PHILIPPINE SAVING BANK, PETITIONER, VS. SPOUSES MELODY AND JOHN LANSANG AND THE HON. PRESIDING JUDGE OF BRANCH 7, REGIONAL TRIAL COURT, MALOLOS CITY, RESPONDENTS.

Ponente: CASTILLO, M., J.

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CASTILLO, M., J.:

This is a petition for certiorari seeking to annul and set aside the Orders dated 02 December 2011[1] and 03 July 2013,[2] of the public respondent Regional Trial Court of Malolos City, Branch 7, in LRC Case No. P-387-M-2010, granting private respondents' motion to quash writ of possession and denying petitioner's motion for reconsideration, respectively.

The antecedents of this petition are:

An Ex-Parte Petition for Writ of Possession was filed by petitioner Philippine Savings Bank (PSBank) on 02 August 2010 before the public respondent RTC.[3] The said petition alleged:[4]

- Petitioner is a thrift bank, organized and existing under Philippine laws, with principal office and place of business at 4th Floor, PS Bank Center, 777 Sedeno St., Paseo de Roxas Avenue, Makati City.

- On December 11, 2008, Sps. Carlota and Rufino Tolentino with given address at No. 0796, NIA Road, San Juan, Balagtas (Bigaa), Bulacan, applied and obtained loans from petitioner in whose favor he/she/they executed a Promissory Note/s with Real Estate Mortgage xxx payable in accordance with the terms and conditions thereof;

- To secure payment on the said Promissory Note/s with Real Estate Mortgage, mortgagors mortgaged the said property/ies, covered by Transfer Certificate of Title No. T-274705 duly registered with the Register of Deeds of the Province of Bulacan xxx to herein petitioner;

- Sps. Carlota and Rufino Tolentino failed to pay the aforesaid loan pursuant to the terms of the Promissory Note/s with Real Estate Mortgage, and notwithstanding demands for payment, he/she/they failed and refused to pay the petitioner of (sic) the aforesaid loan, which became past due;

- As a consequence of their failure and willful refusal to pay the past due loan, the petitioner instituted extrajudicial foreclosure proceedings against the above-mentioned Real Estate Mortgage, which was executed to secure the payment thereof, and caused the sale at public auction, pursuant to Act No. 3135, as amended, the aforesaid mortgaged property/ies which was/were sold to the petitioner, as the highest bidder, and the corresponding Certificate of Sale xxx was issued in its favor;

- Copies of Notice of Extra Judicial Sale, Affidavit of Publication and Minutes of Sale are attached hereto xxx to prove compliance with the procedural requirements of Act No. 3135 and other pertinent laws;

- Formal Demand xxx was made upon Sps. Francisco and Aurenida Secretario and to all those claiming rights under him/her/them to vacate and turn over actual possession of the foreclosed property to the petitioner but he/she/they failed and/or refused to comply with the said demand;

- Petitioner is willing to post a bond in an amount equivalent to the reasonable rentals for the use of the foreclosed property for a period of twelve (12) months as the redemption period has not yet expired;

- The petitioner, as purchaser of the foreclosed property at its auction sale, is authorized to apply ex-parte for the issuance of a writ of possession over such property, in accordance with Section 7 of Act 3135 xxx

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- In accordance with prevailing jurisprudence, the Honorable Court has the power and authority to grant the petition for a writ of possession applied for and issue the corresponding writ of possession, provided the purchaser of the foreclosed property files the required bond equivalent to the reasonable rentals of the property within the redemption period of one (1) year xxx

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Finding that the petitioner was able to establish its allegations through the evidence it presented ex-parte, the RTC granted PSBank's petition on 28 February 2011.[5]

On 30 June 2011, private respondent spouses Melody and John Lansang moved to quash the writ of possession issued in favor of PSBank.[6] They claimed that they were the real, genuine registered owners of the parcel of land subject of the writ of possession; and that the spouses Carlota and Rufino Tolentino obtained title to the said realty by virtue of a spurious Deed of Absolute Sale dated 30 September 2008. They further averred that they were in actual possession of the said lot and that they had been occupying the same since 2000.

In its first assailed Order, the public respondent ordered the quashal of the writ of possession it earlier issued.

The subsequent motion for reconsideration of PSBank was denied by the RTC in its second assailed Order.

Hence, this petition.

Upon the filing of private respondents' Comment on the petition for certiorari and the lapse of the period granted to the petitioner to file its reply thereto, PSBank was deemed to have waived the filing thereof and the case was submitted for decision sans said reply.

