

**SPOUSES FELIPE YULIENCO AND FLORA YULIENCO, PETITIONERS,
VS. HON. COURT OF APPEALS (4TH DIVISION); HON. LUCAS P.
BERSAMIN IN HIS OFFICIAL CAPACITY AS PRESIDING JUDGE OF THE REGI...**

G.R. No. 141365. November 27, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Petitioners seek to annul and set aside the decision[1] dated December 20, 1999 of the Court of Appeals, which (1) affirmed the order of the Regional Trial Court of Quezon City, Branch 96, in Land Registration Case No. Q-11564 (99) granting a writ of possession to private respondent Advance Capital Corporation; and (2) lifted the temporary restraining order issued by the CA on September 17, 1999.

The records show that petitioner spouses Felipe and Flora Yulienco were the owners of a residential house and lot located at Nos. 136-138 Biak-na-Bato Street, Sta. Mesa Heights, Quezon City, covered by Transfer Certificate of Title No. RT-2572 (57609).[2] On June 29, 1990, petitioners obtained a loan of P20,000,000 from private respondent Advance Capital Corporation (ACC) with interest at 24 percent per annum and evidenced by a promissory note. To secure the loan, deeds of real estate mortgage were executed on their properties in Makati City, Benguet, and Quezon City. When petitioners failed to pay the loan in full, ACC filed on July 2, 1993 a petition for extrajudicial foreclosures of the properties with the Ex-Officio Sheriff of Quezon City, pursuant to the authority provided in the deed of real estate mortgage. Auction sale of the properties was scheduled on July 30, 1993 and notice of the sale was published in the Times Record on July 7, 14, and 21, 1993.[3]

To forestall the foreclosure of their properties, petitioners filed on July 26, 1993 a petition for injunction, reformation, and damages with prayer for temporary restraining order and/or preliminary injunction against ACC with the Regional Trial Court of Makati City, Branch 61. In their complaint, petitioners questioned the validity of the promissory notes and real estate mortgages. They alleged that their true agreement with ACC was to pay the loan from the proceeds of the sale of their shares of stock in PHESCO which were then subject of a pending case in the Securities and Exchange Commission. They also assailed the Notice of Sheriff's Sale in Makati and Quezon City because it was not published in newspapers of general circulation in Metro Manila.

On July 28, 1993, or two days before the scheduled sale, the Makati RTC issued an order[4] enjoining private respondent and the sheriffs of Makati, Quezon City, and Benguet from proceeding with the foreclosure of petitioners' properties. The auction sale of petitioners' Quezon City property scheduled on July 30, 1993 was likewise cancelled.

On August 30, 1993, ACC filed with the Office of the Clerk of Court and Ex-Officio Sheriff of Quezon City a letter-request to proceed with the auction sale of petitioners' Quezon City property since, by that time, the 20-day effectivity period of the temporary restraining order issued by the Makati RTC had expired[5] and, therefore, there was no more legal impediment to the sale. On the same day, the Sheriff of Quezon City prepared and issued

a Second Notice of Sheriff's Sale of the Quezon City property, scheduling the sale on September 27, 1993. The notice was published in the Times Record on September 1, 8, and 15 1993.[6]

In the meantime, the RTC of Makati issued on September 20, 1993 an order granting petitioners' prayer for preliminary injunction as to the foreclosure of their property in Makati City, but not as to the Quezon City and Benguet properties since under Section 21 of Batas Pambansa Bilang 129, the court does not have jurisdiction to enforce a writ of preliminary injunction outside its territorial jurisdiction.

