

**SPOUSES VICTOR ONG AND GRACE TIU ONG, PETITIONERS, VS.
COURT OF APPEALS, HON. RODOLFO R. BONIFACIO IN HIS
CAPACITY AS PRESIDING JUDGE, RTC, PASIG CITY, BRANCH 159;
PROVINCIAL SH...**

G.R. No. 121494. June 08, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Subject of the present petition for review on certiorari is the decision of the Court of Appeals in CA-G.R. SP. No. 34636 dismissing petitioner's special civil action for prohibition with preliminary injunction which sought to enjoin public respondents from implementing a writ of possession issued in favor of private respondent. The Court of Appeals likewise denied petitioners' Motion for Reconsideration.

Petitioners are the mortgagors of an 857 square meter lot and residential house in San Juan, Metro Manila, evidenced by Transfer Certificate Title (TCT) No. (53788) 030-R. The real estate mortgage was used to secure a promissory note (No. 275-Z and later 285-W) issued by Kenlene Laboratories, Inc. (debtor company), a domestic corporation, in favor of private respondent Premiere Development Bank (mortgagee-bank).

Upon failure of the debtor company to pay its amortizations, the mortgagee-bank extrajudicially foreclosed the real estate mortgage under the provisions of Act 3135, as amended by Act 4118. The mortgagee-bank was the highest bidder. During the one-year redemption period, the mortgagee filed a petition with the Regional Trial Court of Pasig City, Branch 159 for the issuance of a writ of possession, which was docketed as LRC Case No. R-4874.

Upon the filing of a bond, the trial court issued the writ of possession. Petitioners filed a Motion for Reconsideration and to Recall Writ of Possession, which was denied by the trial court.

Petitioners-mortgagors filed with the Court of Appeals a petition for prohibition with an application for a writ of preliminary mandatory injunction[1] to enjoin the implementation of the writ of possession. Petitioners alleged that there is a pending case for annulment of extrajudicial foreclosure of real estate mortgage with an application for preliminary injunction and temporary restraining order (TRO), docketed as Civil Case No. 64604, with the Regional Trial Court of Pasig, Branch 157. Petitioners argued that the implementation of the writ of possession would render nugatory the judgment of the trial court in Civil Case No. 64604.

Initially, the Court of Appeals granted the TRO, but later dismissed the petition for prohibition for lack of merit based on:[2] (1) failure to allege that there was no appeal or any plain, speedy and adequate remedy in the ordinary course of law, (2) forum-shopping (though it did not explain why), and (3) *Veloso v. IAC*, 205 SCRA 22 (1992) which held that the pendency of a civil case for annulment of sale or reformation of contract is not sufficient ground to deny the issuance of a writ of possession or for the suspension of the resolution thereof. The Court of Appeals likewise denied petitioner's Motion for Reconsideration.[3]

Hence, the present petition for review on certiorari.[4]

In their Memorandum,[5] petitioners argue that the Court of Appeals should have enjoined the implementation of the writ of possession (LRC Case No. R-4874) pending resolution of their separate case for annulment of extrajudicial foreclosure of real estate mortgage (Civil Case No. 64604). Petitioners contend that if Civil Case No. 64604 is resolved in their favor, the RTC-Pasig, Branch 157 cannot enforce it as against a co-equal court which issued the writ of possession, hence the necessary recourse to the Court of Appeals and this Court.

Petitioners further invoke the case of *Allied Bank v. Court of Appeals*, G.R. No. 109253, February 7, 1994,[6] wherein both the SC and CA upheld the trial court's orders setting aside the certificate of sale and nullifying the extrajudicial foreclosure proceedings on the ground of prematurity. The mortgagee bank therein foreclosed the real estate mortgage prior to the maturity of the restructured loan. Worse, there was no publication of the foreclosure sale. No writ of possession was issued in that case. Hence, *Allied* is not at fours with this case, and petitioners not similarly situated.

Petitioners insist that appeal under Act 496 is not an available remedy because it merely refers to orders and decisions of the trial court in "registration proceedings." Further, appeal, even if available, would not be an adequate and speedy remedy because it would not stop the sheriff from implementing the writ of possession.

Lastly, petitioners maintain that the order issuing the writ of possession has not yet attained finality because of the present petition for prohibition. Inasmuch as the extrajudicial foreclosure proceedings are a nullity, the issuance of the writ of possession was in excess of jurisdiction, hence correctible by certiorari or prohibition.

