

REYNALDO L. LAUREANO, PETITIONER, VS. BORMAHECO, INC. AND EDGARDO C. CRUZ, RESPONDENTS.

G.R. No. 137619. February 06, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is a Petition for Review on Certiorari under Rule 45 seeking to set aside the decision[1] of the Court of Appeals[2] which dismissed the Petition for Certiorari in CA-G.R. SP No. 45908.

The antecedents of this case are as follows:[3]

On December 11, 1962, the spouses Reynaldo Laureano and Florencia Laureano obtained various credit accommodations from the Philippine National Cooperative Bank (PNCB, for brevity), and, as a security therefor, constituted a real estate mortgage upon two (2) lots located at Bel-Air, Makati City, with Transfer Certificate of Title Nos. 59664 and 59665. The Laureano spouses failed to pay their indebtedness. Consequently, PNCB filed a verified application for extra-judicial foreclosure of the real estate mortgage with the Office of the Sheriff of the Regional Trial Court of Makati. On February 20, 1984, a public auction sale was conducted by the Sheriff, and the two lots were purchased by the PNCB as the highest bidder. On the same day, a Certificate of Sale was issued in favor of the bank and registered with the Register of Deeds of Makati City.

The Laureano spouses failed to redeem the two lots within the one-year period. On March 20, 1985, ownership was consolidated in the name of the PNCB, and new titles with TCT Nos. 136823 and 136824 were issued.

On September 26, 1988, PNCB sold several properties including the two lots to Bormaheco, Inc. (Bormaheco, for brevity). Immediately thereafter, new titles with TCT Nos. 157724 and 157725 were issued in favor of Bormaheco.

On October 20, 1988, Bormaheco filed with the Regional Trial Court of Makati[4] an Ex parte Petition for the Issuance of Writ of Possession (hereafter ex parte petition) for the two lots, docketed as LRC Case No. M-1530. The RTC of Makati ordered the service of a copy of the ex parte petition upon the Laureano spouses. Reynaldo Laureano filed a Motion to Dismiss the ex parte petition on the ground of lack of jurisdiction of the RTC of Makati over the subject matter of the case. The RTC of Makati denied the Motion to Dismiss, and this was challenged by Reynaldo Laureano in a Petition for Certiorari filed with the Court of Appeals (CA-G.R. SP No. 16284). The Court of Appeals dismissed the petition, and denied the corresponding Motion for Reconsideration. The decision of the Court of Appeals was further challenged by Laureano in a Petition for Review filed with the Supreme Court (G.R. No. 87813), but the High Court sustained the said decision and denied the petition in a Resolution dated November 23, 1989. The petitioner's Motion for Reconsideration was denied with finality on January 22, 1990.

On January 18, 1989, LIDECO Corporation filed a Motion for Intervention and to Admit Attached Complaint in Intervention in LRC Case No. M-1530, alleging that it is the owner and possessor of two buildings constructed on

the two lots subject of the ex parte petition for the issuance of writ of possession. The complaint for intervention was initially admitted by the RTC, but was stricken off upon motion by Bormaheco alleging that LIDECO Corporation was not a duly registered corporation, and hence had no legal personality. Laureano Investment and Development Corporation, the majority of the stock of which is held by the Laureano spouses, filed an Urgent Motion to Substitute Party Intervenor (LIDECO Corporation) and to Adopt Complaint in Intervention and All Pleadings, but this was denied by the RTC. Laureano Investment and Development Corporation assailed the two RTC Orders[5] in a Petition for Certiorari filed with the Court of Appeals (C.A. G.R. No. 22763). The Court of Appeals dismissed the petition, and such dismissal was questioned by Laureano Investment and Development Corporation in the Petition for Review filed with the Supreme Court (G.R. No. 100468).

In the meantime, on October 24, 1991, the RTC of Makati, Branch 141, issued an order granting the ex parte petition for the issuance of a writ of possession. On 8 November 1991, Bormaheco, Inc. filed a motion for execution of the RTC Order. Three days later, Reynaldo Laureano filed an Urgent Motion to Dismiss Petition and To Strike Pleadings Filed by Bormaheco on the ground of lack of legal capacity of Bormaheco, Inc. to file the ex parte petition. The resolution of these motions was held in abeyance by the RTC in deference to the case pending with the Supreme Court (G.R. No. 100468). On May 6, 1997, the Supreme Court denied the Petition for Review in G.R. 100468.

