

BPI FAMILY SAVINGS BANK, INC., PETITIONER-APPELLEE, VS. SPOUSES VIRGINIA M. CERVERA AND ARLENO M. CERVERA, RESPONDENTS-APPELLANTS.

Ponente: SORONGON, E.D., J.

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SORONGON, E.D., J.

This is an Appeal[1] from the Decision[2] dated April 16, 2012 of the Regional Trial Court of Mariveles, Bataan, Branch 4 in CAD Case No. 734-ML.

The Facts

On November 23, 2010, petitioner-appellee BPI Family Savings Bank (BPI) filed an Ex-Parte Petition for Issuance of Writ of Possession with the Regional Trial Court of Bataan docketed as CAD Case No. 734-ML[3] against respondents-appellants spouses Virginia M. Cervera and Arleno M. Cervera (spouses Cervera). BPI averred that by virtue of the extra-judicial foreclosure proceeding and pursuant to the pertinent provisions of Act No. 3135, as amended, the Provincial Ex-Officio Sheriff of Balanga City sold at public auction[4] on May 21, 2009 to BPI, being the highest bidder, the real property covered by TCT No. T-79126 of the Registry of Deeds of the Province of Bataan, consisting of 253 square meters, under the name of spouses Cervera.

On June 23, 2009, the Certificate of Sale[5] was presented, registered and annotated at the back of TCT 79126. The spouses Cervera failed to exercise their one (1) year legal right of redemption reckoned from June 23, 2009. Consequently, ownership over said property was consolidated in the name of BPI and TCT No. T-79126 was canceled and a new title (TCT No. 038-2010006488)[6] was issued in its name.

Finding the petition to be sufficient in form and substance, the trial court set the same for initial hearing. However, prior to the said hearing on March 15, 2011, the trial court received an Opposition to the Motion for Writ of Possession[7] filed by spouses Cervera arguing on the main the pendency of a case for annulment of foreclosure and auction sale of the same property subject of the sought writ of possession which case should justify the suspension of the proceedings until such time that the said case is finally disposed. But BPI replied[8] that the issuance of writ is ministerial and that it can proceed independently of any action seeking for the annulment of the foreclosure and auction sale.

On May 19, 2011, BPI was allowed to present evidence Ex-Parte during which witness Jennifer C. Salalila testified on the material averments of the petition. Several documentary evidence[9] were also submitted by BPI and admitted by the trial court as part of the testimony of said witness.

On April 16, 2012, the trial court issued its assailed Decision granting the petition, the dispositive portion of which reads:

“WHEREFORE, premises considered, the Court hereby orders the issuance of a Writ of Possession in favor of herein petitioner, BPI Family Savings Bank, Inc., involving one (1) parcel of land situated in Poblacion, Limay, Bataan and embraced by Transfer Certificate of Title No. 038-2010006488 against defendants, Spouses

Virginia M. Cervera and Arleno M. Cervera and all persons/entities claiming rights under them.”

Displeased, spouses Cervera filed a Notice of Appeal[10] which was granted in the trial court's Order dated May 16, 2012. In their appeal brief, spouses Cervera alleged:

I.

THE COURT A QUO GRAVELY ERRED IN SETTING ASIDE THE OPPOSITION OF THE APPELLANT TO THE EX-PARTE PETITION FOR ISSUANCE OF WRIT OF POSSESSION AND DENYING THE RIGHT OF APPELLANT TO PARTICIPATE IN SAID PROCEEDING THEREBY DENYING APPELLANTS' RIGHT TO DUE PROCESS.

II.

THE COURT A QUO GRAVELY ERRED IN DENYING APPELLANTS' OPPOSITION THAT CIVIL CASE NO. 834-ML FOR ANNULMENT OF EXTRA-[JUDICIAL] FORECLOSURE PROCEEDINGS, AND APPLICATION FOR TEMPORARY RESTRAINING ORDER/INJUNCTION INVOLVING THE SAME PARTIES AND PROPERTY IN ISSUE [BE] RESOLVED FIRST AND ABATE THE PETITION FOR ISSUANCE OF WRIT OF POSSESSION.

In short, two main issues are raised in this appeal, viz: (1) Is the trial court correct in excluding spouses Cervera in the proceedings before it? (2) Will the pendency of the case for annulment of foreclosure proceedings and public auction have an effect over the proceedings for the issuance of a writ of possession?

