

**REGGIE CHRISTI LIMPO, PETITIONER, VS. COURT OF APPEALS AND
VERONICA GONZALES, RESPONDENTS.***G.R. No. 124582. June 16, 2000*

Ponente: MENDOZA, J.

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This is a petition for review of the decision,[1] dated January 26, 1996, of the Seventeenth Division of the Court of Appeals, dismissing for lack of merit a special civil action of certiorari filed by petitioner to set aside the decision of the Regional Trial Court, Branch 11, Malolos, Bulacan, which granted private respondent's ex parte petition for the issuance of a writ of possession.

The following are the facts:

Petitioner Reggie Christi S. Limpo (Regina Christi Schaetzchen Limpo) and Bong Diaz (Maria Lourdes Gamir Diaz) were acquitted of nine counts of violation of Batas Pambansa Blg. 22, in Criminal Case Nos. 9638-M to 9646-M. She and her co-accused, Bong Diaz, and Leonarda Mariano y Bernardo, were likewise acquitted of seven counts of estafa, in Criminal Case Nos. 9647-M to 9653-M. But petitioner and Diaz jointly were held severally liable to private respondent Veronica Gonzales, complainant in the two criminal cases, in the total amount of P275,000.00, plus interests at the legal rate computed from the date of the first demand, or on November 19, 1985, until the amount was fully paid, in the decision rendered October 28, 1991 by the Regional Trial Court, Branch 12, Malolos, Bulacan.

The decision became final and executory on December 1, 1991. On December 29, 1992, private respondent filed a motion for the enforcement of the civil liability, whereupon the trial court issued a writ of execution. Consequently, the sheriff levied upon two (2) parcels of land registered in the name of petitioner under TCT Nos. T-30395 and T-30396 of the Register of Deeds of Bulacan. At the auction sale subsequently held, the properties were sold to private respondent as the highest bidder and a certificate of sale dated June 8, 1993 was duly issued in her favor. As petitioner failed to redeem the properties, a final deed of sale was executed in favor of private respondent on June 20, 1994.

To consolidate her ownership over the two (2) parcels of land, private respondent demanded from petitioner the surrender of her owner's copy of TCT Nos. T-30395 and T-30396. Petitioner, however, failed to do so, whereupon private respondent filed a petition under §107 of P.D. No. 1529 (Property Registration Decree),[2] to compel petitioner to surrender her owner's duplicate certificates of title. The petition was docketed as LRC Case No. P-292-M and assigned to Branch 21 of the court.

The proceedings in that case are stated in the decision rendered on November 10, 1994, thus:

On October 26, 1994, this Petition was set for hearing and the petitioner thru counsel presented the judicial requirements of this Court. Marked in evidence are: the Order dated September 22, 1994 setting this petition for hearing on October 26, 1994 marked as Exhibit `A'; the registry return card showing receipt of the said Order by the Land Registration Authority marked as Exhibit `A-1' and stamp receipt of the Office of the

Solicitor General marked as Exhibit `A-2'; stamp receipt of the Office of the Register of Deeds of Malolos, Bulacan marked as Exhibit `A-1'; and the Certificate of Posting marked as Exhibit `B'. Likewise marked is the Order setting the continuation of hearing of this petition to November 4, 1994 as Exhibit `C' and the receipt of the notice to respondent Reggie Christi Limpo was hereto marked as Exhibit `C-1'.

Despite Reggie Limpo's receipt however, no opposition was filed prompting the Court to enter an Order of general default and allowing the presentation of ex parte evidence for the petitioner on November 7, 1994. (Underscoring supplied)

On the basis of these documents, judgment was rendered by the court as follows:

WHEREFORE, finding the evidence adduced by the herein petitioner to be sufficient to warrant the relief prayed for under the aforesaid law, the respondent Reggie Christi Limpo is hereby directed to surrender the said owner's duplicate copies of TCT No. T-30395 and T-30396 to the Register of Deeds at Malolos, Bulacan. In the event that she failed or refused to do so, the said public officer is hereby ordered to cancel or annul the same and in lieu thereof, issue new copies of certificates of title in the name of herein petitioner, Veronica R. Gonzales, with the proper notations as provided by law.

