
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> The requirement of prior or contemporaneous service of summons shall not apply where the summons could not be served personally or by substituted service despite diligent efforts, or the defendant is a resident of the Philippines temporarily absent therefrom, or the defendant is a non-resident of the Philippines, or the action is

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> one in rem or quasi in rem."

We find that the sheriff substantially complied with the aforecited rules on levy of properties subject to execution. Petitioner's claim that she was not notified of the levy deserves scant consideration because, assuming it is true, it did not affect the execution proceedings conducted by the sheriff. Petitioner is not the judgment debtor; thus, she is not entitled to any notice on the execution of the judgment (Venzon vs. Juan, 427 SCRA 237; Sec. 15 [d], Rule 39, id.).

Parenthetically, We find highly suspect petitioner's claim that she is a lessee of the subject property. The Contract of Lease was executed on July 2, 2002, or more than six months after the subject property was sold at public auction (on December 7, 2001). Even more curious is the fact that the Contract of Lease was executed by First Apollo, as lessor, and petitioner, as lessee, although the subject property was then registered in the name of PMRDC – not First Apollo - under TCT No. 205458 and was already sold at public auction to Keppel (on December 7, 2001). Petitioner did not explain the basis of First Apollo's authority to sign the Contract of Lease as lessor of the subject property.

Assuming that petitioner has a right to possess the property as a lessee, the proper recourse to challenge the levy in execution was to file a third-party claim under Sec. 16, Rule 39, id.:

> "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 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 therefore is filed within one hundred twenty days (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.
>
> x x x."

Doctrinal is the rule that certiorari will lie only if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law against the acts of a public respondent (Building Care Corporation vs. NLRC, 268 SCRA 666). Time and again, it has been held that for certiorari to lie, all the remedies available in the trial court should have first been exhausted (Colarina vs. Court of Appeals, 303 SCRA 647).

In the present case, petitioner had a plain, speedy and adequate remedy under Sec. 16, Rule 39, id., and her failure to avail thereof cannot be cured by a resort to this extraordinary action. Having failed to avail of the proper remedy in the proceedings below to protect her purported right to possess the subject property, petitioner must suffer the consequences of her inaction.

Similarly, there is no merit in petitioner's contention that the Notice of Levy/Attachment can no longer be enforced as it was effected way back on November 14, 1997. To clarify, said Notice of Levy was made pursuant to the writ of preliminary attachment issued in Civil Case No. Q-97-32611. However, the execution sale was conducted not on the basis of the same Notice of Levy but the sheriff's levy on March 23, 2001 upon authority of the writ of execution dated March 12, 2001.

To recall, the final judgment was promulgated on November 10, 1999 and, upon Keppel's motion, a writ of execution was issued on March 12, 2001, followed by the levy on March 23, 2001 and sale at public auction on December 7, 2001. Thus, contrary to petitioner's claim, the judgment was actually executed in a span of about two years.

Even the subsequent issuance of the writ of possession on September 22, 2004 and service of the first notice to vacate dated October 19, 2004 were effected within five years from finality of the judgment in question.

Besides, given the consolidation of ownership and issuance of a TCT in its name, Keppel is entitled to the possession of the subject property and can demand it any time (Philippine National Bank vs. Sanao Marketing Corporation, 465 SCRA 287).

Finally, a writ of possession may be issued under four instances, one of which is in execution sales, as provided for in Sec. 33, last par., Rule 39, id. (Philippine National Bank vs. Sanao Marketing Corporation, supra).

All told, We find it apt to reiterate the dictum that execution is the fruit and the end of the suit and the life of the law (Garcia vs. Yared, 399 SCRA 331). Consequently, all efforts by a party-litigant or third person to thwart the full execution of a judgment long final shall not be countenanced.

WHEREFORE, for lack of merit, the instant petition is DENIED due course and, accordingly, DISMISSED.

SO ORDERED.

Reyes, Jr., and Lanzanas, JJ., concur.

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