We resolve the first issue in the affirmative. The trial court did not commit any error in maintaining the non-adversarial nature of a proceeding for the issuance of a writ of possession. A petition for the issuance of a writ of possession is ex parte, non-adversarial, and summary in nature because the only issue involved is the purchaser's right to possession. In fact, Section 7 of Act 3135 expressly provides that it is the ministerial duty of the court to issue a writ of possession in favor of the purchaser even during the redemption period, unless the case falls under the exceptions provided by law and jurisprudence.[11]

In the case of *Spouses Fortaleza vs. Spouses Lapitan*[12], it was held that:

Accordingly, unless a case falls under recognized exceptions provided by law and jurisprudence, we maintain the ex parte, non-adversarial, summary and ministerial nature of the issuance of a writ of possession as outlined in Section 7 of Act No. 3135, as amended by Act No. 4118, which provides:

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 x x x 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. (Emphasis supplied.)

Under the provision cited above, the purchaser in a foreclosure sale may apply for a writ of possession during the redemption period. Notably, in this case, the one-year period for the spouses Fortaleza to redeem the mortgaged property had already lapsed. Furthermore, ownership of the subject property had already been consolidated and a new certificate of title had been issued under the name of the spouses Lapitan. Hence, as the new registered owners of the subject property, they are even more entitled to its possession and have the unmistakable right to file an ex parte motion for the issuance of a writ of possession. As aptly explained in *Edralin v. Philippine Veterans Bank*, the duty of the trial court to grant a writ of possession in such instances is ministerial, and the court may not exercise discretion or judgment, thus:

Consequently, 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. x x x The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title becomes merely a ministerial function. Effectively, the court cannot exercise its discretion. (Emphasis in the original.)

In fine, the issuance of a writ of possession on the part of BPI is merely an incidence of ownership and is just the natural result of the consolidation of title in its name. And, since the case does not fall into any recognized exceptions such as when the property is being contested by a third person, the trial court can very well exclude those who want to participate in the ex-parte hearings thereof.

Regarding the second issue, the pendency of an action for the annulment of the foreclosure sale of the subject property will not preclude the trial court from issuing the writ of possession.

In the case of LZK Holdings and Development vs. Planter's Development Bank[13], it was held that:

To emphasize the writ's ministerial character, we have in previous cases disallowed injunction to prohibit its issuance, just as we have held that issuance of the same may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.

x x x x

x x x [Planters Bank], as the purchaser in the foreclosure sale, may apply for a writ of possession during the redemption period. In fact, it did apply for a writ on December 27, 1999, well within the redemption period. The San Fernando RTC, given its ministerial duty to issue the writ, therefore, should have acted on the ex parte petition. The injunction order is of no moment because it should be understood to have merely stayed the consolidation of title. As previously stated, an injunction is not allowed to prohibit the issuance of a writ of possession. Neither does the pending case for annulment of foreclosure sale, mortgage contract, promissory notes and damages stay the issuance of said writ. (emphasis supplied)

Lastly, the trial on the merits has not even started. Until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, petitioner is bereft of valid title and of the right to prevent the issuance of a writ of possession to [Planters Bank]. Until then, it is the trial court's ministerial function to grant the possessory writ to [Planters Bank]. "

Accordingly, it was error for spouses Cervera to claim that their action to annul the foreclosure sale could have effectively stayed the issuance of a writ of possession. Put it differently, until and unless the foreclosure sale is declared void, they do not have the legal standing to interfere in the proceedings for the issuance of the said writ.

On the basis of the foregoing, the instant appeal must therefore fail.

WHEREFORE, the Appeal is hereby DISMISSED. Accordingly, the Decision dated April 16, 2012 of the Regional Trial Court of Balanga City, Branch 4 in CAD Case No. 734-ML is hereby AFFIRMED.

SO ORDERED.

Reyes, Jr., A.B., Chairperson, and Rosario, R.R., JJ., concur.

[1] Rollo, pages 25-34.

[2] Rolo, pages 11-15.

- [3] Record, pages 1-7.
- [4] Record, Exhibit “D”, page 12.
- [5] Record, Exhibit “E”, pages 13-14.
- [6] Record, Exhibit “G”, page 15.
- [7] Record, pages 32-33.
- [8] Record, pages 34-38.
- [9] Exhibits “A” to “H” and submarkings, records (Index of Exhibits)
- [10] Record, pages 75-76.
- [11] G.R. No. 170906, November 27, 2009.
- [12] G.R. No. 178288, August 15 2012.
- [13] G.R. No. 187973, January 20, 2014.

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