The public auction was held on September 27, 1993 and petitioners' Quezon City property was sold to ACC as the highest bidder.[7] On the same date, the Sheriff's Certificate of Sale was annotated on the TCT.[8] A year later, petitioners filed a second amended and supplemental petition in the case pending before the RTC of Makati. On September 26, 1994, the RTC issued a temporary restraining order enjoining ACC from exercising its right of consolidation of ownership of the foreclosed property in Quezon City.[9] Then on October 13, 1994, the RTC, again citing Section 21 of Batas Pambansa Bilang 129, finally denied petitioners' prayer for preliminary injunction to enjoin ACC from consolidating title.[10]

Thereafter, when petitioners failed to redeem the foreclosed property, ACC caused the consolidation of its ownership and paid the necessary taxes with the Bureau of Internal Revenue to effect transfer of the title to its name.[11] Accordingly, the Register of Deeds of Quezon City cancelled TCT No. RT-2572 (57609) and issued TCT No. 119740 in ACC's name.[12] Tax declarations over the subject property were likewise transferred in the name of ACC after it paid real estate taxes.[13] From then on, private respondent ACC has been paying real taxes on the property.[14]

Petitioners continued to occupy the house and lot over the property so, in a letter dated May 3, 1999, ACC made a formal and final demand on petitioners to vacate the subject house and lot within five days from receipt of the letter. ACC also demanded P1,080,000 corresponding to rental arrearages from October 1994 to the date of the letter, at P20,000 per month.[15] ACC likewise filed with the RTC of Quezon City, Branch 96, a petition for the issuance of a writ of possession over the subject property. The case was docketed as Land Registration Case No. Q-11564 (99).[16]

At the hearing of June 25, 1999, public respondent Hon. Lucas Bersamin, the presiding judge of the RTC of Quezon City, Branch 96, allowed ACC to present its evidence ex parte without prejudice to any comment that may be filed by petitioners.

In their comment below, petitioners alleged, among others, that it would be improper for the court to issue a writ of possession pending the outcome of Special Civil Case No. 93-2521 before Branch 61 of the Makati RTC for injunction, reformation, and damages assailing the validity of the loan and the mortgage.[17]

On September 3, 1999, the RTC of Quezon City granted the petition for writ of possession, disposing as follows:

ACCORDINGLY, premises considered, the instant petition is hereby GRANTED. Let a writ of possession be issued over the property covered by Transfer Certificate of Title No. 119740 of the Registry of Deeds of Quezon City and located at 136-138 Biak-na-Bato, Sta. Mesa Heights, Quezon City.

SO ORDERED.[18]

Petitioners' motion for reconsideration was denied. To annul the trial court's decision dated September 3, 1999, petitioners elevated the case to the Court of Appeals via certiorari and prohibition with a prayer for temporary restraining order and/or writ of preliminary injunction.[19] In a resolution dated September 17, 1999, the CA issued a temporary restraining order enjoining the implementation of the writ of possession issued by the RTC of Quezon City.[20] Then on December 20, 1999, respondent Court of Appeals denied the petition for certiorari.[21]

The appellate court confined its discussion to the validity of the trial court's issuance of the writ of possession, finding the same neither a capricious nor a whimsical exercise of judgment that could amount to grave abuse of discretion. In the same decision, the CA likewise lifted the temporary restraining order it issued on September 17, 1999.[22]

Hence, the instant petition under Rule 45 of the Rules of Court, anchored on the following averments:

A.

THE RESPONDENT COURT HAS RENDERED THE DECISION DATED DECEMBER 20, 1999 (ANNEX B) IN DISREGARD OF THE FRAUD COMMITTED BY RESPONDENT ACC PROVEN BY FACTS NOT DENIED BY RESPONDENT ACC WHICH CLEARLY VIOLATE THE CONSTITUTIONAL RIGHT TO DUE PROCESS OF PETITIONERS AND WILL FRAUDULENTLY ENRICH RESPONDENT ACC THRU ACTUAL AND ILLEGAL CONFISCATION OF THE PROPERTIES OF PETITIONERS IN AN ILLEGAL AND FRAUDULENT MANNER, THUS CONSTITUTING A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS OR SO FAR SANCTIONED SUCH DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION OF THIS HONORABLE COURT; and

B.