On the other hand, in its Memorandum,[7] private respondent (mortgagee-bank) contends, in gist, that prohibition does not lie since petitioners in fact has two remedies available - (1) appeal of the order issuing the writ of possession under Sec. 8 of Act 3135, as amended by Act 4118, and (2) their separate action for annulment of foreclosure of mortgage. For failure to avail of the first remedy, the issue of possession already attained finality. Private respondent concedes, nevertheless, that its possession of the mortgaged property would still be subject to the outcome of Civil Case No. 64604. Further, private respondent claims that the pendency of both the petition for prohibition and Civil Case No. 64604, both aimed at preventing the implementation of the writ of possession, constitutes forum shopping.

Simply put, the issues are: (1) Whether or not prohibition lies to enjoin the issuance of a writ of possession? (2) Whether or not petitioners are guilty of forum shopping?

A writ of possession is "a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment." [8]

A writ of possession may be issued under the following instances:[9] (1) land registration proceedings under Sec. 17 of Act 496;[10] (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened;[11] and (3) extrajudicial foreclosure of a real estate mortgage under Sec. 7 of Act 3135 as amended by Act 4118.

The present case falls under the third instance. Under Sec. 7 of Act 3135 as amended by Act 4118, a writ of possession may be issued either (1) within the one year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond.[12] Sec. 7 of Act 3135, as amended by Act 4118, provides -

"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 sec. 194 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 court shall, upon the filing of such petition, collect the fees specified in par. 11 of sec 114 of Act No. 496, 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."

In case it is disputed that there was violation of the mortgage or that the procedural requirements for the foreclosure sale were not followed, Sec. 8 of Act 3135 as amended by Act 4118, provides that the mortgagor may file a petition with the trial court which issued the writ to set aside the sale and for cancellation of the writ of possession within 30 days after the purchaser-mortgagee was given possession. Sec. 8 of Act 3135 as amended by Act 4118, provides -

"Sec. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act No. 496; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section 14 of Act No. 496; but the order of possession shall continue in effect during the pendency of the appeal."

The law is clear that the purchaser must first be placed in possession of the mortgaged property pending proceedings assailing the issuance of the writ of possession. If the trial court later finds merit in the petition to set aside the writ of possession, it shall dispose in favor of the mortgagor the bond furnished by the purchaser. Thereafter, either party may appeal from the order of the judge in accordance with Section 14 of Act 496, which provides that "every order, decision, and decree of the Court of Land Registration may be reviewed . . . in the same manner as an order, decision decree or judgment of a Court of First Instance (RTC) might be reviewed." The rationale for the mandate is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on his right of ownership.[13]

In several cases,[14] the Court has ruled that the issuance of a writ of possession is a ministerial function. "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. The judge issuing the order following these express provisions of law cannot be charged with having acted without jurisdiction or with grave abuse of discretion." [15] Therefore, the issuance of the writ of possession being ministerial in character, the implementation of such writ by the sheriff is likewise ministerial.

Contrary to petitioners' protestations that *Veloso v. Intermediate Appellate Court*, 205 SCRA 227 (1992) should only apply to cases wherein the one-year period for redemption has already lapsed, *Veloso* makes no such distinction. In said case, the Court merely observed that -

"Worthy of note is that petitioners do not impugn the validity of the mortgage at its inception. Their assault is on it is founded on events allegedly transpiring after its execution. The tenability of their challenge to the mortgage may well be determined in the civil action (No. 136559) instituted by them in the Manila Regional Trial Court. But clearly, the pendency of that action does not and cannot bar the issuance of a writ of possession to the mortgagee who has, in the meantime, extrajudicially foreclosed the mortgaged property and

acquired it as highest bidder in the subsequent public auction sale. The law is quite explicit on this point, and the right of the mortgagee thereunder unquestionable. And decisions abound applying the law and declaring it to be the court's ministerial duty to uphold the mortgagee's right to possession even during the redemption period." [16]

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. [17] Regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice of course to the eventual outcome of said case. Hence, an injunction to prohibit the issuance of writ of possession is entirely out of place. [18]

The foregoing considered, the petition for review on certiorari assailing the dismissal of the petition for prohibition must fail.

First. Under Section 2 of Rule 65 of the Rules of Court, prohibition can only be availed of if there is no appeal, or any other plain, speedy, adequate remedy in the ordinary course of law. In this case, appeal under Sec. 8 of Act 3135, as amended by Act 4118, is still available. Further, petitioners have a plain, speedy and adequate remedy in the ordinary course of law, which is their separate case for annulment of the foreclosure of mortgage.