SO ORDERED.[3]

No motion for reconsideration nor appeal having been filed by petitioner within the reglementary period, the decision became final and executory. Consequently, on December 16, 1994, pursuant to the order of RTC Branch 21, the Register of Deeds of Bulacan cancelled TCT Nos. T-30395 and T-30396 in the name of petitioner and, in lieu thereof, issued TCT Nos. T-62002 and T-62003 in the name of private respondent.

On March 29, 1995, because of petitioner's refusal to vacate the premises, private respondent filed a petition for issuance of a writ of possession. The petition, which was docketed as LRC Case No. P-123-95, was assigned to Branch 11 of the trial court. It was subsequently substituted by an amended ex parte petition for issuance of a writ of possession. Private respondent alleged that pursuant to Rule 39, §35 of the Rules of Court, she was entitled to possession of the properties.

On April 27, 1995, the trial court granted ex parte private respondent's amended petition for issuance of a writ of possession and, on May 26, 1995, a writ of possession was issued commanding the sheriff to place private respondent in possession of the properties in question.

On June 19, 1995, petitioner filed an urgent motion to stop the sheriff from implementing the writ of possession. She prayed that, after notice and hearing, the order of April 27, 1995 and the writ of possession issued pursuant to it be set aside. Petitioner alleged that she had never been furnished a copy of private respondent's petition for the issuance of a writ of possession, nor given a notice of hearing concerning the same and, consequently, she was deprived of due process. Hence, the court did not acquire jurisdiction over her and had no authority to issue a writ of possession under Rule 39, §35.

On July 21, 1995, the court denied petitioner's motion for lack of merit. On September 5, 1995, it denied petitioner's motion for reconsideration and directed the issuance of an alias writ of possession.

Petitioner, thereupon filed on September 29, 1995 a petition for certiorari in the Court of Appeals and obtained from it a writ of preliminary injunction enjoining the enforcement of the alias writ of possession until further orders. She reiterated her contention that RTC Branch 11 had no jurisdiction to issue a writ of possession ex parte under Rule 39, §35 of the Rules of Court. She argued that such writ could be issued ex parte only in connection with an extrajudicial foreclosure of mortgage under Act No. 3135, §7, as amended. For this reason, she asked the appellate court to set aside the trial court's order dated April 27, 1995 granting ex parte private respondent's

amended petition for a writ of possession, including the writ of possession and the alias writ issued pursuant thereto; the order dated July 21, 1995 denying petitioner's urgent omnibus motion; and the order dated September 5, 1995, denying petitioner's motion for reconsideration.

On January 26, 1996, the Court of Appeals rendered its decision, now the subject of this petition for review on certiorari, dismissing petitioner's petition for certiorari and, on April 8, 1996, it denied reconsideration. Hence, this petition.

The question for decision is whether a writ of possession may be issued ex parte under Rule 39, §35 of the Rules of Court.

Petitioner contends that in the absence of any complaint filed with it and a decision duly rendered by it, RTC Branch 11 had no jurisdiction to issue a writ of possession on the basis of an ex parte petition filed by private respondent. She argues that such may be issued ex parte only in cases of an extrajudicial foreclosure of mortgage pursuant to Act No. 3135, §7, as amended. She points out that private respondent should have filed the amended ex parte petition before Branch 12 the same court where Criminal Case Nos. 9638-M to 9653-M was filed, citing the case of *Kaw v. Anunciacion*[4] where it was ruled that even in the case wherein the party is held liable or the case is adversely decided against the party, an ex-parte motion is not allowed.

The petition has no merit.

First. Petitioner is right that, as a matter of strict procedure, the writ of possession should have been sought in Branch 12 of the RTC as an incident of the execution of its decision. Moreover, it should have been sought by mere motion and not in the form of an independent action in which summons should be issued and the defendant required to file his answer.

However, what was filed as a petition for issuance of a writ of possession was in substance merely a motion, as private respondent actually sought just the execution of the final decision rendered in her favor. Such motion could be made ex parte. Indeed, petitioner has not asserted any defense to private respondent's motion. All she says is that because the proceedings were ex parte, she was deprived of her right to be heard.

However, no practical benefit can be derived by setting aside the order of the court granting ex parte a writ of possession. On the other hand, private respondent's right to possession over the property is clear and is based on her right of ownership as purchaser of the properties in the auction sale.

