BANGKO LUZON, INCORPORATED (FORMERLY COMMUNITY RURAL BANK OF SAN ISIDRO, NUEVA ECIJA, INCORPORATED), PETITIONER-APPELLEE, VS. FLORLINA A. DIAZ, OPPOSITOR-APPELLANT.

Ponente: DACUDAO, J.

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DACUDAO, J.:

Appeal by writ of error from the Decision[1] of the Regional Trial Court of Gapan City, Branch 35, in Cad. Case No. 1564, the decretal portion whereof reads:

> "WHEREFORE, the ex-parte petition for the issuance of a writ of possession is hereby granted. Accordingly, let a Writ of Possession be issued for the Sheriff of this Court to place the petitioner or any of its authorized representatives in possession over the parcel of land covered by Transfer Certificate of Title No. NT-220870 of the Registry of Deeds of Nueva Ecija, containing an area of One Thousand Four Hundred Fifty Seven (1,457) square meters, situated at Nabao, Jaen, Nueva Ecija including all the improvements erected thereon and to eject therefrom all adverse occupants, more particularly Spouses Florlina Aguilar and Rodolfo Diaz and their privies and/or other persons claiming rights under them.
>
> "SO ORDERED.
>
> "Gapan City, March 16, 2005.
>
> "(SGD.) DORENTINO Z. FLORESTA
> "Judge"

These facts, as narrated in the assailed Decision, are undisputed:

> "This is an ex-parte petition for issuance of writ of possession filed by petitioner Bangko Luzon, Inc.
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> "Finding the petition to be sufficient in form and substance, the Court issued an Order dated September 10, 2001 setting this case for hearing on November 27, 2001 at 8:30 in the morning and directed all interested persons to appear on said date and time and to show cause, if they have any, why the petition should be granted.
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> "At the scheduled hearing on November 27, 2001, Atty. Jose E. Belen appeared as counsel for the petitioner while, Atty. Adriano Magbitang appeared as counsel for the oppositor Florlina A. Diaz and submitted his written opposition to the petition dated September 28, 2001.
>
> "In her opposition, oppositor alleged that she obtained a loan in the amount of Php200,000.00 from the petitioner bank on February 18, 1992 and that the loan is covered by Real Estate Mortgage as security for payment of loan. She also alleged that the loan she obtained was already paid as evidenced by official receipts issued by the petitioner in the total amount of Php307,226.00. This was admitted by the petitioner in its comment to the opposition dated December 7, 2001 that the loan obtained on February 18, 1992 was fully paid on April 5, 1994, but before the petitioner could release the title to the respondent, the latter renewed her loan on the same Real Estate Mortgage dated February 18, 1992.

"On December 19, 2001, the Court issued an Order denying the opposition to the ex-parte petition for the issuance of writ of possession after the hearing was conducted by the Court. On January 28, 2002 a Motion for Reconsideration of the Order dated December 19, 2001 was filed by oppositor Florlina A. Diaz which was denied per Order dated March 15, 2002. On June 19, 2002, oppositor again filed a motion for reconsideration in the interest of substantial justice on the ground that the instant case be suspended until such time that the complaint for annulment of sale pending before RTC Branch 87, Gapan City has been resolved, but before the Court resolved the said motion, petitioner was ordered to submit the original copy of the Real Estate Mortgage executed by mortgagors Florlina Diaz and Rodolfo Diaz in favor of the petitioner bank in order to secure the payment of their loan in the amount of Php200,000.00 which was obtained on January 20, 1995, and was also ordered to comply with the Order dated June 27, 2002.

"In its compliance, petitioner alleged that there is no second real estate mortgage executed by the mortgagors to secure the payment of their loan obtained by the oppositor on January 20, 1995 but only a Promissory Note No. 95-01069. The loan obtained by the mortgagors on January 20, 1995 in the amount of Php200,000.00 was released to the oppositor utilizing the same real estate mortgage dated February 18, 1992.

"In the Order dated July 26, 2002, the Court reconsidered and set aside its Order dated March 15, 2002 and held in abeyance the issuance of writ of possession pending the resolution of the complaint filed before RTC Branch 87 of this Court.