Petitioner imputes grave abuse of discretion on the part of the public respondent RTC in issuing its assailed Orders. It essentially argues that the private respondent spouses Melody and John Lansang are not the third parties in actual possession of the subject property adverse to the mortgagors contemplated by the law exempting the issuance of a writ of possession as a ministerial duty of the court.

We dismiss the instant petition.

An appeal by way of a notice of appeal to this Court is the proper remedy to obtain a reversal of a final order rendered by the Regional Trial Court in the exercise of its original jurisdiction. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to certiorari because one of the requirements for the latter remedy is that there should be no appeal.[7] Thus, in Balayan v. Acorda,[8] it was clarified:

It bears emphasis that the special civil action for certiorari is a limited form of review and is a remedy of last recourse. The Court has often reminded members of the bench and bar that this extraordinary action lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. It cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, certiorari not being a substitute for a lapsed or lost appeal. Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion. x x x. (citations omitted.)

Here, the assailed Order of the public respondent (granting private respondents' motion to quash writ of possession) is a final order, given that the same disposed of the Ex-Parte Petition for Writ of Possession of PSBank in a manner that left nothing more to be done by the RTC in respect of the said case.

Accordingly, petitioner should have filed a notice of appeal and not a petition for certiorari before this Court. The failure of PSBank to avail of the appropriate remedy warrants the dismissal of the instant petition. Where the rules

prescribe a particular remedy for the vindication of rights, such remedy should be availed of.[9]

Moreover, certiorari is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence.[10] In this case, petitioner received the 03 July 2013 Order of the RTC (denying its motion for reconsideration) on 29 July 2013. It therefore had until 13 August 2013 to file a notice of appeal to this Court. PSBank, for unknown reasons, let this period lapse without filing its appeal. It filed the instant petition instead, on 26 September 2013, and attempted to mislead this Court into believing that the filing of the petition for certiorari was proper by declaring therein that "[t]here is no other plain, speedy and adequate remedy in the ordinary course of law."[11]

Even on the merits, the instant petition must fail.

The public respondent RTC cannot be faulted for quashing the writ of possession it earlier issued in favor of PSBank. In so doing, the RTC acted well in accordance with the applicable jurisprudence on the matter at hand.

In Emmanuel C. Villanueva v. Cherdan Lending Investors Corporation,[12] the case cited by the RTC in support of its assailed Order (first), the trial court set aside the writ of possession it issued to respondent therein on motion of petitioner Villanueva. Petitioner averred that he was in actual possession of and the true owner of the parcel of land subject matter of the case and that he was divested of his title thereto through the fraudulent deed of donation executed in favor of the debtors-mortgagors. In sustaining the aforementioned Order of the RTC, the Supreme Court held:

> A writ of possession is an order of the court commanding the sheriff to place a person in possession of a real or personal property. It may be issued in an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118, 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 or of a separate and independent action.
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> It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed within one year after the registration of the sale. As such, he is entitled to the possession of the property and can demand that he be placed in possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. Time and again, we have held that it is ministerial upon the court to issue a writ of possession after the foreclosure sale and during the period of redemption. Upon the filing of an ex parte motion and the approval of the corresponding bond, the court issues the order for a writ of possession. The writ of possession issues as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new TCT in the name of the purchaser.
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> This rule, however, is not without exception. Under Section 33, Rule 39 of the Rules of Court, which is made to apply suppletorily to the extrajudicial foreclosure of real estate mortgages by Section 6, Act 3135, as amended, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure unless a third party is actually holding the property adversely to the judgment debtor. Section 33 provides:
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> Sec. 33. Deed and possession to be given at expiration of redemption period; by whom executed or given.
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> 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 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. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

> 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.

The same issue had been raised in Bank of the Philippine Islands v. Icot, Development Bank of the Philippines v. Prime Neighborhood Association, Dayot v. Shell Chemical Company (Phils.), Inc., and Philippine National Bank v. Court of Appeals, and we uniformly held that the obligation of the court to issue an ex parte writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor.

The purchaser's right of possession is recognized only as against the judgment debtor and his successor-in-interest but not against persons whose right of possession is adverse to the latter. In this case, petitioner opposed the issuance of the writ of possession on the ground that he is in actual possession of the mortgaged property under a claim of ownership. He explained that his title to the property was cancelled by virtue of a falsified deed of donation executed in favor of spouses Peñaredondo. Because of this falsification, he filed civil and criminal cases against spouses Peñaredondo to nullify the deed of donation and to punish the party responsible for the falsified document. Petitioner's claim that he is in actual possession of the property is not challenged, and he has come to court asserting an ownership right adverse to that of the mortgagors, the spouses Peñaredondo.