Rule 39, §35 of the Rules of Court provides:

Deed and possession to be given at expiration of redemption period. By whom executed or given. - If no redemption be made within twelve (12) months after the sale, the purchaser, or his assignee, is entitled to a conveyance and possession of the property; or, if so redeemed, whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to the conveyance and possession; but in all cases the judgment debtor shall have the entire period of twelve (12) months from the date of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity, as though the officer making the sale had continued in office and executed it.

Upon the execution and delivery of said deed, the purchaser, or redemptioner, or his assignee, shall be substituted to and acquire all the right, title, interest and claim of the judgment debtor to the property as of the time of the levy, except as against the judgment debtor in possession, in which case the substitution shall be effective as of the date of the deed. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment debtor.

In the instant case, private respondent acquired the property after the levy on execution and sale of the property at public auction. No procedural infirmity attended these proceedings. As the Court of Appeals noted:

The mandate under Section 35 of Rule 39, *supra*, is unmistakable: if no redemption of the property auctioned is made within twelve (12) months after the sale, the purchaser "is entitled to a conveyance and possession of the property," which possession "shall be given to the purchaser" except when a third party with an interest adverse to the judgment debtor is actually holding the same.

Here, it is not disputed that the 12-month period within which Limpo may exercise her right of redemption had long expired without any redemption having been effected. Neither is it disputed that a final deed of sale following the expiration of said period had been executed by the sheriff in favor of Gonzales as purchaser in the auction sale. Finally, and this is likewise undisputed, Gonzales had already consolidated her ownership of the same property, as in fact Limpo's former certificates of title thereon had already been cancelled and replaced with new certificates in the name of Gonzales, who, unquestionably, is now the registered owner of the realties.

Given the above, we cannot perceive of any reason why an *ex parte* writ of possession may not be issued in favor of Gonzales. To our mind, under the factual milieu obtaining in this case, the issuance of such writ upon Gonzales' application therefor is a matter of course of which no discretion is left to the respondent court. After all, a writ of possession "is but complimentary to the writ of execution" (*Vda. de Bogacki vs. Inserto*, 111 SCRA 356, 363), and, in case of an execution sale done through public auction is but a "consequence" of the writ of execution (*Cometa vs. IAC*, 151 SCRA 563).

True it is that in *Cometa*, *supra*, the Supreme Court made it clear that the issuance of a writ of possession "is dependent on the valid execution of the procedural stages preceding it," and that "any flaw affecting any of its stages x x x could affect the validity of its issuance." In the present case, however, petitioner has not impugned or ascribed any irregularity in the entire process taken against her properties prior to the *ex parte* issuance of the assailed writ of possession. And it is in this respect where, in our view, the Achilles' heels in petitioner's recourse lies.

We have perused the petition filed in this case and found nothing therein whereby the petitioner imputes any flaw or irregularity in any of the proceedings which led to the ultimate issuance of the questioned writ. For one, petitioner does not at all dispute the fact that the decision in Criminal Case Nos. 9638-M to 9653-M, whereunder she was adjudged civilly liable to the private respondent in the principal amount of P275,000.00 has long become final and executory. For another, petitioner makes no claim nor pretense that the execution sale conducted by the sheriff to enforce the civil aspect of the same decision, including the certificate of sale and final deed of sale executed by the same sheriff in favor of Gonzales, was attended with any irregularity. Then, too, the petition could be searched in vain of any allegation of fraud or accident which prevented her from exercising her right of redemption over the properties. So also, there is nothing in the petition indicating that petitioner was left in the dark as to the steps then being taken by the private respondent to ultimately place the latter in possession of the premises. Indeed, it would be preposterous on the part of the petitioner to feign ignorance of such steps. Thus, she does not deny her receipt of a letter from the private respondent requiring her (petitioner) to surrender her owner's duplicate copies of her title to the property in order that the same may be cancelled and replaced by new ones in the name of the private respondent. And certainly, she cannot, with more reason, pretend ignorance of the petition filed against her by the private respondent on account of her refusal to surrender said owner's copies. For sure, despite notice of said petition, she opted not to appear in the scheduled hearing thereof nor bothered to file any opposition thereto. This is obvious from the order issued on November 10, 1994 by Branch 21 of the respondent court in LRC Case No. P-292-M, quoted earlier in this decision. Finally, the petition makes no allegation whatsoever that at the time the writ was issued, the petitioner is not the one in possession of the premises in question but a third person with a claim adverse to her. In short, in this recourse, petitioner has not set forth any ground that she could have raised in opposition to private respondent's application for a writ of possession had she been given the opportunity to contest it.

