

**JOSE A. BUENCONSEJO, JR. AND MA. REMIRA A. BUENCONSEJO,
PETITIONERS, VS. HON. LORNA F. CATRIS-CHUA CHENG, PRESIDING
JUDGE OF RTC-BRANCH 168, MARIKINA CITY AND BANCO DE
ORO-EPCI,...**

Ponente: TIJAM, J.

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TIJAM, J.:

Assailed in this Petition[1] for Certiorari, Prohibition and Mandamus under Rule 65 of the Revised Rules of Court is the Order[2] dated March 7, 2012 and Amended Order[3] dated March 7, 2012[4] (“assailed Orders”) of the Regional Trial Court of Marikina City, Branch 168, in LRC Case No. 2008-1039-MK entitled, “In Re: Petition for the Issuance of Writ of Possession over the Properties covered by Transfer of Certificates of Title No. 492044 and 492045[5] of the Registry of Deeds for Marikina City in the name of Banco de Oro-EPCI, Inc., Banco de Oro-EPCI, Inc., Petitioner”. The assailed Orders granted Private Respondent's motion for issuance of a writ of possession, and denied Petitioners' claim third party claim on the subject properties.

The facts of the case are as follows:

On July 28, 2006, First GPL Development Corporation (“GPL”), through Spouses Gregorio and Imelda Arroyo (“Spouses Arroyo”), obtained a loan from Private Respondent in the amount of Php5,800,000.00[6] secured by a Mortgage Loan Agreement[7] dated July 25, 2006 covering the properties described in TCT No. 466054 and TCT No. 466070 (subject properties).[8]

Due to the failure of GPL to pay the obligation, the bank foreclosed the mortgage and sold the properties at a public auction.[9]

During the public auction conducted on October 17, 2007, the subject properties were awarded to Private Respondent, as the highest bidder. Private Respondent was issued the corresponding Certificate of Sale,[10] which was annotated on the title of the subject properties on January 28, 2008.[11]

Upon the expiration of redemption period, the Private Respondent consolidated ownership over the subject properties pursuant to Section 47[12] of the General Banking Law. Hence, GBL's TCTs covering the subject properties were cancelled and new ones were issued in the name of Private Respondent.[13]

In a Letter[14] dated September 15, 2008, Private Respondent demanded that Spouses Arroyo, and all persons claiming rights under them vacate the subject properties.

Private Respondent, on October 16, 2008, filed a Petition[15] for the issuance of a writ of possession in the RTC of Marikina City, Branch 168, docketed as LRC Case No. 2008-1039-MK.

On May 26, 2009, Petitioners filed a Manifestation with Opposition to Petition for Issuance of Writ of Possession over the Properties covered by TCT No. 492044 and 492045 of the Registry of Deeds for Marikina City in the name of Banco de Oro-EPCI, Inc.[16] In their Manifestation, Petitioners alleged that they are the former

registered owners of the subject properties and that GPL, through fraudulent machinations of its President, Gregorio Arroyo, was able to register the subject properties under GPL's name. Due to the fraud employed by Arroyo, there are pending cases against GPL and Spouses Arroyo with the RTC of Marikina City, Branch 156 and the Office of the City Prosecutor of Marikina City; one case was a Civil Case No. 06-1155-MK for Rescission of Memorandum of Agreement, Annulment of Deed of Absolute Sale, Annulment of TCT No. 466070 and 466054 and Reconveyance of Titles with Damages, while the other was a criminal case, docketed as I.S. No. 06-2865 for Estafa committed by a Syndicate/Large Scale Estafa. Petitioners accordingly prayed that the issuance of a writ of possession in favor of Private Respondent be temporarily suspended pending resolution of the cases filed against GPL and Spouses Arroyo.

