

PHILIPPINE NATIONAL BANK, PETITIONER, VS. THE COURT OF APPEALS AND ERNESTO AUSTRIA AND LORETO Q. QUINTANA, RESPONDENTS.

G.R. No. 135219. January 17, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Before us is a petition for review under Rule 45 of the Rules of Court, seeking a reversal of the Court of Appeals' resolution in CA-G.R. SP No. 48660 dated August 25, 1998, which affirmed the order of the Regional Trial Court of Makati, Branch 60 in LRC Case No. M-2635.

Sometime during the late 70's, the spouses Godofredo and Wilma Monsod obtained a loan in the amount of P120,000.00 from petitioner Philippine National Bank (PNB). To secure their loan, the Monsods mortgaged to PNB a parcel of land covered by TCT No. S-84843, located within the Monte Villa de Monsod Subdivision in Parañaque, Rizal.

Due to Monsods' failure to pay their loan obligation, PNB extrajudicially foreclosed the mortgage. At the auction sale of the subject real property, PNB was declared the highest bidder. On December 21, 1981, a certificate of sale was issued in favor of PNB, and was registered on July 11, 1984.[1]

Upon expiration of the redemption period on July 12, 1985, ownership of the property was consolidated in PNB. Thereafter, TCT No. S-84843 was cancelled and TCT No. 99480 was issued in PNB's name.[2]

On June 23, 1992, PNB filed an "Ex-Parte Petition for the Issuance of Writ of Possession" with Branch 60 of the Regional Trial Court of Makati City, docketed as LRC Case No. M-2635. Pursuant to the provisions of Act No. 3135, as amended, the trial court conducted an ex parte hearing. PNB's representative testified that the foreclosed property is occupied by one Ernesto Austria. According to PNB, Mr. Austria was invited by the bank to a conference to discuss the ownership of the foreclosed lot, however, he did not honor the bank's invitation.[3]

On August 28, 1992, the trial court granted PNB's petition and a writ of possession was issued on October 26, 1992.[4]

On December 11, 1992, respondents Ernesto and Loreto Quintana Austria filed a "Motion for Intervention and to Recall and/or Stop the Enforcement of the Writ of Possession." The Austrias alleged that they are the actual occupants of the subject lot, which they purportedly bought from the Monsods as early as 1974. They claimed that the foreclosed property was enclosed within a concrete fence and formed part of their family compound. PNB allegedly knew of this fact even before it granted the loan to the Monsods, because the bank's credit investigators were advised of the same when they inspected the property in the summer of 1976. Consequently, the Austrias maintained that the issuance of the possessory writ ex parte was improper, since it will deprive them of their property without due process.[5]

Due to the Austrias' refusal to vacate the premises, the sheriff failed to enforce the challenged writ.

On July 27, 1993, on motion of PNB, the trial court issued an alias writ of possession. Again, the writ was not implemented.[6]

On September 17, 1993, the sheriff sought to enforce the first alias writ of possession for the second time. The Austrias filed a “Second Motion for Intervention” seeking to restrain the enforcement of the writ of possession issued on October 26, 1992.[7] PNB then filed an “Urgent Ex-Parte Motion for Issuance of Break Open Order”[8] and, subsequently, an Opposition to the Austrias’ Second Motion for Intervention.[9]

On January 31, 1994, the trial court denied the Austrias’ second motion and granted PNB’s “Motion for Issuance of Break Open Order.” The trial court ruled that the Austrias can no longer be permitted to intervene in the case during said stage of the proceedings and that the remedy of the Austrias was to file an ordinary civil action to assert their claim of ownership over the property.[10]

In the meantime, the first alias writ of possession lapsed. PNB thus filed an “Ex-Parte Motion for Issuance of Second Alias Writ of Possession,”[11] and on November 29, 1994, a second alias writ was issued.[12]

Unfazed, the Austrias filed an Omnibus Motion on January 25, 1995, seeking a recall of the second alias writ and a reconsideration of the trial court’s order denying their motion to intervene.[13] Meanwhile, the second alias writ had likewise expired.

