

**SPOUSES GERARDO AND CELESTINA PAHIMUTANG, PETITIONERS,
VS. HON. COURT OF APPEALS, HON. MANUEL D. VICTORIO,
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI,
BRANCH 141, BAN...**

G.R. No. 121104. November 27, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition filed under Rule 45 of the Rules of Court seeks to set aside the Decision dated April 25, 1995, of the Court of Appeals which denied petitioners' plea to annul the Order of the Regional Trial Court dated February 24, 1994. Said trial court earlier issued through its assailed Order a second alias writ of execution in favor of respondent Banco Filipino and Mortgage Bank in connection with the foreclosure proceedings against the petitioners' mortgaged property.

The records disclose that petitioners, the spouses Pahimutang, bought a house and lot from BF Homes, Inc. In this transactions they had to mortgage said house and lot to secure a P87,300.00 loan from Banco Filipino. They took also a second mortgage with Pilar Development Corporation for P38,400.00. Both were standard practices of Banco Filipino and Pilar Development Corp., in the conduct of business related to sales of houses and lots by BF Homes, Inc.

The mortgages were payable in 15 years exclusive of the stipulated respective interests of 12% and 3% per annum. Pilar Development later assigned its right to the second mortgage to Banco Filipino, such that the principal debt to Banco Filipino amounted to P125,700.00, exclusive of the interests agreed upon. The spouses signed promissory notes to secure the loan. They made payments from 1975 up to November 1981 totaling P159,734.28, inclusive of the surcharges for some late payments. On December 1981, they defaulted on the payments. The unpaid principal balance and accrued interest amounted to P108,566.68. Banco Filipino filed a petition for extrajudicial foreclosure of the mortgaged property. Petitioners were served a corresponding Notice of Sale by the sheriff of Pasay City on August 5, 1982. Notice was also posted in a newspaper of general circulation in Metro Manila. At the auction, Banco Filipino itself was the highest bidder at P124,850.00. After the Certificate of Sale was registered at the Registry of Deeds, Metro Manila upon failure of petitioners to exercise their right of redemption, the ownership of the subject property was transferred to Banco Filipino on October 10, 1983 under TCT No. 73492 by the Pasay City Register of Deeds.

Earlier, on January 21, 1983, Banco Filipino filed a petition for the issuance of a Writ of Possession with the CFI of Pasay City, docketed as LRC Case No. Pq-2486-P, later re-assigned to the Makati RTC, Branch 141, as Petition Case No. M-100. The Makati RTC ordered the issuance of a writ of possession contingent on the filing of a bond worth P200,000.00.

Petitioners then filed an action for cancellation and annulment of the extrajudicial foreclosure of mortgage, Civil Case No. 5566, with the Makati RTC, Branch 146. This was dismissed on August 19, 1984 and a motion for

reconsideration was similarly denied on November 18, 1985.

Meanwhile, on December 7, 1983, Banco Filipino filed the P200,000.00 bond relative to its Petition Case No. M-100. The Makati RTC, Branch 141, then ordered the Sheriff to eject petitioners from the property on December 27, 1983, after it granted the Writ of Possession.

On February 7, 1984, petitioners filed a petition for certiorari and prohibition, docketed as CA-G.R. No. 02617, with the Court of Appeals. The appellate court granted the petition and annulled the writ of possession in Civil Case M-100. Banco Filipino filed a Motion for Reconsideration which was denied on September 27, 1984.

Banco Filipino then filed a petition for review before the Supreme Court, docketed as G.R. No. 68878. On April 8, 1986, the Supreme Court reversed the Court of Appeals in CA-G.R. No. 02617 and upheld the Writ of Possession issued by the Makati RTC. Per Entry of Judgment, said Supreme Court decision on G.R. No. 68878 became final and executory on February 13, 1992.

On January 24, 1994, Banco Filipino filed a petition for a second alias Writ of Possession, granted by herein respondent judge on February 28, 1994. Petitioners requested 10 more days to stay in the premises and even filed with the Makati RTC, Branch 141, a motion for extension to voluntarily vacate the same. But on March 15, 1994, petitioners instead filed a petition for certiorari before the Court of Appeals asking annulment of the second alias writ for execution, and raising the illegality of the extrajudicial foreclosure. It also averred that petitioners were protected by RA 6552, otherwise known as the Realty Installment Buyers' Protection Act. Banco Filipino alleged that the petition of the spouses before the CA was merely dilatory and additionally asked that petitioners be cited for contempt for its stubborn refusal to obey the Supreme Court's decision.

