

MARIA TERESA C. TOREJOS, EMILIO C. CABILAN, AND APOLLO C. CABILAN PETITIONERS, VS. HON.SYLVA G. AGUIRRE-PADERANGA, PRESIDING JUDGE, REGIONAL TRIAL COURT-BRANCH 16, CEBU CITY, HO...

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

In this petition for certiorari,[1] petitioners pray for this Court to annul and restrain the implementation of the Order[2] dated April 10, 2014 (“assailed Order”) of the Regional Trial Court (RTC), Branch 16, Cebu City. This assailed Order denied petitioners' Urgent Motion for Reconsideration and to Set Aside Order and considered the same not filed for being pro forma.

The controversy involved in this case arose when private respondent DWBH Lending Investors, Inc. (DWBH) filed an ex-parte petition for issuance of a writ of possession before the public respondent RTC. In such ex-parte petition, DWBH alleged that it has the right of possession over a parcel of land described as Lot 13 Block 2 of the subdivision plan (LRC) Psd-44408, being a portion of Lot 2587 of the Cadastral Survey of Cebu, LRC (GLRO) Cadastral Record No. 9647) situated in the City of Cebu (“subject Property”) containing an area of two hundred nineteen (219) square meters, more or less, and previously covered by Transfer Certificate of Title (TCT) No. 107-2011004391, and now covered by TCT No. 107-2013003187. DWBH further alleged that TCT No. 107-2013003187 is now under the name of DWBH after a consolidation of ownership of the subject Property in its favor.

DWBH explained that Marlon Cabilan, Maria Teresa Torrejos, Apollo Cabilan, Emilio Cabilan and Maria Consuelo Canlobo (“mortgagors”) executed a Deed of Real Estate Mortgage over the subject Property in favor of DWBH to secure a loan. And, after such loan became due and demandable, the above-named mortgagors failed to comply with the terms and conditions of the Real Estate Mortgage contract. As such, DWBH extrajudicially foreclosed the subject Property pursuant to Act No. 3135, as amended. Such foreclosure resulted in the issuance of a Certificate of Sale in DWBH's favor. Then after the lapse of the redemption period without the mortgagors redeeming the subject Property, DWBH caused the consolidation of ownership over the subject Property in its name.[3]

Finding the evidence of DWBH to have sufficiently established the propriety of DWBH's possession over the subject Property, the RTC, in its Order[4] dated January 27, 2014, granted DWBH's petition and issued a writ of possession in its favor.

Upon receipt by petitioners of the January 27, 2014 Order of the RTC and the issuance of writ of possession, petitioners filed an Urgent Motion for Reconsideration and to Set Aside the January 27, 2014 Order[5] (“Urgent Motion”). Petitioners alleged in their Urgent Motion that they were denied due process considering that they did not have any knowledge that the subject property was already extrajudicially foreclosed. They averred therein that they never received any copy of the petition for extrajudicial foreclosure and denied receiving a demand letter

from DWBH for them to pay the loan secured by the mortgage contract.

In an Order[6] dated February 19, 2014, the RTC noted petitioners' Urgent Motion and directed DWBH to file a comment thereon. Accordingly, DWBH filed its Comment/Opposition[7] where it contended that petitioners' Urgent Motion is a mere scrap of paper as petitioners failed to set the same for hearing. It likewise contended that petitioners were not denied due process and that they cannot now refuse to be bound by the contract on the ground that the subject property is their family home.

Consequently, the RTC issued its assailed Order where it denied the Urgent Motion as it considered the same pro forma and deemed it not filed for petitioners' failure to set the same for hearing. The dispositive portion of the assailed Order reads:

“WHEREFORE, premises considered, the Urgent Motion for Reconsideration and to Set Aside Order dated January 27, 2014 filed by movants through counsel is deemed not filed for being pro forma which cannot be acted upon by this Court.

