

HEIRS OF THE LATE DOMINGO N. NICOLAS, PETITIONERS, VS. METROPOLITAN BANK & TRUST COMPANY, RESPONDENT.

G.R. NO. 137548. September 03, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse the Decision[1] of the Court of Appeals (Sixteenth Division) dated January 14, 1999 in CA-G.R. SP No. 49926.

The facts of the case are not in dispute, thus:

Spouses Domingo and Josefa Nicolas are the registered owners of two (2) parcels of land located at Sanville Subdivision, Quezon City as evidenced by Transfer Certificates of Title (TCT) Nos. 156339 and 156341 of the Registry of Deeds, same city. On these lots is the residential house of spouses Nicolas and their two children, herein petitioners. These properties are conjugal.

On May 19, 1986, Domingo Nicolas passed away.

On June 11, 1988, a fire gutted the office of the Register of Deeds of Quezon City. Among the records destroyed were the original copies of TCTs Nos. 156339 and 156341.

Sometime in 1988, Josefa Nicolas, the surviving spouse of Domingo, filed with the Land Registration Administration (LRA) an application for reconstitution of the two (2) land titles.

In 1991, the LRA approved the application and ordered the reconstitution of the destroyed TCTs but only in the name of applicant Josefa Nicolas.

In 1998, petitioners learned that their mother mortgaged the lots with the Metropolitan Bank & Trust Co., herein respondent; that the mortgage had been foreclosed; that respondent had the land titles consolidated in its name; and that respondent filed with the Regional Trial Court (RTC), Branch 77, Quezon City a petition for the issuance of a writ of possession (LRC Case No. Q-8019[96]) which was granted on January 15, 1998.

Petitioners then filed with the RTC, Branch 22, Quezon City Civil Case No. Q-98-34312 for Annulment of Reconstituted Titles, Mortgage and Sale at Public Auction. This case is still pending trial.

Petitioners also filed with the RTC, Branch 77, Quezon City a motion to quash the writ of possession, but it was denied on September 10, 1998. Thereupon, they filed with the Court of Appeals a petition for certiorari, docketed as CA-G.R. SP No. 49926. However, the appellate court dismissed the petition. It held that the trial court, in issuing the writ of possession in favor of the respondent, did not commit grave abuse of discretion amounting to lack or excess of jurisdiction considering that the trial court has the ministerial task to issue such writ.

Petitioners seasonably filed a motion for reconsideration, but this was denied by the Court of Appeals in its

Resolution of February 24, 1999.

Hence, the instant petition.

Petitioners contend that the Court of Appeals erred in dismissing their petition for certiorari, invoking our ruling in *Rivero de Ortega v. Natividad*[2] which reads:

The general rule is that after a sale has been made under a decree in a foreclosure suit, the court has the power to give possession to the purchaser, and the latter will not be driven to an action in law to obtain possession. The power of the court to issue a process and place the purchaser in possession, is said to rest upon the ground that it has power to enforce its own decrees and thus avoid circuitous actions and vexatious litigation. But where a party in possession was not a party to the foreclosure, and did not acquire his possession from a person who was bound by the decree, but who is a mere stranger and who entered into possession before the suit was begun, the court has no power to deprive him of possession by enforcing the decree. Thus, it was held that only parties to the suit, persons who came in under them pendente lite, and trespassers or intruders without title, can be evicted by a writ of possession. The reason for this limitation is that the writ does not issue in case of doubt, nor will a question of legal title be tried or decided in proceedings looking to the exercise of the power of the court to put a purchaser in possession. A very serious question may arise upon full proofs as to where the legal title to the property rests, and should not be disposed of in a summary way. The petitioner, it is held, should be required to establish his title in a proceeding directed to that end.

Here, petitioners as children and, therefore, compulsory heirs of spouses Nicolas, acquired ownership of portions of the lots as their legitime upon the death of their father or prior to the foreclosure of mortgage and the filing by the respondent of its petition for the issuance of a writ of possession. Consequently, petitioners are strangers or third parties therein whose rights cannot be determined as they were not impleaded by respondent. Verily, they should not be deprived of their legitime by the enforcement of the writ of possession. Clearly, therefore, the writ of possession should not include parts of the two lots pertaining to petitioners.

Records indicate that the estate of Domingo Nicolas has not been judicially or extra-judicially settled.

It is basic that after consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right[3] and its issuance to a purchaser in an extra-judicial foreclosure is merely a ministerial function.[4] However, considering the circumstances obtaining in this case and following our ruling in *Rivero de Ortega*, earlier cited, we hold that such writ of possession should apply only to the share of Josefa as may be determined in Civil Case No. Q-98-34312 or in any other proceeding that may be instituted by petitioners for the purpose of settling the undivided estate of Domingo Nicolas.

WHEREFORE, we GRANT the petition. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 49926 is MODIFIED in the sense that the writ of possession issued by the RTC, Branch 77, Quezon City in LRC Case No. Q-8019(96) shall apply only to such portion of the lots pertaining to Josefa Nicolas as may be determined in Civil Case No. Q-98-34312 or in any other proper proceeding which petitioners may file.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

[1]Rollo, pp. 18-25. Per Associate Justice Ramon A. Barcelona (retired) and concurred in by Associate Justice Martin S. Villarama, Jr. and Associate Justice Demetrio G. Demetria (dismissed from the service).

[2] 71 Phil. 340 (1941), citing *Ludlow v. Lansing*, Hopk. Ch. [N.Y.] 231; *Jones v. Hooper*, 50 Miss. 510, 514; See 2 *Wiltie on Mortgage Foreclosure*, 1061-1062; 3 *Jones on Mortgages*, 301 and the cases cited therein; *Thompson*

v. Campbell, 57 Ala. 183, 188; Cooper v. Cloud, 194 Ala., 449, 452; Board of Home Missions v. Davis, 70 N. J.E. 577, 62 Atl. 447, 448.

[3] Yulienco v. Court of Appeals, G.R. No. 141365, November 27, 2002, 393 SCRA 143, 153, citing Manalo v. Court of Appeals, 366 SCRA 752 (2001).

[4] Manalo v. Court of Appeals, G.R. No. 141297, October 6, 2001, 366 SCRA 752, citing A.G. Development Corporation v. Court of Appeals, 281 SCRA 155 (1997).

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