PNB filed a “Manifestation and Motion for Issuance of Third Alias Writ of Possession,” which the trial court granted anew in an order dated October 10, 1995.[14]

However, on December 12, 1995, the Austrias again filed a motion to set aside the trial court’s order dated October 10, 1995 and to recall the third alias writ.[15]

Consequent to the filing of this fourth motion, the sheriff again failed to implement the third alias writ, which also lapsed. Thus, on February 15, 1996, PNB filed another “Motion for Issuance of a Fourth Alias Writ,”[16] which was granted on March 26, 1996.

The trial court, after hearing the Austrias’ fourth motion, issued an order on October 4, 1996, denying the same, on the ground that the issuance of a possessory writ for a property sold at public auction pursuant to an extra-judicial foreclosure proceeding was a ministerial duty on its part. The Austrias failed to establish any legal ground for recalling the writs, even as they claimed a superior right to the subject property.[17]

On February 19, 1997, the fourth alias writ was issued by the trial court. The writ was partially implemented with the posting of PNB security guards within the premises of the foreclosed lot.[18]

On April 17, 1997, the Austrias, for the fifth time, filed a motion to stop the enforcement of the fourth alias writ and to set aside all prior writs issued by the trial court.[19]

In the meantime, the Austrias filed before the Regional Trial Court of Parañaque, an action for cancellation of PNB’s title to the property, docketed as Civil Case No. 97-0184.[20]

On October 28, 1997, the trial court denied the Austrias’ fifth motion but ruled that: “any writ of possession that may be issued in this case, is declared unenforceable against the MOVANTS ERNESTO AUSTRIA and the HEIRS OF LORETO AUSTRIA, until the Court declares otherwise.”[21]

PNB filed a motion for reconsideration, which was denied on May 20, 1998.[22] A petition for certiorari under Rule 65 of the Rules of Court was filed by PNB before the Court of Appeals. However, the Court of Appeals dismissed the petition, stating:

There is no prima facie showing of grave abuse of discretion on the part of respondent Judge in issuing his

assailed Order which the Court finds to be in accord with law, the pertinent rules and jurisprudence cited therein.

Hence, PNB filed the instant petition, contending that:

I

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR BY SIMPLY ADOPTING THE FINDINGS OF THE TRIAL COURT THAT WRIT OF POSSESSION CANNOT BE ENFORCED AGAINST RESPONDENT AUSTRIA. SAID FINDINGS ARE UNPROVEN AND UNSUPPORTED BY EVIDENCE.

II

THE COURT OF APPEALS COMMITTED SERIOUS MISAPPREHENSION OF FACTS IN:

A) SUPPORTING THE JURISPRUDENCE CITED BY THE TRIAL COURT IN THE OCTOBER 28, 1997 ORDER. THE RULINGS DO NOT JUSTIFY THE NON-ENFORCEMENT OF THE WRIT OF POSSESSION AGAINST RESPONDENTS. RESPONDENTS WERE GIVEN THE OPPORTUNITY TO BE HEARD BUT NO EVIDENCE WAS PRESENTED TO SUPPORT THEIR CLAIM;

B) NOT GIVING DUE CONSIDERATION TO THE FACT THAT PNB HAS THE LEGAL RIGHT TO POSSESS THE PROPERTY AS ITS REGISTERED OWNER;

C) LOSING SIGHT OF THE FACT THAT THE TRIAL COURT BELATEDLY ISSUED THE OCTOBER 28, 1997 ORDER DIRECTING THAT THE WRIT OF POSSESSION CANNOT BE ENFORCED AGAINST THE RESPONDENTS. THE TRIAL COURT HAD EARLIER ISSUED FOUR (4) POSSESSORY WRITS ALL OF WHICH WERE DIRECTED AGAINST RESPONDENTS AUSTRIA & QUINTANA.[23]

The basic issue to be resolved in this case is whether or not an ex-parte writ of possession issued pursuant to Act No. 3135, as amended, can be enforced against a third person who is in actual possession of the foreclosed property and who is not in privity with the debtor/ mortgagor.[24]

Petitioner PNB maintains that the trial court's order was based on the unproven allegation that respondents had purchased the property from the Monsods before the latter mortgaged it to PNB. According to petitioner PNB, respondents did not adduce any proof to support their claim of ownership, even as they were repeatedly given the opportunity to do so during the hearings on the numerous motions filed by respondents themselves.

