SPOUSES ENRIQUE R. CAMACHO AND ANGELINA M. CAMACHO, PETITIONERS, VS. PHILIPPINE NATIONAL BANK AND REGISTER OF DEEDS OF TACLOBAN CITY, RESPONDENTS.

G.R. No. 136365. August 16, 2001

Ponente: PARDO, J.

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PARDO, J.:

Spouses Enrique R. Camacho and Angelina M. Camacho appeal via certiorari from the decision of the Court of Appeals[1] that denied their petition for prohibition to enjoin the Regional Trial Court, Leyte, Tacloban City, Branch 7 from enforcing its Order[2] granting the issuance of a writ of possession after the respondent Philippine National Bank (hereafter, PNB) posted a bond in the amount of five hundred thousand pesos (P500,000.00) in favor of petitioners.

The facts are not disputed.

On May 25, 1995, for failure of petitioners to pay their mortgage indebtedness with PNB, the Provincial Sheriff of Leyte extra-judicially foreclosed the mortgage constituted on petitioners' property covered by TCT Nos. T-33726, T-30578, T-29142, T-33725, and T-31058. At the foreclosure sale, PNB was the highest bidder. The Sheriff's Certificate of Sale, dated June 2, 1995, was duly registered with the Register of Deeds, Tacloban City, on June 16, 1995, so that petitioners had one (1) year therefrom, or until June 16, 1966, within which to redeem the foreclosed property.

On October 30, 1995, PNB, as purchaser in the foreclosure sale, filed with the Regional Trial Court, Tacloban City, Branch 7 a verified ex-parte petition for "a writ of possession" to enable it to gain possession of the property subject of the petition.[3]

On March 5, 1996, the trial court issued summons requiring petitioners to file their answer to the petition.[4] On April 16, 1996, petitioners filed their answer with counterclaim.[5]

On September 10, 1996, the trial court issued a notice setting the hearing of the case on September 20, 1996.[6]

On September 10, 1996, petitioners filed a Motion to Transfer date of hearing from September 20, 1996, to October 18, 1996, alleging that their counsel had a prior commitment.[7]

On October 15, 1996, the trial court issued an order that decreed as follows:

> "Considering that the applicable law on the matter renders the issuance of a Writ of Possession ministerial and imperative, the Ex-Parte Motion for Issuance of Writ of Possession is hereby GRANTED upon posting of a bond of P500,000.00 in favor of Spouses Camacho."[8]

On November 21, 1996, petitioners filed with the Court of Appeals a petition for prohibition[9] to enjoin the enforcement of the writ of possession and to declare the order as null and void for having been issued with grave abuse of discretion amounting to depriving petitioners of their day in court.

After due proceedings, on March 25, 1998, the Court of Appeals promulgated its decision that denied the petition for prohibition, as follows:

> "WHEREFORE, foregoing considered, the present petition for prohibition is hereby DENIED.
>
> "SO ORDERED."[10]

In denying the petition, the Court of Appeals ruled that petitioners were not denied due process because PNB's motion for issuance of writ of possession was to be heard on two (2) dates, September 10, 1996 and October 10, 1996, but on these dates petitioners chose not to attend the hearing; that even assuming that there was denial of due process, the same was cured by the filing of a motion for reconsideration. The Court of Appeals held that the right of PNB to have possession of the subject property would not be defeated notwithstanding the pendency of a case questioning the validity of the foreclosure sale, citing Zaballero vs. Court of Appeals.[11]

Hence, this petition.[12]

The issues raised are:

(1)

Whether the decision of the Court of Appeals had attained finality, and therefore, can no longer be appealed to the Supreme Court; and

(2)

Whether PNB, after its incorporation as a private bank is entitled to a writ of possession on the property which it extra-judicially foreclosed under Act 3135, as amended, and Presidential Decree (P. D.) No. 385.

We dismiss the petition.