In an Order dated September 9, 2009, the trial court denied Petitioners' opposition stating that any question on the validity of mortgage or foreclosure is not sufficient to forestall the implementation of a writ of possession.[17]

On March 28, 2011, the trial court rendered a Decision granting the petition for writ of possession in favor of Private Respondent.[18]

On October 27, 2009, Petitioners filed a Motion for Reconsideration with Manifestation of Third Party Claim.[19]

The trial court denied Petitioners' motion in its first March 7, 2012 Order. [20] The trial court found that Petitioners are not the "third parties" which the law seeks to protect under Sec. 16 of Rule 39 of the Rules of Court, as the said rule only refers to properties levied pursuant to a writ of execution. The court further stated that the proper procedure was for Petitioners to execute an affidavit of title to the property or right to possession thereof. Hence, the trial court ordered the issuance of the writ of possession pursuant to its March 11, 2011 Order. The trial court issued an Amended Order[21] dated March 7, 2012, correcting its earlier order, to reflect that it is issuing the writ of possession in accordance with its March 28, 2011 Decision.

On June 4, 2012, Petitioners filed an Affidavit of Third Party Claim over the Properties covered by TCT No. 492044 and 492045 of the Registry of Deeds for Marikina City in the name of Banco de Oro-EPCI, Inc.[22]

On September 28, 2012, the trial court issued an Order noting Petitioners' Affidavit.[23]

On October 12, 2012, the court sheriff served Petitioners a Notice to Vacate.[24]

Hence this Petition raising the following issues:

"I

THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE WRIT OF POSSESSION AGAINST THE PETITIONERS KNOWING THAT PETITIONERS WERE NOT PARTIES IN THE EARLIER FORECLOSURE SUIT DECIDED IN FAVOR OF BANCO DE ORO UNIBANK, INC. AND THUS CANNOT BE BOUND BY THE WRIT OF POSSESSION IN IMPLEMENTING THE SAID DECISION.

II

THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE WRIT OF POSSESSION AGAINST THE PETITIONERS DESPITE THE FACT THAT THE PROPERTY SUBJECT OF THE FORECLOSURE SUIT WAS THE FAMILY HOME OF THE PETITIONERS AND THUS SHOULD BE CONSIDERED AS ONE IN THE IMPLEMENTATION OF THE WRIT OF POSSESSION"

The petition is meritorious.

The sole issue for resolution in this case is whether the issuance of a writ of possession over the subject properties

was proper.

It is true that the buyer in a foreclosure sale becomes the absolute owner of the property if it is not redeemed within one year from registration of the sale and title is consolidated in his name. "As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it becomes the ministerial duty of the courts," upon application and proof of title, to issue a Writ of Possession to place him in possession. This rule is clear from the language of Section 33, Rule 39 of the Rules of Court. The same provision of the Rules, however, provides as an exception that when a third party is actually holding the property adversely to the judgment debtor, the duty of the court to issue a Writ of Possession ceases to be ministerial.[25] Thus:

SEC. 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. — If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor. (Emphasis Supplied)

This exception to the ministerial duty of courts to issue a writ of possession in case there is a third-party possessor of the auctioned property has been applied by the Supreme Court in various cases[26]. In these cases, the High Court explained that the purchaser's right of possession is recognized only as against the judgment debtor and his successor-in-interest but not against persons whose right of possession is adverse to the latter.

In this case, Petitioners opposed the issuance of the writ of possession on the ground that they are in actual possession of the mortgaged property under a claim of ownership. They averred that their title to the properties was cancelled by virtue of fraud employed by Gregorio Arroyo, GPL's President. Because of this alleged fraudulent schemes, civil and criminal cases were filed against Spouses Arroyo to nullify the documents which served as basis for the alleged fraudulent transfer of the subject properties. Evidently, the thrust of Petitioners' claim of ownership of the subject properties is that they are the true owners of the subject properties, and that they were fraudulently deprived of such ownership by Spouses Arroyo. It appearing that their claim of ownership is not derived from the mortgagor in this case, GPL, nor that it was a party to the mortgage between GPL and BDO, We find that Petitioners are "third parties" whose possession of the mortgaged property is protected by law.