THE RESPONDENT JUDGE COURT HAS DECIDED IN ITS DECISION DATED DEC. 20, 1999 (ANNEX B) QUESTIONS OF SUBSTANCE NOT THERETOFORE DETERMINED BY THIS HONORABLE COURT, OR HAS DECIDED IT IN A WAY NOT IN ACCORD WITH LAW AND LOGIC AND/OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT.[23]

At issue is whether the Court of Appeals committed reversible error in affirming the RTC decision granting the writ of possession to respondent corporation. To resolve this issue, we must also inquire whether prohibition lies to enjoin the Regional Trial Court of Quezon City from issuing to ACC the writ of possession over the property covered by TCT No. 119740 of the Quezon City Register of Deeds.

Petitioners assail the jurisdiction of the Quezon City RTC in taking cognizance of the present case on the ground that there is a pending case in the Makati RTC for injunction, reformation, and damages impugning the validity of the promissory notes and mortgage contracts used as basis for the foreclosure sale. They likewise lament that the grant of the writ and the displacement of petitioners from their residence on the basis of fraud smacks of deprivation of property without due process of law.

Petitioners' contention cannot stand judicial muster. Act 3135, otherwise known as "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages," mandates that jurisdiction over a petition for a writ of possession lies in the court of the province, city, or municipality where the property subject thereof is situated. Section 7 of the said Act is clear on this matter, thus:

SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance [now Regional Trial Court] 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 violating the mortgage or without complying with the requirements of this Act....

Since the land subject of the controversy is located in Quezon City, the city's RTC should rightly take cognizance of the case, to the exclusion of other courts.

Neither can this Court consider the pendency of Special Civil Case No. 93-2521 before Branch 61 of the Makati

RTC a procedural obstacle. Said action for injunction, reformation, and damages does not raise an issue that constitutes a prejudicial question in relation to the present case.

A prejudicial question is one that arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal.[24] It generally comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue that must be preemptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.[25] The rationale behind the principle of prejudicial question is to avoid two conflicting decisions.[26]

Here, Special Civil Case No. 93-2521 and the present one are both civil in nature and, therefore, no prejudicial question can arise from the existence of the two actions. It taxes our imagination how the questions raised in Special Civil Case No. 93-2521 would be determinative of Land Registration Case No. Q-11564 (99). The basic issue in the former is whether the promissory note and mortgage agreement executed between petitioners and private respondent ACC are valid. In the latter case, the issue is whether respondent, armed with a TCT in its name, is entitled to a writ of possession. Clearly, the two cases can proceed separately and take their own direction independently of each other.

In the present case, petitioners cannot anchor their case on the purported interest they have, as owners, over the land and the improvements thereon. They have been stripped of their rights over the property when, as mortgagors, they failed to redeem it after foreclosure took place. A mortgagor has only one year after registration of sale with the Register of Deeds within which to redeem the foreclosed real estate.[27] After that one-year period, he loses all his interests over it. This is in consonance with Section 78 of Republic Act 337, otherwise known as the “General Banking Act,” which provides:

SEC. 78. ...In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking, or credit institution, within the purview of this Act, shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution... (Emphasis supplied.)

Likewise, Section 6 of Act 3135 states:

SEC. 6. 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 judicial creditor or judgment creditor of said debtor, 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;... (Emphasis supplied.)

Well established is the rule that after the consolidation of title in the buyer’s name, for failure of the mortgagor to redeem, the writ of possession becomes a matter of right.[28] Its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function.[29] The writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. The judge issuing the writ following these express provisions of law neither exercises his official discretion nor judgment.[30] As such, the court granting the writ cannot be charged with having acted without jurisdiction or with grave abuse of discretion.