On September 25, 1997, the RTC of Makati[6] issued the contested Order directing the issuance of a Writ of Execution/Possession in favor of Bormaheco, Inc. Reynaldo Laureano filed a Motion for Reconsideration which was denied by the RTC in the contested Order dated November 4, 1997.

On November 10, 1997, Reynaldo Laureano filed a Petition for Certiorari with the Court of Appeals to annul the two RTC Orders (dated September 25, 1997 and November 4, 1997).[7] The Petition was dismissed by the Court of Appeals in a Decision promulgated on June 18, 1998. The Motion for Reconsideration filed by Laureano was denied on February 18, 1999. Hence this petition.

The issues, as set forth by the petitioner in his Memorandum, are as follows:[8]

I.

Did not the Court of Appeals err as a matter of law when it affirmed the trial court's Order of September 25, 1997 and Order of November 4, 1997, and failed to hold as violative of due process the issuance by the trial court of the Order of September 25, 1997 (which finally approved and granted Bormaheco, Inc.'s Petition for the Issuance of Writ of Possession, etc.) when petitioner's "Urgent Motion To Dismiss Petition and To Strike Pleadings Filed by Bormaheco, Inc." was still pending and unresolved?

II.

Did not the Court of Appeals err as a matter of law when it did not hold that the trial court had denied petitioner his right to a hearing?

We rule on both issues in the negative. The appellate court committed no error in dismissing the Petition for Certiorari in CA-G.R. SP No. 45908, and in affirming the questioned orders of the trial court.

After a careful examination of the records of the proceedings of this case, we fail to see any violation of due process by the regional trial court. A second look at the antecedents is in order.

The Philippine National Cooperative Bank foreclosed the real estate mortgage executed by the Laureano spouses on the two lots. For failure of the said spouses to redeem the properties during the one-year period, ownership of the lots was consolidated in the name of the PNCB, the purchaser in the foreclosure sale. New titles with TCT Nos. 136823 and 136824 were issued under PNCB's name.

As the purchaser of the properties in the extra-judicial foreclosure sale, the PNCB is entitled to a writ of possession therefor. The law on extra-judicial foreclosure of mortgage[9] provides that a purchaser in an extra-judicial foreclosure sale may take possession of the foreclosed property even before the expiration of the redemption period, provided he furnishes the necessary bond. Possession of the property may be obtained by filing an ex parte motion with the regional trial court of the province or place where the property or part thereof is situated.[10] Upon filing of the motion and the required bond, it becomes a ministerial duty of the court to order the issuance of a writ of possession in favor of the purchaser.[11] After the expiration of the one-year period without redemption being effected by the property owner, the right of the purchaser to the possession of the foreclosed property becomes absolute. The basis of this right to possession is the purchaser's ownership of the property.[12] Mere filing of an ex parte motion for the issuance of the writ of possession would suffice,[13] and no bond is required.[14]

Instead of seeking the issuance of a writ of possession, however, PNCB sold the two lots to private respondent Bormaheco, Inc. By virtue of the sale, Bormaheco became the new owner of the lots, entitled to all rights and interests its predecessor PNCB had therein, including the right to a writ of possession.

On October 20, 1988, Bormaheco, Inc. filed an Ex-parte Petition for the Issuance of a Writ of Possession. By the nature of the petition[15], no notice needed to be served upon persons interested in the subject property. Hence, there was no necessity of giving notice to the Laureano spouses, especially since they already lost all their interests in the properties when they failed to redeem the same. Nonetheless, the RTC of Makati ordered the service of a copy of the petition upon the Laureano spouses.[16] Reynaldo Laureano, as an oppositor, even moved to dismiss the ex parte petition on the ground of lack of jurisdiction of the court over the subject matter of the case. The RTC denied the Motion to Dismiss, so Laureano went up to the Court of Appeals on Certiorari. The petition for certiorari (CA-G.R. SP No. 16284) was dismissed by the Court of Appeals, and the Petition for Review of the dismissal was denied by this Court for lack of merit (G.R. No. 87813).