Petitioner PNB also submits that since it is the registered owner of the property, it is entitled to a writ of possession as a matter of right. The bank insists that it could rely on the title of the registered land which does not have any annotation of respondents' supposed rights.

Petitioner PNB likewise avers that the trial court could not now belatedly refuse to enforce the writ of possession against respondents. The trial court had already issued a total of four possessory writs directing the ouster of all occupants of the lot, including respondents herein.

On the other hand, respondents assert that the trial court correctly held that the writ of possession can only be implemented against the debtor/mortgagor and his successors-in-interest. Since respondents acquired their rights as owners of the property by virtue of a sale made to them by the Monsods prior to the bank's mortgage lien, respondents can not be dispossessed therefrom without due notice and hearing, through the simple expedient of an ex-parte possessory writ.

We agree with respondents. Under applicable laws and jurisprudence, they can not be ejected from the property by means of an ex-parte writ of possession.

The operative provision under Act No. 3135, as amended,[25] is Section 6, which states:

Sec. 6. Redemption. – In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of section four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act. (*Italics ours*)

Despite the evolutionary development of our procedural laws throughout the years, the pertinent rule in the Code of Civil Procedure[26] remains practically unchanged. Particularly, Rule 39, Section 33, second paragraph, which relates to the right of possession of a purchaser of property in an extrajudicial foreclosure sale:

Sec. 33. x x x

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property at the time of levy. 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 obligor. (*Italics ours*)

Thus, in *Barican v. Intermediate Appellate Court*,[27] we held that the obligation of a court to issue an ex-parte writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor. The same principle was inversely applied in a more recent case,[28] where we ruled that a writ of possession may be issued in an extrajudicial foreclosure of real estate mortgage, only if the debtor is in possession and no third party had intervened. Although the factual nuances of this case may slightly differ from the aforecited cases, the availing circumstances are undeniably similar – a party in possession of the foreclosed property is asserting a right adverse to the debtor/mortgagor and is a stranger to the foreclosure proceedings in which the ex-parte writ of possession was applied for.

It should be stressed that the foregoing doctrinal pronouncements are not without support in substantive law. Notably, the Civil Code protects the actual possessor of a property, to wit:

Art. 433. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

Under the aforequoted provision, one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The term “judicial process” could mean no less than an ejectment suit or reivindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated.

An ex-parte petition for issuance of a possessory writ under Section 7 of Act No. 3135 is not, strictly speaking, a “judicial process” as contemplated above. Even if the same may be considered a judicial proceeding for the enforcement of one’s right of possession as purchaser in a foreclosure sale, it is not an ordinary suit filed in court, by which one party “sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.”[29]

It should be emphasized that an ex-parte petition for issuance of a writ of possession is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act 3135, as amended. Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court, any property brought within the ambit of the act is foreclosed by the filing of a petition, not with any court of justice, but with the office of the sheriff of the

province where the sale is to be made.[30]

As such, a third person in possession of an extrajudicially foreclosed realty, who claims a right superior to that of the original mortgagor, will have no opportunity to be heard on his claim in a proceeding of this nature. It stands to reason, therefore, that such third person may not be dispossessed on the strength of a mere ex-parte possessory writ, since to do so would be tantamount to his summary ejectment, in violation of the basic tenets of due process.

Besides, as earlier stressed, Article 433 of the Civil Code, cited above, requires nothing less than an action for ejectment to be brought even by the true owner. After all, the actual possessor of a property enjoys a legal presumption of just title in his favor,[31] which must be overcome by the party claiming otherwise.

