

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER VS. SPOUSES WILFREDO GATAL AND AZUCENA GATAL, RESPONDENTS.

G.R. NO. 138567. March 04, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us for resolution is the petition for review on certiorari[1] assailing the Decision[2] dated January 18, 1999 of the Court of Appeals and its Resolution[3] dated April 27, 1999 in CA-G.R. SP No. 47736, “Development Bank of the Philippines, petitioner, vs. Hon. Raineldo T. Son, in his capacity as Presiding Judge of Branch 47, Regional Trial Court of Tagbilaran City, and Spouses Wilfredo Gatal and Azucena Gatal, respondents.”

Records show that sometime in 1993, spouses Wilfredo and Azucena Gatal, respondents, obtained a loan of P1,500,000.00 from the Development Bank of the Philippines (DBP), petitioner. The loan was secured by a real estate mortgage over a commercial lot at No. 3 J.A. Clarin Street, Tagbilaran City, covered by Transfer Certificate of Title No. T-22697 of the Registry of Deeds, same city. For failure of respondents to pay their loan, petitioner foreclosed the mortgage in December 1994. In January 1996, the title of the lot was consolidated in the name of petitioner DBP.

On October 29, 1996, the property was offered for sale at public auction, but none of the bidders was able to meet the bid price ceiling.

On November 18, 1996, petitioner offered the property for negotiated sale on condition that the buyer must pay 20% of the selling price as down payment, the balance payable under the terms of the interested buyer.

Respondents then submitted their bid in the amount of P2,160,000.00 and made a deposit equivalent to 10% of the bid price. However, another buyer, Jimmy Torrefranca, offered a bid of P2,300,000.00, or P140,000.00 higher than respondents’ bid. Upon learning of Torrefranca’s offer, respondents wrote[4] petitioner requesting that they will match his bid. But petitioner rejected respondents’ request because Torrefranca was already declared the preferred bidder.[5]

Aggrieved, respondents, filed with the Regional Trial Court (RTC), Branch 4, Tagbilaran City a complaint for injunction with prayer for a temporary restraining order and a preliminary injunction, docketed as Civil Case No. 5996. The action sought to (a) declare the sale of the property to Torrefranca void and uphold respondents’ right of pre-emption; and (b) maintain the status quo between the parties prior to the filing of the suit.

On February 22, 1997, the RTC issued an Order granting respondents’ application for a preliminary injunction.

Meantime, on August 27, 1997, petitioner filed with the same RTC, Branch 47, a petition for issuance of a writ of possession, docketed as Civil Case No. 6097. On October 31, 1997, the court issued a writ of possession in favor of petitioner.

On November 12, 1997, respondents filed with Branch 47 a motion to dismiss Civil Case No. 6097 and a motion

to quash the writ of possession on the ground that there is another case (Civil Case No. 5996 for injunction) pending before Branch 4 involving the same parties, the same subject matter and the same legal issues.

On December 18, 1997, Branch 47 issued an Order dismissing Civil Case No. 6097 and recalling its earlier Order granting the writ of possession on the ground of *litis pendentia*.

Petitioner DBP filed a motion for reconsideration but was denied by Branch 47 in an Order dated February 10, 1998.

Thereafter, petitioner filed with the Court of Appeals a petition for certiorari assailing the Orders dated December 18, 1997 and February 10, 1998 of Branch 47, docketed as CA-G.R. SP No. 47736. On January 18, 1999, the Appellate Court rendered its Decision dismissing the petition, thus upholding the challenged Orders.

Petitioner filed a motion for reconsideration but was denied in a Resolution dated April 27, 1999.

Hence, the instant petition.

The fundamental issue for our resolution is whether the Court of Appeals committed a reversible error in holding that the trial court correctly dismissed Civil Case No. 6097 on the ground of *litis pendentia*.

The petition is meritorious.

One of the grounds for dismissing an action is when there is *litis pendentia* as provided under Section 1(e), Rule 16, of the 1997 Rules of Civil Procedure, as amended, thus:

“SECTION 1. Grounds. – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x

(e) That there is another action pending between the same parties for the same cause;

x x x.”

For *litis pendentia* to lie as a ground for a motion to dismiss, the following requisites must be present: (1) that the parties to the action are the same; (2) that there is substantial identity in the causes of action and reliefs sought; and (3) that the result of the first action is determinative of the second in any event and regardless of which party is successful.[6]

It is undisputed that both cases involve the same parties and the same property. Civil Case No. 5996 is an action for injunction filed by respondents against petitioner DBP. It seeks to declare the sale of the property to Torrefranca void and to order petitioner DBP “to respect respondents’ right of pre-emption,” and maintain the status quo between the parties.

Upon the other hand, Civil Case No. 6097 is a petition for the issuance of a writ of possession filed by petitioner DBP, being the purchaser of the lot at the public auction.

Clearly, the rights asserted and the reliefs sought by the parties in both cases are not identical. Thus, respondents’ claim of *litis pendentia* is unavailing.

Section 33, Rule 39 of the same Rules provides:

“SECTION 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. – If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; 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 as of the time of the 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.”