Hence, even on the extreme assumption that petitioner is entitled to notice before the respondent court should have acted on private respondent's application for a writ of possession, the process would have served no useful purpose nonetheless because the petitioner is evidently wanting of any valid ground to oppose the application. In any event, it is safe to assume that the petitioner must have anticipated his ultimate ouster from the premises. The filing of the petition in LRC Case No. P-292-M in Branch 21 of the respondent court after she refused to surrender the owner's copies of her title must have forewarned her of private respondent's determination to wrest possession of the premises from her. Unfortunately, however, she seemingly did not attach any significance to the filing of said petition and merely ignored the notice sent to her relative thereto, which explains why she was declared as in default. It is thus too bad that petitioner should now cry "foul" simply and solely because the writ which would effectively take her out from the premises was issued ex parte. For, as we have stated herein, petitioner has not cited any ground that she could have validly raised by way of opposition to the application for the writ had she been afforded the opportunity to be heard relative thereto. (Emphasis added)

Private respondent's reliance on the case of *Kaw v. Anunciacion* is misplaced. Said case involved an administrative matter filed by complainant against a judge and sheriff of MeTC for grave misconduct, incompetence and partiality involving an ejectment suit where respondents were fined P10,000.00 each. We held that respondent judge erred in issuing an order of execution on the basis of an ex parte motion for execution filed by the lessor against the lessee. The fact that the decision of the MeTC in ejectment cases is immediately executory does not mean that notice of the motion for execution to the adverse party is unnecessary under Rule 70, §8 of the Rules of Court.

Second. Nor is there any doubt as to the power of RTC Branch 11 to issue the alias writ of possession in LRC Case No. P-123-95 notwithstanding the fact that the writ was issued to execute the decision of another branch of the court (Branch 12). The different branches of a court in one judicial region are not really independent of each other. As explained in *Bacalso v. Ramirez*:^[5]

The various branches of the Court of First Instance of Cebu under the Fourteenth Judicial District, are coordinate and equal courts, and the totality of which is only one Court of First Instance. The jurisdiction is vested in the court, not in the judges. And when a case is filed in one branch, jurisdiction over the case does not attach to the branch or judge alone, to the exclusion of the other branches. Trial may be held or proceedings continued by and before another branch or judge. It is for this reason that Section 57 of the Judiciary Act expressly grants to the Secretary of Justice [now the Supreme Court], the administrative right or power to apportion the cases among the different branches, both for the convenience of the parties and for the coordination of the work by the different branches of the same court. The apportionment and distribution of cases does not involve a grant or limitation of jurisdiction, the jurisdiction attaches and continues to be vested in the Court of First Instance of the province, and the trials may be held by any branch or judge of the court.

For the foregoing reasons, we find no reason to disturb the decision of the Court of Appeals. Consequently, the petition for review of *Reggie Christi Limpo* must be denied.

On April 25, 2000, while this case was pending deliberation in this Court, the spouses *Anselmo and Precilla Bulaong* filed a motion for leave to intervene. It appears that, in a decision rendered on July 30, 1999, in Civil Case No. 170-M-95, the RTC Branch 12 ordered the cancellation of TCT Nos. T-62002 and T-62003 in the name of private respondent *Veronica Gonzales* and the execution of a deed of sale covering the lands in question in favor of the spouses *Bulaong*; and the issuance to the latter of new titles upon payment by them of P275,000.00 to private respondent *Veronica Gonzales* representing the judgment debt of petitioner in Criminal Case Nos. 9638-M to 9653-M. It appears further that from the decision, both the spouses *Bulaong* and private respondent appealed to the Court of Appeals where the case is now pending as C.A. G.R. SP No. 55423. In their motion for intervention, the spouses *Bulaong* allege that on January 13, 1993, the *Limpos* (presumably the family of herein petitioner

