

RURAL BANK OF BALUNGAO, INC., PETITIONER-APPELLEE, VS. ALICIA ALMONTE CAYABYAB, RESPONDENT-APPELLANT.

Ponente: CARANDANG, J.

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CARANDANG, J.:

Before this Court is an appeal seeking to annul and set aside the Order dated 4 May 2010 of the Regional Trial Court Branch 42 of Dagupan City and the Order dated 16 May 2011 which denied appellant's Motion for Reconsideration.

The facts are as follows:

Petitioner-appellee Rural Bank of Balungao, Inc. has acquired a parcel of land (subject property) by purchase at the foreclosure sale held on 18 May 2006. For failure of the mortgagor, herein respondent-appellant Alicia Cayabyab to redeem the property within the legal period of redemption, appellee was able to consolidate its ownership to the subject property. Consequently, appellee caused the issuance of TCT No. 86252 in its name. However, despite the consolidation and transfer of title in appellee's name, the previous owner refused to vacate the subject property despite repeated demands.

On 27 August 2009, appellee filed the Petition a quo for the issuance of a Writ of Possession. On 6 October 2009, appellant filed an Opposition to the Petition a quo contending that appellee has no legal right to possess the subject property because the foreclosure proceeding is null and void due to the absence of publication of the Notice of the Extrajudicial Foreclosure.

On 4 May 2010, the trial court issued the assailed order the dispositive portion of which states:

“WHEREFORE, the petition for the issuance of a writ of possession is hereby given due course. Let a writ of possession be issued ordering the City Sheriff of Dagupan City to place petitioner in possession of the subject parcel of land covered by TCT No. 86252, now registered in the name of the petitioner, with all the improvements thereon.

SO ORDERED.”

In granting the Petition a quo, the trial court ratiocinated that the issuance of a writ of possession in favor of the purchaser in a foreclosure sale is a ministerial duty of the court. It also ruled that public officers in a foreclosure proceeding enjoy the presumption of regularity in the performance of their duties.

In the meantime, herein appellant filed a complaint against the appellee seeking the nullification of the foreclosure proceedings which was docketed as Civil Case No. 2009-0102-D. Prior to her receipt of the 4 May 2010 Order, appellant filed on 20 May 2010 a Motion to Consolidate the Petition a quo and Civil Case No. 2009-0102-D.

On 2 June 2002, appellant filed a Motion for Reconsideration to the 4 May 2010 Order. However, it was denied by the trial court on 16 May 2011.

Hence, the present appeal.

ISSUES

- WHETHER OR NOT the Court a quo committed reversible error in granting the Writ of Possession in favor of respondent Rural (sic) of Balungao, Inc., against Alicia Almonte Cayabyab on the property subject matter of this case.
- WHETHER OR NOT the court a quo committed reversible error in denying the consolidation of SP. Proc No. 2009-0104-D and Civil case No. 2010-0102-D;
- WHETHER OR NOT the court a quo committed reversible error in applying the presumption of regularity of proceedings enjoined (sic) by the public officers in the subject foreclosure proceedings despite the patent nullity of the subject foreclosure proceedings;
- WHETHER OR NOT the court a quo committed reversible error in denying the reconsideration of the order dated May 4, 2010.[1]

RULING

The instant appeal has no merit.

In *Santiago v. Merchants Rural Bank of Talavera, Inc.*,[2] the Supreme Court defined the nature of a petition for a writ of possession:

“The proceeding in a petition for a writ of possession is ex parte and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.”

The order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond if the redemption period has not yet lapsed.[3] If the redemption period has expired, then the filing of the bond is no longer necessary. Any and all questions regarding the regularity and validity of the sale is left to be determined in a subsequent proceeding and such questions may not be raised as a justification for opposing the issuance of a writ of possession.[4]

In this case, the appellee bank has already consolidated its ownership on the subject property when the appellant failed to redeem the subject property within the redemption period. Hence, the issuance of a writ of possession becomes a matter of right. In *De Vera vs. Agloro*,[5] the Supreme Court ruled:

“The possession of land becomes an absolute right of the purchaser as confirmed owner. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right.”

The contention of the appellant that the trial court erred when it did not allow the consolidation of the instant case with the nullification proceedings is likewise untenable. This issue has already been settled by the Supreme Court. In *Espinoza vs. United Overseas Bank Philippines*,[6] the High Court ruled:

“By its very nature, an ex parte petition for issuance of a writ of possession is a non-litigious proceeding. It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong.

On the other hand, by its nature, a petition for nullification or annulment of foreclosure proceedings contests the presumed right of ownership of the buyer in a foreclosure sale and puts in issue such presumed right of

ownership. Thus, a party scheming to defeat the right to a writ of possession of a buyer in a foreclosure sale who had already consolidated his ownership over the property subject of the foreclosure sale can simply resort to the subterfuge of filing a petition for nullification of foreclosure proceedings with motion for consolidation of the petition for issuance of a writ of possession. This we cannot allow as it will render nugatory the presumed right of ownership, as well as the right of possession, of a buyer in a foreclosure sale, rights which are supposed to be implemented in an ex parte petition for issuance of a writ of possession.

Besides, the mere fact that the "presumed right of ownership is contested and made the basis of another action" does not by itself mean that the proceedings for issuance of a writ of possession will become groundless. The presumed right of ownership and the right of possession should be respected until and unless another party successfully rebuts that presumption in an action for nullification of the foreclosure proceedings. As such, and in connection with the issuance of a writ of possession, the grant of a complaint for nullification of foreclosure proceedings is a resolutive condition, not a suspensive condition.

Given the foregoing discussion, it is clear that the proceedings for the issuance of a writ of possession should not be consolidated with the case for the declaration of nullity of a foreclosure sale. The glaring difference in the nature of the two militates against their consolidation."

As to the third issue, the same is also without merit. Appellant still has the opportunity to refute the presumption of regularity of the foreclosure proceeding in the nullification proceedings in Civil Case No. 2009-0102-D.

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit.

SO ORDERED.

Gonzales-Sison and Sorongon, JJ., concur.

[1] Rollo, pp. 18-19.

[2] G.R. No. 147820, 18 March 2005, 453 SCRA 756, 763-764.

[3] *Maliwat v. Metropolitan Bank and Trust Company*, G.R. No. 165971, 3 September 2007, 532 SCRA 124, 128.

[4] *Id.*

[5] *De Vera v. Agloro*, G.R. No. 155673, 14 January 2005, 448 SCRA 203, 213-314.

[6] G.R. No. 175380. March 22, 2010.

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