Corollarily, Section 7 of Act 3135,[7] as amended by Act 4118, reads:

“Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without complying with the requirements of this Act. x x x”

In *Tan Soo Huat vs. Ongwico*,^[8] we ruled that “once a mortgaged estate is extrajudicially sold, and is not redeemed within the reglementary period, no separate and independent action is necessary to obtain possession of the property. The purchaser at the public auction has only to file a petition for issuance of a writ of possession pursuant to Section 33 of Rule 39 of the Rules of Court.”

To give effect to the right of possession, the purchaser must invoke the aid of the court and ask for a writ or possession^[9] without need of bringing a separate independent suit for this purpose.^[10]

Records show that title to the property has been consolidated to petitioner DBP. Thus, its petition for a writ of possession is in order.

Obviously, the RTC (Branch 47) erred when it granted respondents’ motion to dismiss and recalled the writ of possession it earlier issued. Where, as here, the title is consolidated in the name of the mortgagee, the writ of possession becomes a matter of right on the part of the mortgagee, and it is a ministerial duty on the part of the trial court to issue the same. The pendency of a separate civil suit questioning the validity of the sale of the mortgaged property cannot bar the issuance of the writ of possession. The rule equally applies to separate civil suits questioning the validity of the mortgage or its foreclosure and the validity of the public auction sale.^[11]

There being no *litis pendentia*, the Court of Appeals likewise erred in applying the doctrine of non-interference between courts of equal rank. Under the said doctrine, a trial court has no authority to interfere with the proceedings of a court of equal jurisdiction.^[12] When Branch 47 issued the writ of possession, it did not interfere with the jurisdiction of Branch 4 in the injunction case. It merely exercised its ministerial function of issuing the writ of possession.

Finally, we do not find merit in respondents’ contention that petitioner violated the rule against forum shopping. Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other.^[13] This situation is not present here.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals dated January 18, 1999 and its Resolution dated April 27, 1999 in CA-G.R. SP No. 47736 are REVERSED.

SO ORDERED.

Panganiban, (Chairman), Corona, and Garcia, JJ., concur.

Carpio-Morales, J., on leave.

[1] Filed pursuant to Rule 45, 1997 Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Artemon D. Luna (retired) and concurred in by Justices Delilah

Vidallon-Magtolis and Rodrigo V. Cosico; Rollo at 8-16.

[3] Rollo at 17.

[4] Annex “B”, id. at 104.

[5] Annex “C”, id. at 105.

[6] See Cooperative Development Authority vs. Dolefil Agrarian Reform Beneficiaries Cooperative, Inc., G.R. No. 137489, May 29, 2002, 382 SCRA 552; Olayvar vs. Olayvar, 98 Phil. 52, 54 (1955), citing Santos vs. Geronimo and Tierra, 89 Phil. 715 (1951), Oriental Sawmill vs. Tambunting, 87 Phil. 529 (1950), Capati vs. Ballesteros, 47 O.G. 5127, Vda. de Hernandez vs. Jison, 40 O.G. 3646, J. Northcott and Co. vs. Villa-Abrille, 41 Phil. 462 (1921), Hongkong & Shanghai Banking Corp. vs. Aldecoa & Co., 30 Phil. 255 (1915), and Manuel vs. Wiggett, 14 Phil. 9 (1909); Arceo vs. Oliveros, G.R. No. L-38251, January 31, 1985, 134 SCRA 308, 313, citing Marapao vs. Mendoza, 119 SCRA 97 (1982), Lamis Ents. vs. Lagamon, 108 SCRA 740 (1981), Salacup vs. Madela, Jr., 91 SCRA 275 (1979), Surigao Development Bank vs. Buslon, 48 SCRA 308 (1972), and Quimpo vs. Dela Victoria, 46 SCRA 139 (1972).

[7] “An Act To Regulate The Sale Of Property Under Special Powers Inserted In Or Annexed To Real Estate Mortgages.”

[8] 63 Phil. 746 (1936).

[9] Tolentino, Civil Code of the Philippines, 1990 Ed., Vol. 1, at 68, citing 6 Von Tuhr 294-299, 1-II, Enneccerus, Kipp & Wolff 546.

[10] IFC Service Leasing and Acceptance Corporation vs. Nera, 125 Phil. 595 (1967), citing Tan Soo Huat vs. Ongwico, supra; Rivera vs. CFI of Nueva Ecija and Rupac, 61 Phil. 201 (1935).

[11] Vaca vs. Court of Appeals, G.R. No. 109672, July 14, 1994, 234 SCRA 146, 148, citing Vda. de Jacob vs. Court of Appeals, 184 SCRA 294 (1990), Navarra vs. Court of Appeals, 204 SCRA 850 (1991).

[12] Gallego vs. Sps. Romeo and Vivien Galang, G.R. No. 130228, July 27, 2004; citing Philippine Sinter Corp vs. Cagayan Electric Power and Light Co., Inc, 381 SCRA 582 (2002).

[13] Cooperative Development Authority vs. Dolefil Agrarian Reform Beneficiaries Cooperative, Inc., supra, citing First Philippine International Bank vs. CA, G.R. No. 115849, January 24, 1996, 252 SCRA 259, 283, citing Philippine Woman’s Christian Temperance Union, Inc. vs. Abiertas House of Friendship, Inc., 292 SCRA 785, 791 (1998).

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