On October 24, 1990, the ex parte petition for the issuance of a writ of possession was granted by the RTC of Makati. Subsequently, Bormaheco, Inc. filed a Motion for Execution thereof. On September, 11, 1991, Reynaldo Laureano filed another motion to dismiss, this time denominated as an Urgent Motion to Dismiss Petition and to Strike Pleadings Filed by Bormaheco, on the ground of lack of legal capacity of Bormaheco, Inc. to file the petition.

The proceedings of the ex parte petition were even held in abeyance when an intervention sought by LIDECO corporation and a subsequent motion to substitute LIDECO as intervenor filed by Laureano Investment and Development Corporation were both denied by the RTC of Makati, and the latter corporation, again, went up to the Court of Appeals on certiorari. The Petition for Certiorari (CA-G.R. SP No. 22763) was dismissed by the Court of Appeals, and the corresponding Petition for Review (G.R. No. 100468) filed with this Court was denied.

A few months thereafter, the RTC of Makati issued the questioned order dated September 25, 1997, which resolved the motions pending before the said court, including the motion for execution filed by Bormaheco and the supplemental motion to dismiss the ex parte petition filed by Reynaldo Laureano. The Urgent Motion to Dismiss earlier filed by Laureano was not among the motions listed to be resolved in the Order. Nevertheless, the ground raised in the Urgent Motion to Dismiss, i.e. the lack of legal personality of Bormaheco, Inc., and hence, lack of legal capacity to file the ex parte petition, was addressed by the RTC, to wit:

xxx To put the issues in their proper perspective, it is best that the motions filed by the oppositor Reynaldo Laureano be first resolved. The motions adverted to above sought the dismissal of the petition on the sole ground that BORMAHECO, Inc. was not yet in existence as [a] corporation at the time of the filing of the petition on 21 October 1988. xxx

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It is now too late in the day to question the legal personality of the petitioner. Such legal infirmity had been cured by the formal registration of BORMAHECO, INC. as a corporate name with the Securities and Exchange Commission on 13 March 1991. Its predecessor was Border Machinery and Heavy Equipment Co., Inc. which used BORMAHECO, INC. as an acronym. Thus, on 1 October 1950, the articles of incorporation of Border Machinery and Heavy Equipment Co., Inc. was amended and it specifically used BORMAHECO, INC. as its acronym. In said amended articles of incorporation, it was certified:

"FIRST. That the name [of] said corporation shall be BORDER MACHINERY AND HEAVY EQUIPMENT CO., INC. (BORMAHECO, INC.)"

In a larger sense, BORMAHECO, INC. had been registered with the Securities and Exchange Commission upon filing of the said amended articles of incorporation with the Securities and Exchange Commission in 1950. This Court therefore denies the oppositor's motions adverted to above. xxx xxx

A Motion for Reconsideration (of the September 25, 1997 RTC Order) filed by Laureano was denied by the lower court in the contested Order dated November 4, 1997. Laureano questioned the two RTC Orders by way of a Petition for Certiorari with the Court of Appeals, and the issue set forth in the Urgent Motion to Dismiss was resolved anew by the appellate court, to wit:

We are, on the other hand, satisfied that the private respondent was incorporated as early as February 23, 1951 by the SEC as "Border Machinery and Heavy Equipment Company, Inc." with a corporate life of fifty (50) years. The by-laws of the Border Machinery x x was registered with the SEC on April 21, 1951. The business name of the private respondent, in turn, was registered with the Bureau of Domestic Trade in 1978 as BORMAHECO; as BORMAHECO, Inc. in 1983; and as BORMAHECO, Incorporated in 1988. Aside from that, the private respondent was given business permits by the Mayor of Makati, in the name of BORMAHECO, Inc. in 1988 and BORMAHECO, Inc. in 1991.

The amendment or change of corporate name of Border Machinery x x to BORMAHECO, Inc., was approved by the SEC on March 13, 1991.

Certainly, the amendment did not make the private respondent a new corporation, but it just continued its operation and remained as the original corporation of 1951. An authorized change in the name of a corporation has no more effect upon its identity as a change of name of a natural person. The rights of the corporation were not affected and neither were the obligations lessened or added.

