ROSARIO BUMANGLAG, PETITIONER-APPELLEE, VS. SPOUSES QUIRICO M. MAJADUCOM AND AURORA S. MAJADUCOM, RESPONDENTS-APPELLANTS.

Ponente: SADANG, J.

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SADANG, J.:

Brought to this court via appeal is the Resolution[1] dated August 31, 2010 of the Regional Trial Court (RTC) of Muntinlupa City, Branch 276, in LRC Case No. 09-080, granting petitioner-appellee's petition for issuance of writ of possession, and the Order[2] dated January 10, 2011 denying the motion for reconsideration of the respondents-appellants.

Records show that petitioner-appellee Rosario Bumanglag (hereafter, appellee) filed in the RTC a Petition for the Issuance of a Writ of Possession. At the hearing on February 18, 2010, the RTC granted respondents-appellants spouses Quirico M. Majaducom (Quirico) and Aurora Majaducom (hereafter, appellants) ten days to file a comment or opposition.[3] Because appellants did not file their comment or opposition, the RTC allowed appellee to present evidence ex-parte. At the May 28, 2010 hearing before the court-appointed hearing officer,[4] appellee testified that to secure a P26,000.00 loan appellants mortgaged to her a parcel of land located in Tunasan, Muntinlupa City, covered by Transfer Certificate of Title (TCT) No. S-92296[5] in the name of appellants, under a Deed of Real Estate Mortgage (REM)[6] dated September 29, 1987. In view of appellants' failure to pay the loan, the REM was extrajudicially foreclosed and the land sold in a foreclosure sale conducted by the Clerk of Court and Ex-Officio Sheriff of Muntinlupa City on November 12, 2003. As the highest bidder, appellee was issued a Certificate of Sale[7] in her name. Appellants did not redeem the property within the one (1) year redemption period and refused to vacate the land.

In an Order, dated August 31, 2010, the RTC granted the issuance of the writ of possession, disposing thus:

> WHEREFORE, in the light of the foregoing, the Petition for the Issuance of a Writ of Possession is therefore GRANTED. Let a Writ of Possession issue to place Petitioner Rosario M. Bumanglag in possession of the subject property covered by Transfer Certificate of Title No. S-92296 and the Deputy Sheriff of this Court is hereby directed to implement the same.
>
> SO ORDERED.[8]

Appellants filed a Motion for Reconsideration but it was denied in the assailed Order[9] dated January 10, 2011.

Appellants simultaneously filed a Notice of Appeal Ad Cautelam[10] and a Joint Record on Appeal Ad Cautelam.[11] The RTC directed the transmittal of the records in an Order dated February 8, 2011.

In their Respondents-Appellant's Brief, appellants raise the following assignment of errors:[12]

> I. THE LOWER COURT ERRED IN GRANTING EX PARTE AS A MATTER OF COURSE, THE ISSUANCE OF THE WRIT OF POSSESSION.

II. THE LOWER COURT ERRED IN NOT CONSIDERING THAT THE ISSUE OF THE VALIDITY OF THE MORTGAGE CAN BE A LEGAL GROUND FOR THE REFUSAL OF THE ISSUANCE OF THE WRIT OF POSSESSION.

RULING

The appeal must be denied.

Where the redemption period expires without the mortgagor or his successor-in-interest redeeming the foreclosed property within one year from the registration of the sale with the Register of Deeds, the title over the property consolidates in the purchaser. The consolidation confirms the purchaser as the owner entitled to the possession of the property without any need for him to file the bond required under Section 7 of Act No. 3135.[13] The issuance of a writ of possession to the purchaser becomes a matter of right upon the consolidation of title in his name,[14] while the mortgagor, by failing to redeem, loses all interest in the property.[15]

In this case, there is no question that appellee was the highest bidder at the foreclosure sale of the real property covered by TCT No. S-92296. There is also no question that a certificate of sale was issued in her favor and she caused the registration and annotation thereof on TCT No. S-92296 on July 14, 2005. From that date, appellants had a period of one (1) year within which to exercise their right of redemption.[16] There being no question that appellants did not redeem the property within the prescribed period, title to the land was consolidated in favor of appellee. Her right to possession has ripened into the right of a confirmed absolute owner[17] and the issuance of the writ becomes a ministerial function that does not admit of the exercise of judicial discretion.[18] The right of possession of appellee would now be based not only on Section 7 of Act 3135 but also on Article 428 of the Civil Code which provides for said right as an incident of ownership.[19] The right to possess a property follows ownership.[20]

Appellants contend that it was erroneous for the trial court to issue the writ of possession despite the question of validity of the REM. The contention deserves scant consideration. Contrary to appellant's assertion, not even a question as to the validity of the mortgage, or even a pending action challenging such validity, is a legal ground to refuse the issuance of a writ of possession. It is settled that any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as a justification for opposing a petition for the issuance of the writ of possession.[21] The said issues may be raised and determined only after the issuance of the writ of possession.[22] The judge with whom an application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure.[23] The alleged forgery of Quirico's signature on the REM does not justify denial of the writ.