Second. Prohibition does not lie to enjoin the implementation of a writ of possession.

In *PNB v. Adil*, 118 SCRA 116 (1982), the Court held that "once the writ of possession has been issued, the trial court has no alternative but to enforce the writ without delay." The Court found it gross error for the judge to have suspended the implementation of the writ of possession on a very dubious ground as "humanitarian reason."

With regard to the second issue, it will be recalled that the essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining favorable judgment. [19] It exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. [20] The issuance of the writ of possession being a ministerial function, and summary in nature, it cannot be said to be a judgment on the merits, but simply an incident in the transfer of title. Hence, a separate case for annulment of mortgage and foreclosure sale cannot be barred by *litis pendentia* or *res judicata*. [21] Clearly, insofar as LRC Case No. R-4874 and Civil Case No. 64604 pending before different RTCs are concerned, there is no forum shopping.

In fact, in *Nartates v. GSIS*, 156 SCRA 205 (1987), two cases, one for annulment of foreclosure proceedings (G.R. No. L-47669) and another for annulment of the writ of possession (G.R. No. L-47744), both reached this Court at the same time. The Court consolidated the cases since they both stemmed from the foreclosure of the GSIS of the property mortgaged to it by petitioner. As to the issuance of the writ of possession, the Court upheld the issuance of the writ. As to the foreclosure proceedings, the records being complete, the Court found the foreclosure in order.

In this case, however, only the issue of the implementation of the writ of possession is before us. Civil Case No. 64604 is still pending with the trial court. Hence, the allegations as to the failure to comply with procedural requirements of the extrajudicial foreclosure sale, being factual, is for the trial court to determine. [22]

As of the time of filing the petition, private respondent bank has not yet been placed in possession of the property. Section 8 of Act 3135 as amended by Act 4118 provides that petitioners-mortgagors have "30 days after the purchaser was given possession" to file a petition that the sale be set aside and the writ of possession cancelled. Hence, the filing of the petition for prohibition with the CA to enjoin the implementation of the writ of possession is ill-advised and premature.

WHEREFORE, the instant petition for review on certiorari is DENIED for lack of merit. Costs against petitioners.

SO ORDERED.

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

[1] Rollo, pp. 43-61.

[2] Id. at 35-39.

[3] Id. at 62-71, 42.

[4] Id. at 11-34; Amended Petition impleading the Court of Appeals as party respondent, Rollo, p. 77.

[5] Id. at 178-201.

[6] Decided by Minute Resolution.

[7] Rollo, pp. 137-159.

[8] Black's Law Dictionary, 5th ed., p. 1444.

[9] Gatchalian v. Arlegui, 75 SCRA 234, 244 (1977)

[10] Estipona v. Navarro, 69 SCRA 285, 291 (1976)

[11] Ramos v. Manalac, 89 Phil. 270, 275 (1951); Rivera v. Court of First Instance, 61 Phil. 201 (1935)

[12] Navarra v. CA, 204 SCRA 850, 856 (1991); UCPB v. Reyes, 193 SCRA 756, 760-761, 764 (1991); Banco Filipino Savings and Mortgage Bank v. Intermediate Appellate Court, 142 SCRA 44 (1986); Marcelo Steel Corp. v. Court of Appeals, 54 SCRA 89, 97 (1973); De Gracia v. San Jose, 94 Phil. 623 (1954)

[13] Ibid.

[14] Suico v. CA, 301 SCRA 212, 221 (1999); A.G. Development v. CA, 281 SCRA 155, 159 (1997); Navarra v. CA, 204 SCRA 805, 858 (1991)

[15] GSIS v. CA, 169 SCRA 244, 256 (1989)

[16] Veloso at 234.

[17] Vaca v. Court of Appeals, 234 SCRA 146, 149 (1994); Navarra v. Court of Appeals, 204 SCRA 850 (1991); De Jacob v. Court of Appeals, 184 SCRA 294, 302 (1990)

[18] Kho v. Court of Appeals, 203 SCRA 160, 164 (1991)

[19] Melo v. Court of Appeals, G.R. No. 123686, November 16, 1999, p. 5.

[20] Ibid.

[21] A.G. Development v. CA, 281 SCRA 155, 158 (1997)

[22] Sulit v. CA, 268 SCRA 441 (1997)

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