The facts of the case are similar to *Villanueva v. Cheridan Lending Investors Corp.*[27]. In the said case, Petitioner Emmanuel C. Villanueva moved for the setting aside of the writ of possession on the ground that he is the owner and is in actual possession of the subject property. He notified the court that he had filed criminal and civil cases relative to the fraudulent transfer of ownership of the subject property from him to the spouses Peñaredondo. In upholding Villanueva's right to possess the property as against the mortgagee who purchased the property in the auction sale, the High Court explained:

"The purchaser's right of possession is recognized only as against the judgment debtor and his successor-in-interest but not against persons whose right of possession is adverse to the latter. In this case, petitioner opposed the issuance of the writ of possession on the ground that he is in actual possession of the

mortgaged property under a claim of ownership. He explained that his title to the property was cancelled by virtue of a falsified deed of donation executed in favor of spouses Peñaredondo. Because of this falsification, he filed civil and criminal cases against spouses Peñaredondo to nullify the deed of donation and to punish the party responsible for the falsified document. Petitioner's claim that he is in actual possession of the property is not challenged, and he has come to court asserting an ownership right adverse to that of the mortgagors, the spouses Peñaredondo.

The third party's possession of the property is legally presumed to be based on a just title, a presumption which may be overcome by the purchaser in a judicial proceeding for recovery of the property. Through such a judicial proceeding, the nature of the adverse possession by the third party may be determined, after such third party is accorded due process and the opportunity to be heard. The third party may be ejected from the property only after he has been given an opportunity to be heard, conformably with the time-honored principle of due process. The Civil Code protects the actual possessor of a property, as Article 433 thereof provides:

'Art. 433. Actual possession under claim of ownership raises disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.'"

We see no reason not to apply the aforestated ruling in the case at bar. Petitioners' possession which remains uncontested, could simply not be wrested from it by virtue of a cursory implementation of a writ of possession.

WHEREFORE, in view of all the foregoing, the petition is GRANTED. The Order dated March 7, 2012 and Amended Order dated March 7, 2012 of the Regional Trial Court of Marikina City, Branch 168, in LRC Case No. 2008-1039-MK are declared NULL and VOID and are hereby SET ASIDE. Petitioners are hereby allowed to continue in possession of the subject properties until after the pending cases have been resolved with finality.

SO ORDERED.

Lopez, M. V., and Garcia-Fernandez, M. V., JJ., concur.

[1] Rollo, pp. 5-15.

[2] Rollo, pp. 66-72.

[3] Rollo, pp. 73-79.

[4] Rollo, pp. 73-79.

[5] Hereinafter referred to as "subject properties"

[6] Rollo, p. 23.

[7] Rollo, pp. 24-27.

[8] Rollo, pp. 28-30 and pp. 31-33.

[9] Rollo, pp. 34-42.

[10] Rollo, p. 43.

[11] Rollo, pp. 30, 33.

[12] GENERAL BANKING LAW, Sec. 47 provides:

Section 47. Foreclosure of Real Estate Mortgage. — In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan or other credit accommodation

granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extrajudicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration. (Emphasis Supplied)

[13] Rollo, pp. 48-51.

[14] Rollo, pp. 44-47.

[15] Rollo, pp. 18-22.

[16] Rollo, pp. 52-54.

[17] Rollo, pp. 55-57.

[18] Rollo, pp. 58-62.

[19] Rollo, pp. 63-65.

[20] Supra, note 2.

[21] Supra, note 3.

[22] Rollo, pp. 80-82.

[23] Rollo, pp. 84-85.

[24] Rollo, p. 88.

[25] Spouses Aldover v. Court of Appeals, G.R. No. 167174, September 23, 2013.

[26] Bank of the Philippine Islands v. Icot (G.R. No. 168061, October 12, 2009, 603 SCRA 322, 329); Development Bank of the Philippines v. Prime Neighborhood Association, (VG.R. Nos. 175728 & 178914, May 8, 2009, 587 SCRA 582, 594); Dayot v. Shell Chemical Company (Phils.), Inc., (G.R. No. 156542, January 26, 2007, 525 SCRA 535); and Philippine National Bank v. Court of Appeals (424 Phil. 757).

[27] G.R. No. 177881, October 13, 2010.

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