SO ORDERED.”[8]

Aggrieved by this ruling, petitioners raised the case to this Court through a petition for certiorari on the following ground:

“PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AND PALPABLY ERRED IN RULING THAT THE URGENT MOTION FOR RECONSIDERATION AND TO SET ASIDE ORDER DATED JANUARY 27, 2014 IS “A MERE SCRAP OF PAPER FOR NON-COMPLIANCE WITH SECTION(S) 4 AND 5 OF RULE 15 OF THE REVISED RULES OF COURT” AFTER DIRECTING THE PRIVATE RESPONDENT “TO FILE ITS OPPOSITION/COMMENT TO THE AFORESAID MOTION WITHIN TEN (10) DAYS UPON RECEIPT HEREOF”, HENCE, THE PRIVATE RESPONDENT WAS GIVEN ITS DAY IN COURT AND THE PURPOSE OF SECTION 4 AND 5 (RULE 15) OF THE RULES OF COURT HAS BEEN SATISFIED.”[9]

In gist, petitioners averred that the RTC gravely abused its discretion when it issued the assailed Order that considered their Urgent Motion pro forma and deemed it not filed because of petitioners' failure to set the same for hearing and their failure to observe the three-day notice rule, that is, petitioners failed to furnish the other party a copy of their motion three days before the scheduled hearing of the motion as provided for under Sections 4 and 5, Rule 15 of the Rules of Court. Petitioners argued that when the RTC noted their Urgent Motion and directed DWBH to file a comment, it already brushed aside the rules because the filing of DWBH's comment already served their purpose.

Preliminarily, We note that the applicable law involved in this case is Act No. 3135 as amended, as regards the issuance of writ of possession after the expiration of the redemption period of an extrajudicially foreclosed property.

Sections 7 and 8 of Act. No. 3135, as amended, provide:

SEC. 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 section one hundred and ninety-four 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 paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety six, as amended by Act Numbered Twenty-eight hundred and sixty-six, 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. (underscoring supplied)

SEC. 8. The debtor may, in the proceedings in which possession was requested but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four Hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal. (underscoring supplied)

Section 7 was summarized and explained by the Supreme Court in this wise:

“During the one-year redemption period, as contemplated by Section 7 of the above-mentioned law, a purchaser may apply for a writ of possession by filing an ex parte motion under oath in the registration or cadastral proceedings if the property is registered, or in special proceedings in case the property is registered under the Mortgage Law. In this case, a bond is required before the court may issue a writ of possession.

On the other hand, upon the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale, also upon a proper ex parte motion. This time, no bond is necessary for its issuance; the mortgagor is now considered to have lost any interest over the foreclosed property. The purchaser then becomes the owner of the foreclosed property, and he can demand possession at any time following the consolidation of ownership of the property and the issuance of the corresponding TCT in his/her name. It is at this point that the right of possession of the purchaser can be considered to have ripened into the absolute right of a confirmed owner. The issuance of the writ, upon proper application, is a ministerial function that effectively forbids the exercise by the court of any discretion. xxxx.”[10]

Meanwhile, Section 8 “provides that the mortgagor may file a petition with the trial court which issued the writ to set aside the sale and for cancellation of the writ of possession within 30 days after the purchaser-mortgagee was given possession. xxx The law is clear that the purchaser must first be placed in possession of the mortgaged property pending proceedings assailing the issuance of the writ of possession. If the trial court later finds merit in the petition to set aside the writ of possession, it shall dispose in favor of the mortgagor the bond furnished by the purchaser. Thereafter, either party may appeal from the order of the judge in accordance with Section 14 of Act 496, which provides that “every order, decision, and decree of the Court of Land Registration may be reviewed . . . in the same manner as an order, decision decree or judgment of a Court of First Instance (RTC) might be reviewed.” The rationale for the mandate is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on his right of ownership.”[11]

Under the foregoing circumstances, it becomes apparent that petitioners' mode of bringing the instant case to this Court through a petition for certiorari is incorrect.