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The Petition for Certiorari was dismissed by the Court of Appeals. Still unfazed, the petitioner now comes to us through this petition for review, alleging lack of due process in the proceedings which transpired in the courts below.

As aforesaid, we fail to see the lack of due process claimed by the petitioner. On the contrary, the petitioner has been afforded more than what is due. The petitioner was given notice despite the petition being ex parte. He was allowed opposition despite his lack of interest over the subject properties. He caused the delay of the ex parte petition through legal maneuverings, and in fact, managed to reach this Court at least three times in the process. A simple ex parte petition for the issuance of a writ of possession has become a protracted litigation and, to date, has been pending for more than twelve (12) years. What is manifest, therefore, is the abuse by the petitioner of the legal processes, effectively defeating justice which has long been denied the private respondent. This Court will not countenance such practice of the petitioner and his counsel.

Upon the claim of forum shopping, the private respondent has listed down a number of cases filed by the spouses Reynaldo and Florencia Laureano, allegedly involving the same properties, and is asking this Court to declare the

Laureano spouses guilty of forum shopping. This is the second time that this Court has encountered this long list of cases, the first instance being in the case of Laureano Investment and Development Corporation vs. Court of Appeals[17]. Unfortunately, as in the aforesaid case, Bormaheco did not go beyond the enumeration of the cases, leaving its allegation of forum shopping bare and unsubstantiated. Without any showing that the cases listed have identity of parties, causes of action and reliefs sought,[18] neither can we make any valid determination as to whether the rules on non-forum shopping were violated.

WHEREFORE, premises considered, the petition is hereby DENIED for utter lack of merit, and the questioned decision of the Court of Appeals is AFFIRMED. The counsel for the petitioner, Atty. Eduardo R. Robles, is hereby ADMONISHED to be more circumspect in his availment of legal processes, and any future indiscretion shall be dealt with more severely. Treble costs against the petitioner.

SO ORDERED.

Melo, J., (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Promulgated on June 18, 1998.

[2] Twelfth Division, composed of J. Bernardo LL. Salas, acting chairperson and ponente, and JJ. Eloy R. Bello, Jr. and Candido V. Rivera, concurring.

[3] Assailed Court of Appeals Decision, pp. 3 to 4; rollo, pp. 27 to 28; Regional Trial Court Order dated September 25, 1997, pp. 2 to 4; rollo, pp. 56 to 58.

[4] Raffled off to Branch 141, then presided by Judge Phinney C. Araquil

[5] The RTC Order granting Bormaheco's motion to strike off (LIDECO Corporation's) complaint in intervention, and the RTC Order denying Laureano Investment and Development Corporation's urgent motion for substitution.

[6] Branch 141, presided by Judge Manuel D. Victorio

[7] CA-G.R. SP No. 45908

[8] Memorandum of the Petitioner, p. 6; rollo, p. 167.

[9] Act 3135, particularly Section 7.

[10] Ibid.

[11] A.G. Development Corporation vs. Court of Appeals, 281 SCRA 155 (1997), at p. 159, citing Vaca vs. Court of Appeals, 234 SCRA 146 (1994) and F. David Enterprises vs. Insular Bank of America, 191 SCRA 516.

[12] Jus possidendi is a necessary incident of ownership being among the bundle of rights enjoyed by an owner of a property under Article 428 of the New Civil Code.

[13] United Coconut Planters Bank vs. Reyes, 193 SCRA 756 (1991), at p. 761.

[14] Ibid., at pp. 763 to 764.

[15] An ex parte petition is taken or granted at the instance and for the benefit of only one party, without notice to, or contestation by any person adversely interested. [Definition of judicial proceedings ex parte, Black's Law Dictionary, 5[th] edition (1979), p. 517.]

[16] RTC Order dated October 24, 1991, p. 1; rollo, p. 206.

[17] 272 SCRA 253 (1997).

[18] The test in determining the presence of forum shopping is whether in the two (or more cases) pending, there is identity of (a) parties [or interests represented], (b) rights or causes of actions, and (c) reliefs sought. [Employee's Compensation Commission vs. Court of Appeals, 257 SCRA 717 (1996), at pp. 723 to 724.].

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