The third party's possession of the property is legally presumed to be based on a just title, a presumption which may be overcome by the purchaser in a judicial proceeding for recovery of the property. Through such a judicial proceeding, the nature of the adverse possession by the third party may be determined, after such third party is accorded due process and the opportunity to be heard. The third party may be ejected from the property only after he has been given an opportunity to be heard, conformably with the time-honored principle of due process. The Civil Code protects the actual possessor of a property, as Article 433 thereof provides:

> Art. 433. Actual possession under claim of ownership raises disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

One who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The "judicial process" could mean no less than an ejectment suit or a reivindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated.

The ex parte petition for the issuance of a writ of possession filed by respondent, strictly speaking, is not the kind of judicial process contemplated in Article 433 of the Civil Code. Even if the same may be considered 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 enforcement or protection of a right, or the prevention or redress of a wrong.

Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court where an action for foreclosure is filed before the RTC where the mortgaged property or any part thereof is situated, any property brought within the ambit of Act 3135 is foreclosed by the filing of a petition, not with any court of justice, but with the office of the sheriff of the province where the sale is to be made. As such, a third person in possession of an extrajudicially foreclosed property, who claims a right superior to that of the original mortgagor, is given no opportunity to be heard on his claim. It stands to reason, therefore, that such third person may not be dispossessed on the strength of a mere ex parte possessory writ, since to do so would be tantamount to his summary ejectment, in violation of the basic tenets of due process.

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The Court cannot sanction a procedural shortcut. To enforce the writ against petitioner, an unwitting third party possessor who took no part in the foreclosure proceedings, would amount to the taking of real property without the benefit of proper judicial intervention. Hence, it was not a ministerial duty of the trial court under Act 3135 to issue a writ of possession for the ouster of petitioner from the lot subject of this instant case, particularly in light of the latter's opposition, claim of ownership and rightful possession of the disputed properties.

Since the facts of this case are substantially the same as those obtaining in the Villanueva case, the public respondent correctly adhered to the ruling therein. The assailed Orders are in conformity with the principle of stare decisis.

The principle of stare decisis et non quieta movere[13] is entrenched in Article 8 of the Civil Code, to wit:

> ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

It enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[14]

The importance of this doctrine in securing the certainty and stability of judicial decisions was expounded in the case of Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation,[15] to wit:

> Time and again, the court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. Stare decisis et non quieta movere. Stand by the decisions and disturb not what is settled. Stare decisis simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisis is a bar to any attempt to relitigate the same issue.

Under the facts and circumstances of the present case, We find that the public respondent RTC did not abuse its discretion, more so gravely, in rendering its assailed Orders.

WHEREFORE, the instant petition for certiorari is DISMISSED.

SO ORDERED.

MARIFLOR P. PUNZALAN CASTILLO

Associate Justice

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice

PEDRO B. CORALES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIFLOR P. PUNZALAN CASTILLO

Associate Justice

Chairperson, Fifteenth Division

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[1]

Rollo, pp. 18 - 26

[2] Rollo, p. 27

[3] Docketed as LRC Case No. P-387-M-2010

[4] Rollo, pp. 28 - 30

[5] Order of the RTC granting the petition for writ of possession, Rollo, pp. 34 - 35

[6] Third-Party Claim/Opposition (with Motion to Quash/Cancel Writ of Possession, Rollo, pp. 36 - 43

[7] Bugarin v. Palisoc, 513 Phil. 59, 66 (2005), cited in Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission, et. al., G.R. No. 155306, August 28, 2013

[8] 523 Phil. 305, 309 (2006), also cited in Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission, et. al., supra

[9] Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission, et. al., supra

[10] Bugarin v. Palisoc, supra, cited in Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission, et. al., supra

[11] Petition for certiorari, Rollo, p. 4

[12] Assailed Order of the RTC, Rollo, p. 21

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[13] To adhere to precedents and not to unsettle things which are established.

[14] Castillo v. Sandiganbayan, G.R. No. 138231, 21 February 2002, 377 SCRA 509, 515, cited in Amelia D.De Mesa, et. al. v. Pepsi Cola Products Phils., Inc., et. al., G.R. No. 153063-70, August 19, 2005

[15] G.R. No. 159422, 28 March 2008, 550 SCRA 180, 197-198, cited in Amelia Aquino, et. al. v. Philippine Ports Authority, G.R. No. 181973, April 17, 2013

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