

SPOUSES EDUARDO VACA AND MA. LUISITA PILAR, PETITIONERS, VS. THE COURT OF APPEALS AND ASSOCIATED BANK, RESPONDENTS.

G.R. No. 109672. July 14, 1994

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals, granting private respondent Associated Bank's petition for certiorari and mandamus to annul two orders of the Regional Trial Court (Branch 85) of Quezon City dated June 11 and August 25, 1992.

The facts of the case are:

On February 7, 1992, private respondent Associated Bank filed with the RTC of Quezon City a petition (docketed as LRC Case No. Q-5536-92) for the issuance of a writ of possession of property covered by TCT No. 254504. The property, consisting of a 953-square meter lot and a residential house erected on it, is situated at No. 18, Lovebird Street, Green Meadows Subdivision I, Quezon City. Private respondent alleged that for failure of petitioners Eduardo Vaca and Ma. Luisita Pilar to pay their mortgage obligation to private respondent, the mortgage was extrajudicially foreclosed and the mortgaged property was sold on October 30, 1990 to private respondent as the highest bidder; that the one-year period to redeem having expired, TCT No. 254504 was cancelled and TCT No. 52593 in private respondent's name was issued in lieu there-of; and that despite demands, petitioners refused to turn over possession of the property to private respondent.

Petitioner spouses filed an opposition alleging that there was a pending action (Civil Case No. Q-91-8285) in another court which the petitioners had filed for the annulment of the mortgage and its foreclosure.

On June 11, 1992, the RTC denied private respondent's petition for the issuance of a writ of possession, and on August 25, 1992, denied private respondent's motion for reconsideration.

On certiorari the Court of Appeals annulled the orders and ordered the RTC to issue the writ of possession. Hence this petition.

Petitioners contend that the action for annulment of the mortgage (Civil Case No. Q-91-8285) constitutes a prejudicial question in LRC Case No. Q-5536-92 for issuance of a writ of possession and that it was error for the Court of Appeals to order the RTC to issue the writ of possession in favor of the mortgagee (herein private respondent). They argue further that the rule that it is a ministerial duty of the court to issue a writ of possession after the one-year period to redeem has expired is subject to certain exceptions, and this case falls within the exception.

Petitioners' contention has no merit. The question raised in this case has already been settled in *Vda. de Jacob v. Court of Appeals*,^[1] in which it was held that the pendency of a separate civil suit questioning the validity of the mortgage cannot bar the issuance of the writ of possession, because the same is a ministerial act of the trial court

after title on the property has been consolidated in the mortgagee. The ruling was reiterated in *Navarra v. Court of Appeals*,^[2] in which we held that as a rule 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.

Petitioners cite the cases of *Cometa v. Intermediate Appellate Court*,^[3] and *Barican v. Intermediate Appellate Court*,^[4] where we ordered the deferment of the issuance of the writ of possession notwithstanding the lapse of the one-year period of redemption. The deferment, however, was due to the peculiar circumstances of those cases. In *Cometa*, which actually involved execution under Rule 39, sec. 35, the properties were sold at an unusually lower price than their true value, while in *Barican*, the mortgagee bank took five years from the time of foreclosure on October 10, 1980 before filing the petition for the issuance of a writ of possession on August 16, 1985. Earlier the property had been sold to third parties who assumed the indebtedness of the mortgagor and took possession of the property so that at the time of the hearing on the petition for a writ of possession, the original debtor was no longer in possession. Under these circumstances, it was held that the obligation of the court to issue the writ of possession had ceased to be ministerial.

None of these equitable circumstances is present herein so as to justify making an exception to the rule that the issuance of a writ of possession to a purchaser in an extrajudicial foreclosure, after the period of redemption, is a ministerial function of the court. In this case, there is no dispute that the property was not redeemed within one year from registration of the extrajudicial foreclosure sale. Private respondent thus acquired the absolute right, as purchaser, to the issuance of a writ of possession pursuant to Act No. 3135, sec. 7.

WHEREFORE, the resolution of October 18, 1993, giving due course to the petition for review on certiorari, is RECONSIDERED and RECALLED and the petition is DENIED for lack of merit for lack of showing of any reversible error committed by the Court of Appeals.

SO ORDERED.

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

[1] G.R. Nos. 88602 and 89544, April 6, 1990, 184 SCRA 1990.

[2] G.R. No. 86237, December 17, 1991, 204 SCRA 850.

[3] G.R. No. 69294, June 30, 1987, 151 SCRA 563.

[4] G.R. No. 79906, June 20, 1988, 162 SCRA 358.

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