Petitioners cite the 1987 case of *Cometa vs. IAC*,[31] to bolster their argument that a writ of possession should

not be granted in the light of a pending case for annulment of the foreclosure sale wherein the properties were sold at an unusually low price. We note that petitioners' reliance thereon is as flawed as their citation thereof.[32] In said case, there was a pending action where the validity of the levy and sale of the properties in question were directly put in issue, which is not the case here. Special Civil Case No. 93-2521 pending before the Makati RTC for reformation of instrument is not the pending case as contemplated in Cometa because (1) the sale and levy of the property are not directly put in issue, and (2) the Makati RTC could not have taken cognizance of the foreclosure proceedings of the Quezon City property for lack of jurisdiction. A direct action for annulment of the foreclosure sale of the subject property should have been filed in the RTC of Quezon City where the property is located.

More instructive is the 1997 case of Arcega vs. CA,[33] where we held that the purchaser in a foreclosure sale is entitled to possession of the property:

Respondent bank's right to possess the property is clear and is based on its right of ownership as a purchaser of the properties in the foreclosure sale to whom title has been conveyed. Under Section 7 of Act No. 3135 and Section 35 [now Section 33] of Rule 39, the purchaser in a foreclosure sale is entitled to possession of the property. The bank in this case has a better right to possess the subject property because of its title over the same. (Emphasis supplied.)

If only to stress the writ's ministerial character, we have, in a case more recent than Cometa, disallowed injunction prohibiting its issuance,[34] just as we have held that its issuance may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.[35]

Guided by the foregoing principles, until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, petitioners are bereft of valid title and right to prevent the issuance of a writ of possession to respondent corporation. Until then, it is the trial court's ministerial function to grant the possessory writ to said corporation. No error could be attributed to the respondent appellate court for affirming the trial court's order in favor of private respondent, Advance Capital Corporation.

WHEREFORE, the instant petition is DENIED for lack of merit. The challenged decision of the Court of Appeals dated December 20, 1999 in CA-G.R. SP No. 54949 is AFFIRMED. Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman) Acting Chief Justice, Mendoza, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Rollo, pp. 45-61.

[2] Records, pp. 21-22.

[3] Id. at 15.

[4] Id. at 16.

[5] Id. at 17.

[6] Id. at 49.

[7] Id. at 20.

[8] Id. at 53.

[9] Id. at 54-55.

[10] Id. at 56-57.

[11] Id. at 58-59.

[12] Id. at 61.

[13] Id. at 62-64.

[14] Id. at 65-71.

[15] Id. at 72.

[16] Id. at 1-5-A.

[17] Id. at 86.

[18] CA Rollo, p. 31.

[19] Id. at 2-28-A.

[20] Id. at 202-203.

[21] Rollo, pp. 45-61.

[22] The CA Decision erroneously referred to the September 30, 1999 resolution when it should have referred to the September 17, 1999 resolution. See CA Rollo, pp. 202-203.

[23] Rollo, pp. 27-28.

[24] *Tuanda vs. Sandiganbayan*, 249 SCRA 342, 351 (1995).

[25] *Manalo vs. CA*, G.R. No. 141297, October 8, 2001, pp. 12-13.

[26] *Beltran vs. People*, 334 SCRA 106, 110 (2000).

[27] *Unionbank of the Philippines vs. CA*, 311 SCRA 795, 804 (1999).

[28] *Manalo vs. CA*, G.R. No. 141297, October 8, 2001, p. 17.

[29] *Ibid*, citing *A.G. Development Corporation vs. CA*, 281 SCRA 155,159 (1997).

[30] *Suico Industrial Corporation vs. CA*, 301 SCRA 212, 222 (1999).

[31] 151 SCRA 563 (1987).

[32] The citation given was 157 SCRA 563 when it should have been 151 SCRA 563. See Rollo, p. 37.

[33] 275 SCRA 176, 180-181 (1997).

[34] *Kho vs. CA*, 203 SCRA 160, 163 (1991).

[35] *Ibid*.

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