Appellants contend that the writ of possession cannot be issued because Quirico is a third party holding the property adverse to the debtor-mortgagor - appellant Aurora. They reiterate that Quirico neither knew of the mortgage nor gave his consent thereto and his signature on the REM is a forgery. The contention must fail.

It is true that under Section 33, Rule 39 of the Rules of Court, which applies suppletorily to the extrajudicial foreclosure of real estate mortgages under 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.[24] However, as ruled in China Banking Corporation v. Spouses Lozada,[25] the exception mentioned in Section 33, Rule 39 contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary.[26] The co-owner, agricultural tenant, and usufructuary must possess the property in their own right, and they should not merely be the successor or transferee of the right of possession of another co-owner or the owner of the property.[27]

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Appellant Quirico cannot be considered a third party holding title adverse to the judgment-debtor for the simple reason that he is a signatory to the REM. His claim of forgery does not make him a third party because his defense can only be ventilated in a proper action and after the purchaser in the foreclosure has been placed in possession. In fact, appellants had already filed such action. The records show that on October 22, 2003 appellants filed in the RTC of Muntinlupa City a complaint[28] for declaration of nullity of the very same REM subject of appellee's petition for issuance of writ of possession. In that complaint, appellant Quirico alleged that his signature on the REM is a forgery. In an Order, dated June 20, 2006, the RTC of Muntinlupa City, Branch 203, dismissed the complaint after appellants were declared non-suited for failure to appear at the pre-trial conference despite due notice.[29]

WHEREFORE, the appeal is DENIED. The Resolution dated August 31, 2010 and the Order dated January 10, 2011 of the Regional Trial Court of Muntinlupa City, Branch 276, in LRC Case No. 09-080 are AFFIRMED.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

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[1] Record on Appeal, pp. 39-42.

[2] Id. at 76-77.

[3] Id. at 10.

[4] Atty. Agnes dela Cruz; Id. at 11.

[5] Id. at 27-28.

[6] Id. at 29-30.

[7] Id. pp. 31-32

[8] RTC Resolution, supra note 1 at 42.

[9] Id. at 76-77.

[10] Rollo, p. 8.

[11] Id. at 11-88.

[12] Id. at 105.

[13] Id. citing Chailease Finance Corporation v. Ma, G.R. No. 151941, August 15, 2003, 409 SCRA 250, 253, 254.

[14] Id. citing Mallari v. Government Service Insurance System, supra note 16, at 49.

[15] Id. citing Yulienco v. Court of Appeals, G.R. No. 141365, November 27, 2002, 393 SCRA 143, 152.

[16] Section 6, Act No. 3135, as amended:

Sec. 6. Redemption. — In all cases in which an extrajudicial sale is made under the special power herein before referred to, the debtor, his successors-in-interest or any judicial creditor or judgment creditor of said debtor or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at anytime within the term of one year from and after the date of the sale; and such

redemption shall be governed by the provisions of section four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

[17] See Donna C. Nagtalon v. United Coconut Planters Bank, G.R. No. 172504, July 31, 2013 citing Spouses Saguan v. Philippine Bank of Communications, 563 Phil. 696, 706 (2007).

[18] Id. citing Spouses Espiridion v. Court of Appeals, 523 Phil. 664, 668 (2006).

[19] See Nagtalon v. UCPB, supra, citing Article 428 of the Civil Code.

"Article 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it."

[20] Id. citing Edralin v. Philippine Veterans Bank, G.R. No. 168523, March 9, 2011, 645 SCRA 75, 76.

[21] Spouses Charlie Fortaleza and Ofelia Fortaleza v. Spouses Raul Lapitan and Rona Lapitan, G.R. No. 178288, August 15, 2012, see Chailease Finance Corp. v. Ma, supra at 505-506.

[22] Id.citing Samson v. Rivera, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 768.

[23] Id. citing Fernandez v. Espinoza, G.R. No. 156421, April 14, 2008, 551 SCRA 136, 149.

[24] Villanueva v. Cherdan Lending Investors Corporation, G.R. No. 177881, October 13, 2010 citing Development Bank of the Philippines v. Prime Neighborhood Association, G.R. Nos. 175728 & 178914, May 8, 2009, 587 SCRA 582, at 594-595

[25] G.R. No. 164919, July 4, 2008, as cited in Villanueva v. Cherdan Lending Investors Corp., supra.

[26] Id. citing St. Dominic Corp. v. The Intermediate Appellate Court, G.R. No. L-70623, 30 June 1987, 151 SCRA 577, 590.

[27] Id. citations omitted.

[28] Record on Appeal, pp. 63-68.

[29] Rollo, p. 173.

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