

**IFC SERVICE LEASING AND ACCEPTANCE CORPORATION,
PETITIONER-APPELLEE, VS. VENANCIO NERA,
MOVANT-APPELLANT.**

G.R. No. L-21720. January 30, 1967

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from an order of the Court of First Instance of Rizal, denying appellant's motion to set aside the writ of possession issued by the court and the auction sale held before that by the sheriff.

The writ of possession was issued by the lower court on February 26, 1963, on the ex parte application of the appellee. The petition recited that, as mortgagee of the property of the spouses Venancio Nera and Rosa F. Nera, situated at No. 9 Alcman Street, Quezon City, appellee filed with the sheriff's office in Quezon City a verified petition for the extrajudicial foreclosure of the mortgage; that on October 27, 1961, after notice and publication, the property (consisting of a house and lot) was sold to appellee as the highest bidder for P28,451.77; that the period of redemption expired on October 27, 1962 without the property being redeemed, for which reason the property was consolidated in the name of appellee to whom a new title, Transfer Certificate of Title No. 65575, was issued.

On March 6, 1963, appellant asked for a reconsideration of the order granting the writ of possession on the ground that his failure to redeem the property was due to appellee's misrepresentation. According to appellant, he was notified by the appellee on October 31, 1962 that the period of redemption had expired when the truth was, as he found later, that the sale was registered only on November 3, 1961 from which date the period of redemption must be reckoned. The court denied the motion for failure of appellant to serve a copy on the appellee.

On March 26, 1963, appellant filed another motion, an ex parte application to set aside the writ of possession and the auction sale, on the ground that the court had no jurisdiction to issue the writ and that the price at which the mortgaged property was sold was grossly inadequate. As stated in the beginning, the motion was denied, prompting appellant to bring this appeal.

The only issue raised in this appeal is whether in cases of extrajudicial foreclosure of real estate mortgages, a regular action must be instituted in order to secure possession of the property sold. Appellant contends that the jurisdiction of the lower court to issue a writ of possession is limited only to the duration of the period of redemption and that after the expiration of that period, the mortgagee's remedy is an ordinary action for recovery of possession. In support of this proposition, appellant cites the following provisions of Act No. 3135, as amended by Act No. 4118:

"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 a 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 four-teen 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)

Appellant also invokes *Luna v. Encarnacion*, 91 Phil. 531 (1952) in which it was held that in case of refusal of the mortgagor to surrender the possession of the property sold by the sheriff the remedy of the purchaser is to bring an ordinary action for recovery of possession, instead of merely asking for a writ of possession, in order to give the mortgagor the opportunity to be heard not only regarding possession but also regarding the obligation covered by the mortgage.

The contention is without merit. The applicable provision of Act No. 3135 is Section 6 which provides that, in cases in which an extrajudicial sale is made, "redemption shall be governed by the provisions of sections 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." Sections 464-466 of the Code of Civil Procedure were superseded by Sections 25-27 and Section 31 of Rule 39 of the Rules of Court, which in turn were replaced by Sections 29-31 and Section 35 of Rule 39 of the Revised Rules of Court. Section 35 of Rule 39 of the Revised Rules of Court expressly states that "If no redemption be made within twelve (12) months after the sale, the purchaser, or his assignee, is entitled to a conveyance and possession of the property..... The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party actually holding the property adversely to the judgment debtor."

Indeed, as this Court held in *Tan Soo Huat v. Ong-wico*, 63 Phil. 746, 749 (1936),

"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. There is neither legal ground nor reason of public policy precluding the court from ordering the sheriff in this case to yield possession of the property purchased at public auction where it appears that the judgment debtor is the one in possession thereof and no rights of third persons are involved."

This same ruling was made in *Rivera v. Court of First Instance of Nueva Ecija*, 61 Phil. 201 (1935) (judicial foreclosure of mortgage) and in *Republic v. Nable*, G. R. No. L-4979, April 30, 1952 (execution sale).

Moreover, if under Section 7 of Act No. 3135 the court has the power, on the ex parte application of the purchaser, to issue a writ of possession during the period of redemption, there is no reason why it should not also have the same power after the expiration of that period, especially where, as in this case, a new title has already been issued in the name of the purchaser.

The case of *Luna v. Encarnacion*, supra, cannot be applied to the present case because that case involves the extrajudicial foreclosure of a chattel mortgage. The Chattel Mortgage Law (Act No. 1508) contains no provisions similar to Sections 6 and 7 of Act No. 3135 which, as already pointed out, make the Rules of Court provisions on redemption in cases of judicial and execution sales applicable.

IN VIEW OF THE FOREGOING, the order appealed from is hereby affirmed, without pronouncement as to

costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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