The appellate court deferred ruling on the motion to hold petitioners in contempt. Sympathetic though the CA was on the loss of petitioners abode, it denied the petition for certiorari stating that the mortgage and the foreclosure were validly undertaken; that there was nothing dubious about the promissory note issued by the petitioners; that the mortgage contract was entered into by the spouses voluntarily; and that they could no longer impugn the contract. Additionally, the appellate court said that RA 6552 was not applicable to petitioners. More significantly, the Court of Appeals stressed that the validity of the writ of possession was upheld with finality by this Court in G.R. No. 68878, and *res judicata* has set in.

This petition now before us avers that, for issuing the writ of possession, public respondents acted in abuse of their discretion amounting to excess of jurisdiction and that extrinsic fraud was committed by respondents either singly or in collusion in depriving petitioners from the full opportunity to present its case as shown in the following:

1. The bank's failure to notify petitioners' of the foreclosure sale was deliberate and intentional and calculated to subsequently issue the writ of possession;
2. The respondent RTC judge was in a rush to issue the writ of possession in favor of respondent-bank after the expiration of the period of redemption, for it is mandatory and demandable as a matter of right in consonance with the Rules;
3. The respondent RTC judge failed to treat the writ of possession as strictly as he could, by ordering the adverse party to comment on and oppose the writ.

Petitioners also stress that respondents violated Section 18, Rule 39, of the Revised Rules of Court[1] on the notice of sale, particularly the requirements of publication.

At the outset, we note that this petition has been filed under Rule 45 of the Rules of Court. Thus it ought to have

been dismissed outright, for being a wrong remedy. Since the petitioners allege that the Court of Appeals and the Regional Trial Court acted with grave abuse of discretion amounting to a lack of jurisdiction,[2] the correct remedy should have been a petition under Rule 65. Nevertheless, we have considered the petition and the issue presented before us as if the case was properly brought under Rule 65, in the interest of justice. However, here we find no grave abuse of discretion by both courts, hence the present petition could not be granted.

The allegation of petitioners that Banco Filipino did not deliberately notify petitioners of the foreclosure sale, to subsequently justify issuance of the writ, is wholly without merit. It is belied by the Notice of the Extrajudicial Foreclosure Sale issued by the Office of the Sheriff dated July 2, 1982[3], the Certificate of Posting[4] and the Affidavit of Publication issued by We-Forum, a publication of general circulation, to the effect that there has been compliance with the required publication of the extrajudicial foreclosure sale of petitioner's disputed property.[5]

Petitioners' accusation that respondent RTC judge rushed the issuance of the writ and did not treat its strictly by requiring the adverse party to comment has not been proved. Note that this Court already upheld issuance in favor of respondent bank of the writ of possession in G.R. No. 68878. Our decision became final and executory on February 13, 1992. The Court of Appeals correctly noted in its February 24, 1993 decision, that:

"...the validity of the writ of possession initially issued by the respondent court has been upheld with finality by the Supreme Court in G.R. No. 68878 involving the same parties and issues. If that writ was not timely executed, it was because of the series of proceedings taken by the petitioners to thwart its eventual enforcement, hence the petition for an alias writ of execution. In a very real sense, therefore, the rule of res judicata has set in this case which effectively prevents this Court from re-examining the same issues anew.[6]

The execution of the writ of possession in favor of respondent bank has long been overdue. Petitioners' refusal to heed our previous orders has taxed the patience of the courts. Counsel ought to advise petitioners that any further misuse and abuse of court processes will be dealt with more severely.

WHEREFORE, this petition is DENIED. The decision of the Court of Appeals promulgated April 25, 1995, Affirming the Order dated February 28, 1994 of the Regional Trial Court, Makati, Branch 141 issuing the writ of possession in favor of Banco Filipino Savings and Mortgage Bank is AFFIRMED.

Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Sec. 18. Notice of sale of property on execution.-Before the sale of property on execution, notice thereof must be given as follows:

(a) In case of perishable property, by posting written notice of the time and place of the sale in three public places in the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;

(b) In case of other personal property, by posting a similar notice in three public places in the municipality or city where the sale is to take place, for not less than five (5) nor more than ten (10) days;

(c) In case of real property, by posting for twenty (20) days in three (3) public places in the municipality or city where the property is situated, a similar notice particularly describing the property and stating where the property is to be sold, and if the assessed value of the property exceeds FIFTY THOUSAND PESOS (P50,000.00), by publishing a copy of the notice once a week for two (2) consecutive weeks in some newspapers published or

having general circulation in the province, if there be one. If there are newspapers published in the province in English and/or Filipino, then the publication shall be made in one such newspaper.

(d) In all cases, written notice of the sale shall be given to the judgment debtor. (As amended by Resolution of the Supreme Court, dated April 7, 1987).

[2] *Casil v. Court of Appeals*, 285 SCRA 264, 274 (1998).

[3] *Rollo*, p. 50.

[4] *Id.* at 51.

[5] *Id.* at 52.

[6] *Id.* at 61.

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