"On February 2, 2004, a Notice of Appearance with motion to reopen and/or resolve petition for issuance of writ of possession was filed by the new counsel for the petitioner, Atty. Edgardo Villarin. In its motion, petitioner alleged that a petition for issuance of writ of possession is separate and distinct from the annulment of foreclosure proceedings. That the mortgagors had deliberately misled the Court by alleging that they had fully paid their obligation to the petitioner and as result thereof the foreclosure is null and void considering that the alleged loan which resulted to the foreclosure of the mortgage is dated January 20, 1995 while the real estate mortgage is dated February 18, 1992.

"In her opposition, oppositor alleged that the Order of this Court is already final and executory and as such, it can no longer be modified or set aside. That the principal obligation covered by the real estate mortgage has already been paid and the second obligation in the amount of Php200,000.00 was approved and released by the petitioner bank without any real estate mortgage.

"Both counsels argued their respective positions during the scheduled hearing and submitted the same for resolution.

"On May 31, 2004, the Court issued an Order granting the Motion to Re-open the petition for the issuance of writ of possession and petitioner was allowed to present its evidence ex-parte.

"In the said Order the Court clarified that the case was not dismissed but merely suspended the summary and ex-parte hearing for the issuance of writ of possession thus it will not acquire its finality. In short, it can be modified or set aside. Holding in abeyance the instant petition pending the resolution of the case before Branch 87 of this Court is contrary to the Decision of the Supreme Court in the case of UCPB vs. Reyes, 193 SCRA 756. It was held in the said case that any question regarding the regularity and validity of the sale and the consequent cancellation of the writ is left to be determined in subsequent proceedings provided in Section 8 of Act 3135. Such question is not to be raised as a justification for opposing the issuance of the writ of possession since under the Act, the proceeding for this is ex-parte."[2]

During the ex-parte hearing of the case on February 9, 2005, [3] the petitioner-appellee Bank presented as documentary exhibits the Promissory Note and Trust Receipt No. 95-01069,[4] showing that the oppositor-appellant and her husband obtained from the petitioner-appellee Bank a loan for the sum of P200,000.00 on January 20, 1995; the Real Estate Mortgage[5] dated February 18, 1992; the Notice of Auction

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Sale[6] dated October 27, 1997; the Transfer Certificate of Title No. NT-220870;[7] the annotations thereof;[8] the Affidavit of Publication;[9] the Certificate of Sale;[10] the Affidavit of Consolidation of Ownership[11] proving that the oppositor-appellant and her husband failed to redeem the property within the one-year redemption period; and the Transfer Certificate of Title No. NT-280890[12] issued in the name of the petitioner-appellee Bank.

On March 16, 2005, the RTC rendered the now challenged Decision,[13] granting the petition and ordering the issuance of a writ of possession in favor of the petitioner-appellee Bank, with the decretal portion heretofore quoted. The trial court, in support of its disposition, made the following findings and conclusions:

> "The Court was misled in issuing an Order that the Real Estate Mortgage does not apply to the subsequent loan of the mortgagor/oppositor. The real estate mortgage in this case provides that it serves as security for the payment of the loan or advances and such other loans or advance already obtained or still to be obtained by the mortgagors. This kind of stipulation in the real estate mortgage is held legal and valid by the Supreme Court in the case of Ajax Marketing and General Corporation vs. CA, 248 SCRA 222 and Quintanilla vs. CA, 228 SCRA 297. Under Section 7 of Act No. 3135, as amended by Act 4118, and Section 35, Rule 39 of the Rules of Court, the purchaser in a foreclosure sale is entitled to the possession of the property (Arcega vs. CA, 275 SCRA 70). Hence, the possession may then be obtained under a writ which may be applied ex-parte (Navarra, et al. vs. CA, et al., 204 SCRA 850).
>
> "Consequently, it is then the ministerial duty of the Court to issue the said writ of possession which petition was conformable to law. Any question regarding the validity of the mortgage cannot be a legal ground for refusing the issuance of a writ of possession which must have to be threshed out in a separate action.
>
> "xxx [p]etitioner submitted their documentary evidence by presenting the real estate mortgage (Exhibit 'B') showing that on February 18, 1992 Sps. Florlina Aguilar and Rodolfo Diaz mortgaged a parcel of land together with all the improvements erected thereon covered by TCT No. NT-220870 of the Registry of Deeds of Nueva Ecija situated at Nabao, Jaen, Nueva Ecija with an area of one thousand four hundred fifty seven (1,457) square meters in favor of the petitioner Bangko Luzon, Inc. (formerly Community Rural Bank of San Isidro, Nueva Ecija, Inc.), to secure the payment of a loan in the principal amount of Php200,000.00.
>
> "For failure of the mortgagors to pay the said indebtedness when it becomes due and payable, petitioner extra-judicially foreclosed the aforesaid property under the provisions of Act 3135 as amended, as stipulated in the contract of mortgage. In the auction sale conducted on November 28, 1997 by Notary Public Edison V. Rafanan, the mortgaged property was sold to herein petitioner as the highest bidder, and the corresponding certificate of sale was issued on December 16, 1997 (Exh. 'F') and the same was duly registered with the Office of the Registry of Deeds of Nueva Ecija on May 6, 1999. The mortgagors failed to redeem the subject property within the prescribed period of one (1) year, hence, petitioner executed an Affidavit of Consolidation of Ownership over the subject property (Exhibit 'G'), and Transfer Certificate of Title No. NT-220870 in the name of the mortgagors was cancelled, and Transfer Certificate of Title No. NT-280890 of the Registry of Deeds of Nueva Ecija was issued in the name of the petitioner. Despite demands, the mortgagors failed and refused to surrender possession of the subject property.
>
> "In the light of the foregoing, the petitioner is entitled to the relief prayed for pursuant to the provisions of Section 35, Rule 39 of the Rules of Court, Section 7 of Act 3135, as amended by Act 4118, and the ruling of the Supreme Court in IFC Service Leasing and Acceptance Corporation vs. NERA, 19 SCRA 181, PNB vs. ADIL, et al., 118 SCRA 110 and delos Angeles vs. CA, et al., 60 SCRA 116 to the effect that the purchaser is entitled to a writ of possession of foreclosed property, not only during the redemption period but also after the expiration of the redemption period, specifically where titles to all the property purchased at auction sale were already transferred to and registered in the name of the purchaser."[14]

From that judgment, the oppositor-appellant Florlina A. Diaz has taken the present recourse, and in support

thereof, she now contends that the lower court erred--

> I
>
> IN NOT DECLARING THE REAL ESTATE MORTGAGE DATED FEBRUARY 18, 1992 AS NULL AND VOID AFTER THE LOAN OBTAINED ON FEBRUARY 18, 1992 WAS FULLY PAID ON APRIL 5, 1994.
>
> II
>
> IN FINDING THAT THE REAL ESTATE MORTGAGE DATED FEBRUARY 18, 1992 ALSO COVERED THE LOAN OBTAINED ON JANUARY 20, 1995.
>
> III
>
> IN ISSUING THE WRIT OF POSSESSION IN FAVOR OF THE PETITIONER BANK.[15]

As we see it, the crux of the appeal turns upon the propriety of the issuance of the writ of possession in favor of the petitioner-appellee Bank.

The appeal is devoid of merit.

It is axiomatic that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale.[16]As such absolute owner, the purchaser is entitled to the possession of the property, and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title.[17] Possession of the property then becomes an absolute right of the purchaser as a confirmed owner.[18] Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.[19]In the case at bench, the petitioner-appellee Bank had all but sufficiently established its right to the writ of possession. The records showed that on November 28, 1997, the subject property (a 1,457-square meter parcel of land, including all the improvements erected thereon, situated in Barrio Nabao, Municipality of Jaen, Nueva Ecija and previously covered by TCT No. NT-220870 of the Registry of Deeds of Nueva Ecija) was sold at public auction in favor of the petitioner-appellee Bank, being the highest bidder.[20] On December 16, 1997, the corresponding certificate of sale[21] was issued in favor of the petitioner-appellee Bank and the same was registered with the Office of the Registry of Deeds of Nueva Ecija on May 6, 1999.[22] For failure of the oppositor-appellant Florlina A. Diaz and her husband Rodolfo Diaz to redeem the property within the period allowed by law, ownership over the same was consolidated[23] in the name of the petitioner-appellee Bank, in consequence whereof a new transfer certificate of title (No. NT-280890)[24] was issued in its name. Unquestionably, with the petitioner-appellee Bank having filed the proper petition for a writ of possession,[25] on September 5, 2001, and having established its title to and over the subject property, the issuance of the writ of possession in its favor became a ministerial duty on the part of the RTC.