In the case at bar, petitioner PNB admitted that as early as 1990, it was aware that the subject lot was occupied by the Austrias. Yet, instead of bringing an action in court for the ejectment of respondents, it chose to simply file an ex-parte petition for a writ of possession pursuant to its alleged right as purchaser in the extra-judicial foreclosure sale. We cannot sanction this procedural shortcut. To enforce the writ against an unwitting third party possessor, who took no part in the foreclosure proceedings, would be tantamount to the taking of real property without the benefit of proper judicial intervention.

Consequently, it was not a ministerial duty of the trial court under Act No. 3135 to issue a writ of possession for the ouster of respondents from the lot subject of this instant case. The trial court was without authority to grant the ex-parte writ, since petitioner PNB's right of possession under said Act could be rightfully recognized only against the Monsods and the latter's successors-in-interest, but not against respondents who assert a right adverse to the Monsods. Hence, the trial court cannot be precluded from correcting itself by refusing to enforce the writs it had previously issued. Its lack of authority to direct issuance of the writs against respondents assured that its earlier orders would never attain finality in the first place.

In the same vein, respondents are not obliged to prove their ownership of the foreclosed lot in the ex-parte proceedings conducted below. The trial court has no jurisdiction to determine who between the parties is entitled to ownership and possession of the foreclosed lot.

Likewise, registration of the lot in petitioner PNB's name does not automatically entitle the latter to possession thereof. As discussed earlier, petitioner PNB must resort to the appropriate judicial process for recovery of the property and cannot simply invoke its title in an ex-parte proceeding to justify the ouster of respondents.

WHEREFORE, the instant petition is DENIED and the resolution of the Court of Appeals in CA G.R. SP No. 48660 is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Rollo, pp. 12-13.

[2] Ibid., at 34.

[3] RTC Records, pp. 26-27.

[4] Ibid., at 76.

[5] Id., at 59-63.

[6] Id., at 100 & 103.

[7] *Id.*, at 104-108.

[8] *Id.*, at 119.

[9] *Id.*, at 129.

[10] *Id.*, at 158-160.

[11] *Id.*, at 171.

[12] *Id.*, at 180-183.

[13] *Id.*, at 185-187.

[14] *Id.*, at 224.

[15] *Id.*, at 232.

[16] *Id.*, at 244.

[17] *Id.*, at 310-312.

[18] *Id.*, at 319, 322, 324 & 338.

[19] *Id.*, at 327.

[20] *Id.*, at 369-370.

[21] *Id.*, at 417.

[22] *Id.*, at 455.

[23] *Ibid.*, at 20.

[24] *Id.*, at 130.

[25] An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages, as amended by Act No. 4118.

[26] See *IFC Service Leasing and Acceptance Corporation v. Nera*, 19 SCRA 181, 184 (1967), where the Court explained that Sections 464-466 of the Code of Civil Procedure were superseded by Sections 25-27 and Section 31 of Rule 39 of the Rules of Court which in turn were replaced by Sections 29-31 and Section 35 of Rule 39 of the Revised Rules of Court.

[27] 162 SCRA 358, 363 (1988), citing *IFC Service Leasing and Acceptance Corporation v. Nera*, *supra*; *Tan Soo Huat v. Ongwico*, 63 Phil. 746 (1936).

[28] *Philippine National Bank v. Court of Appeals*, 275 SCRA 70, 77 (1997), citing *Gatchalian v. Arlegui*, 75 SCRA 234 (1977).

[29] Section 3 (a), Rule 1, 1997 Rules of Civil Procedure.

[30] See *Supena v. De la Rosa*, 267 SCRA 1, 10 (1997), citing Section 4, Act No. 3135, as amended.

[31] Civil Code of the Philippines, Article 541. A possessor in the concept of owner has in his favor the legal presumption that he possesses with a just title and he cannot be obliged to show or prove it.

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