

**RAYMUNDO VILLANUEVA & JANE VILLANUEVA, PETITIONERS,
VS. HON. CRISANTO C. CONCEPCION, PRESIDING JUDGE OF THE
REGIONAL TRIAL COURT OF BULACAN, BRANCH 12, MALOLOS CITY,
ET.AL., RES...**

Ponente: COSICO, J.

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COSICO, J.:

The issuance of a writ of possession may not be stayed by a pending action for annulment of mortgage.[1]

The Case

This is a special civil action for certiorari filed under Rule 65 of the 1997 Rules of Civil Procedure with ancillary prayer for injunction and/or temporary restraining order assailing the Orders issued by public respondent Hon. Crisanto C. Concepcion, Presiding Judge of the Regional Trial Court, Branch 12 of Malolos City, Bulacan in LRC Case No. P-507-2004 which is a petition for the issuance of a writ of possession filed by private respondent Asiatrust Development Bank (“Asiatrust”) to which title to the mortgaged property (“subject property”) previously owned by petitioners Raymundo and Jane Villanueva, was consolidated. The assailed issuances subject of the instant petition are as follows:

- (1) Order dated October 26, 2005[2] denying petitioners’ prayer for the dismissal of the petition for issuance of a writ of possession;
- (2) Order dated January 16, 2005[3] dismissing petitioners’ motion for reconsideration of the first assailed order.

Alleging that grave abuse of discretion amounting to lack or excess of jurisdiction was committed by public respondent in issuing the above Orders, petitioners are now before us seeking, among other matters, the annulment and setting aside of the aforesaid rulings with damages.

The Facts

As may be deduced from the records, this petition stemmed from the foreclosure of the subject property located at Plaridel, Bulacan which was registered in the names of herein petitioners and mortgaged to Asiatrust to answer for the former’s obligations with the bank. The subject property was later on sold at public auction with Asiatrust as the highest bidder. Subsequently, petitioners filed an action against Asiatrust for “Annulment of Real Estate Mortgage, Credit Line Agreement, Loan Agreement, Promissory Notes, Certificate of Sale dated November 15, 2000, Continuing Surety Agreement plus Damages” before the Regional Trial Court of Quezon City which case was docketed as Civil Case No. 00-42512 and raffled to Branch 97 thereof. For this matter, among the issues raised by the petitioners in the said case was the alleged invalidity of the proceedings that attended the foreclosure sale of the subject property.

The instant controversy arose when during the pendency of Civil Case No. 00-42512, Asiatrust filed before the

Regional Trial Court of Malolos City, Bulacan a petition[4] for the issuance of a writ of possession over the subject property with the following allegations, to wit:

“2. That mortgagors Sps. Raymundo R. Villanueva and Jane B. Villanueva, obtained a loan from petitioner-applicant Asiatruster Development Bank in the amount of SEVEN MILLION PESOS (P7,000,000.00)
x x x

3. That by way of security to the loan, mortgagors offered Transfer Certificate of Title No. T-118561 located at Plaridel, Bulacan registered in their names. x x x

4. That mortgagors failed to pay and settled their obligation within the agreed period, and the petitioner-applicant initiated the extrajudicial foreclosure of the said property with the Office of the Ex-Officio Sheriff, Malolos, Bulacan.

5. That on November 9, 2000, the petitioner/applicant was the highest bidder in the sale at public auction of the said property together with all the improvements found therein as evidenced by a certificate of sale issued by the Office of the Ex-Officio Sheriff, Malolos Bulacan. x x x

6. That the one (1) year redemption period had expired without the mortgagors or any authorized representative, exercised the right of redemption within the period prescribed by law.

7. That an affidavit of consolidation was prepared by the petitioner-applicant and was subsequently issued Transfer Certificate of Title No. T-179302 under the name of Asiatruster Development Bank x x x

8. That petitioner-applicant is not yet in possession of the aforesaid property and the mortgagors, and other persons claiming rights over them are still in possession of the same to the damage and prejudice of the petitioner.

x x x

10. That petitioner-applicant is now entitled to a writ of possession of the property subject matter of this petition.”

In opposing such petition, petitioners, as oppositors therein, prayed for its dismissal, alleging that there is already a complaint assailing the validity of the real estate mortgage which is pending before the Regional Trial Court of Quezon City. Petitioners alleged therein that the petition was dismissible for violation of Section 5, Rule 7 of the 1997 Rules of Civil Procedure or the rule on non-forum shopping as there is another pending action between the parties for the same cause of action. Moreover, under Section 8 of Act No. 3135 a mortgagor is permitted to set aside the foreclosure in the same proceedings for the issuance of a writ of possession.