Anent the first and second assignment of errors (i.e, that the court a quo erred in not declaring the Real Estate Mortgage dated February 18, 1992 as void after the loan obtained on February 18, 1992 was fully paid on April 5, 1994 and in finding that the Real Estate Mortgage dated February 18, 1992 also covered the loan obtained on January 20, 1995) raised by the oppositor-appellant, suffice it to state that the said errors are all questions touching on the validity of the Real Estate Mortgage itself which cannot be threshed out in Cad. Case No. 1564, where the only issue tendered therein is the propriety of the issuance of the writ of possession.[26]

The trial court before whom an application for a writ of possession is filed is under no duty and need not look into the validity of the mortgage, or the manner of its foreclosure.[27] Any question relative to the cancellation of the writ or in respect of the validity and regularity of the public sale should be determined in a proceeding as outlined

in Section 8 of Act 3135.[28] Some such question cannot be raised to oppose, forestall or arrest the issuance of the writ, since the proceeding is ex parte.[29]

In fine, the RTC committed no reversible error when it merely complied with its ministerial duty to issue the writ of possession in favor of the petitioner-appellee Bank.

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appeal at bench must be, as it hereby is DISMISSED, and the judgment appealed from AFFIRMED. Costs shall be assessed against the oppositor-appellant.

SO ORDERED.

Carandang and Arevalo-Zenarosa, JJ., concur.

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[1] Penned by Judge Dorentino Z. Floresta; Records, pp. 147-151.

[2] Records, pp. 147-149; Emphasis ours.

[3] See RTC Order dated February 9, 2005; Records, p. 146.

[4] Exhibit “A”.

[5] Exhibit “B”.

[6] Exhibit “C”.

[7] Exhibit “D”.

[8] Exhibits “D-1” to “D-5”.

[9] Exhibit “E”.

[10] Exhibit “F”.

[11] Exhibit “G”.

[12] Exhibit “H”.

[13] Supra, note 1.

[14] Records, pp. 149-151; Underscoring supplied.

[15] Rollo, p. 15.

[16] Vda. de Zaballero v. CA,, 229 SCRA 810, G.R. No. 106598, February 9, 1994, citing F. David Enterprises v. Insular Bank of Asia and America, G.R. No. 78714, November 21, 1990, 191 SCRA 516; Banco Filipino Savings & Mortgage Bank v. IAC, No. L-68878, April 8, 1986, 142 SCRA 44; IFC Service Leasing and Acceptance Corp. v. Nera, No. L-21720, January 30, 1967, 19 SCRA 181.

[17] Chailease Finance, Corporation v. Ma, G.R. No. 151941, April 15, 2003, 409 SCRA 250.

[18] Chailease Finance, Corporation v. Ma, supra.

[19] Autocorp Group and Autographics, Inc. v. CA, G.R. No. 157533, September 8, 2004, 437 SCRA 678; China Banking Corporation v. Ordinario, G.R. No. 121943, March 24, 2003, 399 SCRA 430; Spouses Ong v. CA, G.R. No. 121494, June 8, 2000, 333 SCRA 189; Veloso v. IAC, G.R. No. 73338, January 21, 1992, 205 SCRA 227; Vda. de Zaballero v. CA, supra.

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In the issuance of a writ of possession, no discretion is left to the trial court. (Chailease Finance Corporation v. Ma, supra; China Banking Corporation v. Ordinario, supra; Marcelo Steel Corporation v. CA, Nos. L-34317 & 34335, November 28, 1973, 54 SCRA 89).

[20] Records, p. 140.

[21] Exhibit “F”.

[22] Records, p. 139.

[23] Exhibit “G”.

[24] Exhibit “H”.

[25] Records, pp. 1-4.

[26] Vda. de Zaballero v. CA, supra.

[27] Chailease Finance Corporation v. Ma, supra.

“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.” (Ong v. CA, G.R. No. 121494, June 8, 2000, 333 SCRA 189).

[28] China Banking Corporation v. Ordinario, supra; Dayrit v. Philippine Bank of Communications, G.R. No. 140316, August 1, 2002, 386 SCRA 117; Sulit v. CA, G.R. No. 119247, February 17, 1997, 268 SCRA 441.

[29] Sulit v. CA, supra.

“The proceedings in a petition and/or motion for the issuance of a writ of possession, after the lapse of the statutory period for redemption, is summary in nature. (Government Service Insurance System v. CA, 169 SCRA 244 [1989]). The trial court is mandated to issue a writ of possession upon a finding of the lapse of the statutory period for redemption without the redemptioner having redeemed the property. (Pahang v. Vestil, 434 SCRA 139 [2004]).”

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