

**AURORA GONZALES VDA. DE ZABALLERO AND THE HEIRS OF
PATERNO ZABALLERO, PETITIONERS, VS. HON. COURT OF APPEALS,
FOURTEENTH DIVISION, HON. ELISA R. ISRAEL, PRESIDING JUDGE,
RTC OF ...**

G.R. No. 106958. February 09, 1994

Ponente: PUNO, J.

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PUNO, J.:

These facts, as narrated in the Decision[1] of the Court of Appeals, dated April 27, 1992, are undisputed:

"On July 5, 1978, spouses Paterno Zaballero, Sr. and Aurora Gonzales obtained a loan in the sum of Four Hundred Twenty Thousand (P420,000.00) Pesos from respondent Monte de Piedad Savings Bank, as a security for payment of which they executed a real estate mortgage over their residential lot located in Sampaloc, Manila and covered by Transfer Certificate of Title No. 130117 of the Registry of Deeds of Manila.

"By September 30, 1982, the obligation of the mortgagors increased to Five Hundred Thousand Three Hundred Fourteen and 52/100 (P500,314.52) Pesos.

"On March 28, 1983, respondent Monte de Piedad sent a letter to the mortgagors asking them for the restructuring of the loan. In answer to the respondent's request, Aurora Gonzales Vda. de Zaballero informed said respondent on May 17, 1983 that her husband, Paterno Zaballero, Sr., died on May 4, 1983.

"On July 3, 1985, respondent Monte de Piedad sent a statement of account to Mr. Paterno Zaballero/Aurora Gonzales showing that as of July 15, 1985, their outstanding account was Seven Hundred Sixty Six Thousand Eleven and 34/100 (P766,011.34) Pesos.

"Subsequently, respondent Monte de Piedad had the mortgage over the property in question foreclosed and the same was sold at public auction sale on July 11, 1988.

"On June 28, 1991, petitioners filed an action 'for nullification of Foreclosure of Mortgage and Auction Sale, Transfer Certificate of Title No. 196805, Damage, Attorney's Fees', which was docketed as Civil Case No. 91-57724 of Branch 28 of the Regional Trial Court of Manila.

"Finally, the period for redemption, having expired, respondent Monte de Piedad filed an ex-parte petition for a writ of possession with the respondent court. The petition was granted on November 13, 1991, thus:

"ORDER"

'This is a petition for issuance of writ of Possession.

'At the ex-parte hearing on the petition, it was established that the period for redemption of the property described in Transfer Certificate of Title No. 196805 which was sold at public auction in favor of the herein petitioner as highest bidder in connection with the extrajudicial foreclosure of the mortgage thereof has already expired without said property having been redeemed.

'Finding merit in the petition, there being no allegation why the same should not be granted, and in conformity

with the provisions of Act 3135, as amended, the petition is hereby granted.

'WHEREFORE, let the corresponding writ of possession be issued directing the Sheriff of Manila or his duly authorized representative to place the herein petitioner in actual physical possession of the foreclosed property covered by Transfer Certificate of Title No. 130117, now Transfer Certificate Title No. 196805 and to eject therefrom the mortgagors Spouses Paterno Zaballero and Aurora Gonzales, their agents and such other persons claiming under them.

'SO ORDERED.'

The heirs of Atty. Paterno Zaballero then filed a petition for certiorari and prohibition before the Court of Appeals,[2] questioning the validity of the above quoted order issued by respondent Judge Elisa Israel.

On April 27, 1992, respondent Court ruled in favor of private respondent Monte de Piedad Savings Bank. Hence, this special civil action for certiorari and prohibition.

The issue in this case boils down to the propriety of the issuance of the writ of possession in favor of private respondent.

We rule against petitioners.

The issue posed is not novel. We reiterate that the purchaser of the foreclosed property, upon ex parte application therefor and the posting of the required bond, has the right to acquire possession of the foreclosed property during the 12-month redemption period. This is sanctioned under Section 7 of Act 3135, as amended by Act 4118.[3] With more reason, a purchaser can demand for a writ of possession after the expiration of the redemption period. Thus, in *F. David Enterprises vs. Insular Bank of Asia and America*,[4] we held:

"It is settled 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. As such, he 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. The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act 3135 as amended. No such bond is required after the redemption period if the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court."

Petitioners did not refute that the period for redemption had already expired. They claim, however, that had they known that their property would be extrajudicially foreclosed after the death of mortgagor Atty. Paterno Zaballero, they would have raised money to pay the mortgage debt. It was alleged that private respondent bank's failure to notify them of the foreclosure sale rendered the said sale a nullity and, therefore, said bank cannot claim possession of the property.

We need not delve on the regularity or validity of the foreclosure sale in as much as any alleged defect or irregularity in the foreclosure sale must be threshed out in Civil Case 91-57724, and not in this case where the only issue is the propriety of the issuance of the writ of possession.

It ought to be mentioned that the right of private respondent to have possession of the subject property would not be defeated notwithstanding the pendency of Civil Case No. 91-57724 before Branch 28 of the Regional Trial Court of Manila. We have consistently ruled that it is the ministerial duty of the court to issue the writ of possession in favor of the purchaser in a foreclosure sale.[5] There is no reason for us to depart from this ruling.

WHEREFORE, premises considered, the decision of the appellate court is **AFFIRMED**. Accordingly, the instant petition is **DISMISSED** for lack of merit. Costs against petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

Nocon, J., on leave.

[1] Penned by Associate Justice Asaali S. Isnani and concurred in by Associate Justices Gloria C. Paras and Ricardo P. Galvez.

[2] Docketed as CA-G.R. No. SP-26660.

[3] Section 7 of Act 3135, as amended reads:

"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 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 the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen 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 (As amended by Act No. 4118)."

[4] G.R. No. 78714, November 21, 1990, 191 SCRA 516, 523.

[5] See *Jacob v. Court of Appeals*, G.R. No. 89514, April 6, 1990; *Arcilla v. Court of Appeals*, G.R. 929239, June 6, 1990 (Minute Resolution); and *F. David Enterprises v. IBAA*, supra; *Veloso, et al., vs. IAC*, G.R. No. 73338, January 21, 1992.

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