In striking down the above arguments of petitioners in the proceedings below and denying their prayer for the dismissal of the petition, the Regional Trial Court, in its first assailed Order dated October 26, 2005 ruled:

“Under the facts obtaining in this case that made the petitioning bank to ask for a writ of possession, the opposition thereto from the mortgagors cannot stop the course of the proceedings to determine if indeed, it can confirm in the ex-parte hearing its right of possession as the absolute owner now of the subject property.”
[Order, p.2]

Citing the case of Mamerto Maniquis Foundation, Inc. v. Pizarro (A.M. No. RTJ-03-1750, January 14, 2005) and Spouses de Vera v. Agloro (G.R. No. 155673, January 15, 2005), public respondent held that the pendency of an action questioning the validity of the mortgage cannot bar the issuance of the writ of possession after title to the property has been consolidated in the mortgagee. In addition, an ex-parte petition for the issuance of a possessory writ under Section 7 of Act No. 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 suit.

As earlier adverted to, the petitioners filed a motion for reconsideration of the first assailed Order which was denied in the second assailed Order dated January 16, 2005 which states:

“The denial of the motion to dismiss was premised on the fact that, as alleged in the petition, the property subject matter of this petition was mortgaged, foreclosed, and sold to herein petitioner bank in a public action held for the purpose. Considering that the subject property was not redeemed within the period prescribed by law from the time the certificate of sale was issued to petitioning bank, it is but proper for it to consolidate the same in its name. Such being the case, it is also but proper for the petitioning bank to file the instant petition. With this premise, what the Court can only do now is to issue the writ prayed for, it being its ministerial function subject to the evidence that petitioning bank will present.” [Order, p. 2]

Undaunted, petitioners are now before us in this petition for certiorari with prayer for the issuance of an injunctive writ.

The Present Petition

In sum, the sole issue raised in this petition[5] is whether or not public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in not dismissing the petition for the issuance of a writ of possession considering the following points:

1. That private respondent clearly violated the rule on non-forum shopping; and
2. That there are serious errors in the findings of facts which if not corrected would cause grave and irreparable damages to petitioners.

In its Comment[6], Asiastrust avers that there is nothing more to restrain as the latter already concluded the presentation of evidence ex-parte before public respondent court. Also, the allegation in the instant petition failed to establish that public respondent really acted with grave abuse of discretion amounting to lack or excess of jurisdiction as the issuance of a writ of possession is merely a ministerial duty on the part of the court; moreso, considering that the title had already been consolidated in the name of Asiastrust.

A Reply[7] to the aforesaid comment having been filed by petitioners, we now deem the petition as submitted for decision.

This Court’s Ruling

The petition is bereft of merit.

The points raised by petitioners herein are not new and has been sufficiently addressed and answered in the case of *Spouses Arquiza v. Court of Appeals*[8] wherein the Supreme Court held that a petition for the issuance of a writ of possession is not covered by the rule on non-forum shopping. Moreover, neither is there *litis pendetia* between an action for annulment of mortgage and a petition for the issuance of a writ of possession involving the same property, thus:

“The certification against forum shopping is required only in a complaint or other initiatory pleading. The ex parte petition for the issuance of a writ of possession filed by the respondent is not an initiatory pleading. Although the private respondent denominated its pleading as a petition, it is, nonetheless, a motion. What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but rather its purpose. The office of a motion is not to initiate new litigation, but to bring a material but incidental matter arising in the progress of the case in which the motion is filed. A motion is not an independent right or remedy, but is confined to incidental matters in the progress of a cause. It relates to some

question that is collateral to the main object of the action and is connected with and dependent upon the principal remedy. An application for a writ of possession is a mere incident in the registration proceeding. Hence, although it was denominated as a "petition," it was in substance merely a motion. Thus, the CA correctly made the following observations:

Such petition for the issuance of a writ of possession is filed in the form of an ex parte motion, inter alia, in the registration or cadastral proceedings if the property is registered. Apropos, as an incident or consequence of the original registration or cadastral proceedings, the motion or petition for the issuance of a writ of possession, not being an initiatory pleading, dispels the requirement of a forum-shopping certification. Axiomatic is that the petitioner need not file a certification of non forum shopping since his claims are not initiatory in character (Ponciano vs. Parentela, Jr., 331 SCRA 605 [2000])

It bears stressing that Section 7 of Act No. 3135, as amended by Act No. 4118, specifically provides that the buyer at public auction may file a verified petition in the form of an ex parte motion.

SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance (now Regional Trial Court) 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 the 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 the filing 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."

For this matter, it has also been held that in cases of this nature, an ordinary action to acquire possession in favor of the purchaser at an extrajudicial foreclosure of real property is not necessary as there is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale.[9] The basis of this right to possession is the purchaser's ownership of the property.[10] The mere filing of an ex parte motion for the issuance of the writ of possession would suffice, and no bond is required.[11]

In addition, in brushing aside the argument of *litis pendentia* between an action for the annulment of mortgage and a petition for issuance of a writ of possession, the High Tribunal in the above-cited case[12], ruled in this wise:

"The requisites of *litis pendentia* are the following: (a) identity of parties, or at least such as representing the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. And one element of *res judicata* is that the judgment or order must be on the merits of the case.

x x x

Well established is the rule that after the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function. The issuance of the writ of possession being a ministerial function, and summary in nature, it cannot be said to be a judgment on the merits, but simply an incident in the transfer of title. Hence, a separate case for annulment of mortgage and foreclosure sale cannot be barred by *litis*

pendentia or res judicata.

Conversely, we reject the petitioners' argument that the ex parte petition for the issuance of a writ of possession should have been dismissed on the ground of forum shopping. The test to determine whether a party violated the rule against forum shopping is whether the elements of litis pendentia are present, or whether a final judgment in one case will amount to res judicata in another. In other words, when litis pendentia or res judicata does not exist, neither can forum shopping exist. Having settled that litis pendentia does not exist, it follows then that no forum shopping likewise exists in this case. The Court's ruling in *Ong vs. Court of Appeals* is instructive, thus:

As a rule, 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. 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." [Emphasis supplied]

On the basis of the foregoing, it is clear that a petition for the issuance of a writ of possession over the subject property may proceed independently of the proceedings for the annulment of mortgage respecting the said property without violating the rule on non-forum shopping since such application for a writ of possession, besides being provided for by law, is not considered an initiatory pleading covered by the rule on non-forum shopping. Notably, there is also no forum shopping since there is no litis pendentia between the two actions. There can be no litis pendentia as the very nature of the proceedings for the issuance of a writ of possession is not equivalent to a judgment on the merits which will resolve the issues raised in the annulment of mortgage. Hence, we find that no grave abuse of discretion was committed by public respondent in proceeding with the hearing of the application for the issuance of a writ of possession.

To repeat, the trial court's duty to grant a writ of possession is ministerial.[13] The writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond.[14] The court neither exercises its official discretion nor judgment.[15] And in such case, the judge issuing the order following the express provisions of law cannot be charged with having acted without jurisdiction or with grave abuse of discretion.[16]

In view of the foregoing disquisition, it is clear that petitioners' prayer for injunction must be denied. Again, it bears stressing that to warrant the issuance of an injunctive writ, the applicant must show (1) a right in esse or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage.[17] Verily, petitioners failed to show any clear right in the case at bar to warrant the issuance thereof. If only to stress the writ's ministerial character, injunction is disallowed to prohibit its issuance.[18] In fine, the issuance of a writ of possession may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.[19]

WHEREFORE, premises considered, the instant petition is hereby DISMISSED.

SO ORDERED.

Sundiam and Librea-Leagogo, JJ., concur.

[1] *PNB v. Sanao Marketing Corp.*, 465 SCRA 287, 303 [2005].

[2] *Rollo* at 55-57.

[3] *Id.* at 18-20.

[4] Id. at 35-39.

[5] Id. at 2-16.

[6] Id. at 60-65.

[7] Id. at 68-74.

[8] 459 SCRA 753,762-764 [2005].

[9] Id. at 764.

[10] Ibid.

[11] Ibid.

[12] Id. at 764-766.

[13] PNB V. Sanao Marketing Corp., 465 SCRA 287, 303 [2005]

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] Light Rail Transit Authority v. Court of Appeals, 444 SCRA 125, 137 [2004].

[18] PNB v. Sanao Marketing Corp., supra. at 303.

[19] Ibid.

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