Admittedly, petitioners received notice of the decision sought to be appealed on April 1, 1998, and, therefore, had fifteen (15) days from April 1, 1998, or until April 16, 1998, within which to move for a reconsideration of the decision or to appeal via certiorari to the Supreme Court.

On April 22, 1998, or six (6) days after April 16, 1998, petitioners filed with the Court of Appeals a Motion for Additional Period Within Which to File Motion for Reconsideration, requesting for a period of at least thirty (30) days from April 16, 1998, within which to file motion for reconsideration of the decision.[13]

On June 2, 1998, the Court of Appeals issued a resolution, decreeing as follows:

> "The Motion for Additional period within which to file motion for reconsideration filed by petitioners themselves on April 22, 1998 is DENIED, the 15-day period to file motion for reconsideration being non-extendible."[14]

Notwithstanding the above resolution, on May 21, 1998,[15] petitioners filed with the Court of Appeals a motion for reconsideration of the decision promulgated on March 25, 1998.[16]

On July 22, 1998, the Court of Appeals issued a resolution as follows:

> "The appearance of Atty. Alfredo C. Verona as counsel for petitioners is noted.
>
> "In view of the Resolution of June 2, 1998, petitioners' motion for reconsideration of the decision dated March 25, 1998, is hereby noted."[17]

On November 3, 1998, the Court of Appeals issued a resolution that denied due course to petitioners' motion for reconsideration.[18]

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On the foregoing facts, the questioned decision of the Court of Appeals promulgated on March 25, 1998 and received by petitioner on April 1, 1998, became final and executory on April 17, 1998. It is no longer appealable to the Supreme Court via certiorari.[19]

In De Gracia v. San Jose,19 we ruled as follows:

> "As may be seen, the law expressly authorizes the purchaser to petition for a writ of possession during the redemption period by filing an ex parte motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title; and upon the filing of such motion and approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession. Under the legal provisions above copied, the order for a writ of possession issues as a matter of course upon filing of the proper motion and approval of the corresponding bond. No discretion is left to the court. And any question regarding the regularity and validity of the sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in Section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding is ex parte."

IN VIEW WHEREOF, we dismiss the appeal. We declare the decision of the Court of Appeals promulgated on March 25, 1998, in CA-G. R. SP No. 42580 to have become final and executory.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] In CA-G. R. SP No. 42580, promulgated on March 25, 1998, Labitoria, J., ponente, Rasul and Buzon, JJ., concurring.

[2] Dated October 15, 1996.

[3] Docketed as Civil Case No. 95-10-141. Petition, Annex "A", Rollo, pp. 15-25.

[4] Petition, Annex "D", CA Rollo, p. 22.

[5] Petition, Annex "B", Rollo, pp. 21-25.

[6] Ibid.

[7] Ibid.

[8] Petition, Annex ""C", Rollo, p. 26.

[9] Docketed as CA-G. R. SP No. 42580. Petition, CA Rollo, pp. 2-11.

[10] Petition, Annex "D", Rollo, pp. 29-34.

[11] 229 SCRA 810 [1994].

[12] Filed on December 28, 1998, Rollo, pp. 7-14. On April 5, 2000, we gave due course to the petition, Rollo, pp. 107-108.

[13] Comment, Annex "1", Rollo, pp. 87-89.

[14] Comment, Annex "2", Rollo, p. 90.

[15] Posted by registered mail, Post Office, Tacloban City.

[16] CA Rollo, pp. 106-110.

[17] Comment, Annex "5", Rollo, p. 97.

[18] Petition, Annex "E", Rollo pp. 35-36.

[19] At any rate, PNB whether a government entity or a private bank as the purchaser of the foreclosed property of the petitioners in the extra-judicial foreclosure sale conducted pursuant to Act No. 3135, as amended, is entitled as a matter of right to a writ of possession in its favor under Section 7 of Act No. 3135, as amended.

[19] 94 Phil. 623 [1954].

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