Reggie Christi Limpo) mortgaged the lands in question to them for P4.3 million, delivering to them for this purpose the owner's duplicates of TCT Nos. T-249639 and T-249641 registered in the name of the persons from whom petitioner bought the properties on November 5, 1991; that as the originals of the titles in the Register of Deeds of Malolos, Bulacan had been destroyed by fire in 1987, they filed a petition for reconstitution of the same, resulting in the issuance on February 4, 1993 of TCT Nos. RT-29488 and RT-29489 which were later cancelled when, in their place, TCT Nos. T-30395 and T-30396 in the name of petitioner were issued; that the spouses found out "to their consternation . . . several entries with various erasures and superimpositions appear[ing] in the pages of the encumbrance of TCT Nos. T-30395 and T-30396;" that "the position, placing, and the number of entries favored spouses Bulaong, while the dates of entries . . . indicate advantage on the part of Gonzales"; that the mortgage lien of the spouses Bulaong was annotated on the reconstituted titles on March 1, 1993; that on August 22, 1993, the mortgage was foreclosed and the properties covered by it were sold for P4.3 million to the spouses Bulaong as highest bidders; and that on August 23, 1994, a certificate of sale was issued to them and inscribed on TCT Nos. T-30395 and T-30396 as Entry No. 46239. The spouses Bulaong pray that "the conflict between the rights of spouses Bulaong as mortgagees for P4.3 million . . . as against the entry in the primary book for the P275,000.00 judgment claim of [private respondent] Gonzales . . . be resolved."

Intervention cannot be allowed at this late stage of this case. Rule 19 of the 1997 Rules of Civil Procedure provides in pertinent parts:

Section 1. Who may intervene. - A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or in interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Sec. 2. Time to intervene - The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

Thus, intervention may be granted only where its allowance will not unduly delay or prejudice the rights of the original parties to a case. Generally, it will be allowed "before rendition of judgment by the trial court," as Rule 19, §2 expressly provides. After trial and decision in a case, intervention can no longer be permitted.^[6] Certainly it cannot be allowed on appeal^[7] without unduly delaying the disposition of the case and prejudicing the interest of the parties.

Indeed, there is no justification for granting the motion for the intervention of the spouses Bulaong which they filed only on April 25, 2000, after the appeal in this case had already been submitted for resolution, when they could have done so earlier. On January 4, 1993, notice of the levy on execution in Criminal Case Nos. 9638-M to 9653-M was entered in the primary entry book of the Register of Deeds of Malolos, Bulacan, per Entry No. 7808 and were later annotated on the owner's duplicate copies of TCT Nos. T-249639 and T-249641. Although the spouses Bulaong claim that said owner's duplicate copies of the titles were "clean" when the Limpos mortgaged the properties to them on January 13, 1993, they nonetheless admit that when the titles in the name of petitioner Reggie Christi Limpo were issued shortly after February 4, 1993 (TCT Nos. T-30395 and T-30396), they contained the notice of levy on execution in Criminal Case Nos. 9638-M to 9653-M. They, therefore, had notice of private respondent's claims over the properties in question.

On December 16, 1994, private respondent filed a petition to compel petitioner, as registered owner, to surrender her owner's copy of TCT Nos. T-30395 and T-30396. Assuming that the spouses Bulaong were until then without

knowledge of the sale of the properties to private respondent, they could not have remained unaware of the claim of private respondent. After all, they admit they were then in possession of the owner's copy of TCT Nos. T-30395 and T-30396.

The result of all this is that the spouses Bulaong, knowing private respondent's interest in the properties in conflict with theirs, could have sought to intervene much earlier and not only now on appeal. It took them nearly five years from March 29, 1995, when private respondent filed a petition for issuance of a writ of possession, before filing their motion for leave to intervene in this case. Such delay amounts to laches and justifies the denial of their motion. Allowance of intervention at this late stage would unduly delay the resolution of the appeal as trial would be conducted anew to allow the spouses Bulaong to present evidence in support of their claim of ownership.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED. The motion for leave to intervene, filed by the spouses Anselmo and Precilla Bulaong, is hereby DENIED.

SO ORDERED.

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

[1] Per Justice Cancio C. Garcia, chairman, and concurred in by Justices Eugenio S. Labitoria and Portia Aliño-Hormachuelos, members.

[2] Sec. 107. Surrender of withheld duplicate certificates. - Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

[3] Rollo, pp. 21-22.

[4] 242 SCRA 1 (1995).

[5] 128 Phil. 559, 564-565 (1967).

[6] Trazo v. Manila Pencil Co., Inc., 1 SCRA 403 (1961).

[7] El Hogar Filipino v. National Bank, 64 Phil. 582 (1937); Pacursa v. Del Rosario, 24 SCRA 125 (1968).

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