As already mentioned, the RTC deemed petitioners' Urgent Motion as not filed on the ground that petitioners failed to set the same for hearing. And, this denial is what petitioners averred as a grave abuse of discretion.

It must be noted that when the RTC deemed the Urgent Motion as not filed, the same is tantamount to the denial of such motion and, in effect, it is an affirmation of its previous Order granting the writ of possession in DWBH's

favor.

Accordingly, when the RTC denied petitioners' Urgent Motion, their remedy is an appeal pursuant to Section 8 of Act No. 3135 as amended and not through a petition for certiorari.

At this point, it must be reiterated, lest it be forgotten, that certiorari as a special civil action is available only if the following essential requisites concur: (1) it must be directed against the tribunal, board or any officer exercising judicial or quasi-judicial functions; (2) the tribunal, board or officer must have acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[12]

The Supreme Court in *Mallari v. Banco Filipino Savings & Mortgage Bank*,[13] is very categorical in holding that Section 8, Act 3135 is the remedy from the trial court's order granting the issuance of a writ of possession, and the aggrieved party may appeal from the order denying or granting said petition. Appeal is the plain, speedy and adequate remedy envisioned in Rule 65 of the Rules of Court, and since petitioner could have availed himself of such procedure, he is not entitled to the remedy of certiorari.

In the same vein, in *Metropolitan Bank and Trust Company v. Tan*,[14] the Supreme Court reiterated that a petition for certiorari could not substitute the remedy of appeal in cases where the trial court grants a writ of possession, thus:

“xxx the trial court’s order granting [a] writ of possession is final. The proper remedy xxx is an appeal and not a petition for certiorari. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctable by an appeal xxx.”

To reiterate, when the RTC deemed the Urgent Motion as not filed, the same resulted to the denial of such motion, being such, the assailed Order granting the writ of possession becomes a final order which could be assailed only through an appeal.

In the instant case, We hold that the RTC in denying the Urgent Motion acted within its jurisdiction, and any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctable by an appeal. Even assuming that this petition for certiorari would be the correct remedy, We failed to see any grave abuse of discretion when the RTC denied petitioners' Urgent Motion. Even if the Urgent Motion was set for hearing, the RTC's grant of a writ of possession would still follow because the “issuance of a writ of possession to a purchaser in a public auction is a ministerial act. After the consolidation of title in the buyer’s name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function. The trial court has no discretion on this matter. Hence, any talk of discretion in connection with such issuance is misplaced.”[15]

Hence, the instant petition must fail.

WHEREFORE, this petition for certiorari is hereby DENIED for being the wrong remedy availed of by the petitioners and for lack of merit. The Order dated April 10, 2014 of the Regional Trial Court (RTC), Branch 16, Cebu City is AFFIRMED. Accordingly, the Order dated January 27, 2014 granting the issuance of a writ of possession in DWBH's is likewise affirmed.

SO ORDERED.

Delos Santos. J., Chairperson, and Azcarraga-Jacob, JJ., concur.

[1] Rollo, pp. 3-17.

[2] Rollo, pp. 50-51.

[3] See Order dated January 27, 2014, rollo, pp. 34-36.

[4] Ibid.

[5] Rollo, pp. 37-40.

[6] Rollo, p. 43.

[7] Rollo, pp. 44-46.

[8] Rollo, p. 51.

[9] Rollo, p. 8.

[10] Nagtalon v. United Coconut Planters Bank, G.R. No. 172504, July 31, 2013.

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

[12] Mallari v. Banco Filipino Savings & Mortgage Bank, G.R. No. 157660, August 29, 2008, citing Metropolitan Bank and Trust Co., Inc. v. NWPC, G.R. No. 144322, February 6, 2007. Emphasis original.

[13] Ibid., citing Green Asia Construction & Development Corp. v. Court of Appeals, G.R. No. 163735, November 24, 2006.

[14] G.R. No. 159934, June 26, 2008.

[15] Espiridion v. Court of Appeals, G.R. No. 146933, June 8, 2006. Emphasis original.

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