

SPOUSES VICENTE YU AND DEMETRIA LEE-YU, PETITIONERS, VS. PHILIPPINE COMMERCIAL INTERNATIONAL BANK, RESPONDENT

G.R. NO. 147902. March 17, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari of the Decision[1] dated November 14, 2000 of the Court of Appeals (CA) in CA-G.R. SP No. 58982 and the CA Resolution dated April 26, 2001, which denied petitioner's Motion for Reconsideration.

The factual background of the case is as follows:

Under a Real Estate Mortgage dated August 15, 1994[2] and Amendments of Real Estate Mortgage dated April 4, 1995[3] and December 4, 1995,[4] spouses Vicente Yu and Demetria Lee-Yu (petitioners) and spouses Ramon T. Yu and Virginia A. Tiu, or Yu Tian Hock aka Victorino/Vicente Yu, mortgaged their title, interest, and participation over several parcels of land located in Dagupan City and Quezon City, in favor of the Philippine Commercial International Bank (respondent) as security for the payment of a loan in the amount of P9,000,000.00.[5]

As the petitioners failed to pay the loan, the interest, and the penalties due thereon, respondent filed on July 21, 1998 with the Office of the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of Dagupan City a Petition for Extra-Judicial Foreclosure of Real Estate Mortgage on the Dagupan City properties.[6] On August 3, 1998, the City Sheriff issued a Notice of Extra-Judicial Sale scheduling the auction sale on September 10, 1998 at 10:00 o'clock in the morning or soon thereafter in front of the Justice Hall, Bonuan, Tondaligan, Dagupan City.[7]

At the auction sale on September 10, 1998, respondent emerged as the highest bidder.[8] On September 14, 1998, a Certificate of Sale was issued in favor of respondent.[9] On October 1, 1998, the sale was registered with the Registry of Deeds of Dagupan City.

About two months before the expiration of the redemption period, or on August 20, 1999, respondent filed an Ex-Parte Petition for Writ of Possession before the Regional Trial Court of Dagupan City, docketed as Special Proceeding No. 99-00988-D and raffled to Branch 43 (RTC Branch 43).[10] Hearing was conducted on September 14, 1999 and respondent presented its evidence ex-parte.[11] The testimony of Rodante Manuel was admitted ex-parte and thereafter the petition was deemed submitted for resolution.

On September 30, 1999, petitioners filed a Motion to Dismiss and to Strike Out Testimony of Rodante Manuel stating that the Certificate of Sale dated September 14, 1998 is void because respondent violated Article 2089 of the Civil Code on the indivisibility of the mortgaged by conducting two separate foreclosure proceedings on the mortgage properties in Dagupan City and Quezon City and indicating in the two notices of extra-judicial sale that petitioners' obligation is P10,437,015.20[12] as of March 31, 1998, when petitioners are not indebted for the total amount of P20,874,031.56.[13]

In the meantime, petitioners filed a complaint for Annulment of Certificate of Sale before the Regional Trial Court of Dagupan City, docketed as Civil Case No. 99-03169-D and raffled to Branch 44 (RTC Branch 44).

On February 14, 2000, RTC Branch 43 denied petitioners' Motion to Dismiss and to Strike Out Testimony of Rodante Manuel, ruling that the filing of a motion to dismiss is not allowed in petitions for issuance of writ of possession under Section 7 of Act No. 3135.[14]

On February 24, 2000, petitioners filed a Motion for Reconsideration, further arguing that the pendency of Civil Case No. 99-03169-D in RTC Branch 44 is a prejudicial issue to Spec. Proc. No. 99-00988-D in RTC Branch 43, the resolution of which is determinative on the propriety of the issuance of a writ of possession.[15]

On May 8, 2000, RTC Branch 43 denied petitioners' Motion for Reconsideration, holding that the principle of prejudicial question is not applicable because the case pending before RTC Branch 44 is also a civil case and not a criminal case.[16]

On June 1, 2000, petitioners filed a Petition for Certiorari with the CA.[17] On November 14, 2000, the CA dismissed petitioners' Petition for Certiorari on the grounds that petitioners violated Section 8 of Act No. 3135 and disregarded the rule against multiplicity of suits in filing Civil Case No. 99-03169-D in RTC Branch 44 despite full knowledge of the pendency of Spec. Proc. No. 99-00988-D in RTC Branch 43; that since the one-year period of redemption has already lapsed, the issuance of a writ of possession in favor of respondent becomes a ministerial duty of the trial court; that the issues in Civil Case No. 99-03169-D are not prejudicial questions to Spec. Proc. No. 99-00988-D because: (a) the special proceeding is already fait accompli, (b) Civil Case No. 99-03169-D is deemed not filed for being contrary to Section 8 of Act No. 3135, (c) the filing of Civil Case No. 99-03169-D is an afterthought and dilatory in nature, and (d) legally speaking what seems to exist is *litis pendentia* and not prejudicial question.[18]

Petitioners filed a Motion for Reconsideration[19] but it was denied by the CA on April 26, 2001.[20]

Hence, the present Petition for Review on Certiorari.

Petitioners pose two issues for resolution, to wit:

- Whether or not a real estate mortgage over several properties located in different locality [sic] can be separately foreclosed in different places.
- Whether or not the pendency of a prejudicial issue renders the issues in Special Proceedings No. 99-00988-D as [sic] moot and academic.[21]

Anent the first issue, petitioners contend that since a real estate mortgage is indivisible, the mortgaged properties in Dagupan City and Quezon City cannot be separately foreclosed. Petitioners further point out that two notices of extra-judicial sale indicated that petitioners' obligation is P10,437,015.20[22] each as of March 31, 1998 or a total of P20,874,030.40,[23] yet their own computation yields only P9,957,508.90 as of February 27, 1998.

As to the second issue, petitioners posit that the pendency of Civil Case No. 99-03169-D is a prejudicial issue, the resolution of which will render the issues in Spec. Proc. No. 99-00988-D moot and academic. Petitioners further aver that they did not violate Section 8 of Act No. 3135 in filing a separate case to annul the certificate of sale since the use of the word "may" in said provision indicates that they have the option to seek relief of filing a petition to annul the certificate of sale in the proceeding involving the application for a writ of possession or in a separate proceeding.

Respondent contends[24] that, with respect to the first issue, the filing of two separate foreclosure proceedings did not violate Article 2089 of the Civil Code on the indivisibility of a real estate mortgage since Section 2 of Act No.

3135 expressly provides that extra-judicial foreclosure may only be made in the province or municipality where the property is situated. Respondent further submits that the filing of separate applications for extra-judicial foreclosure of mortgage involving several properties in different locations is allowed by A.M. No. 99-10-05-0, the Procedure on Extra-Judicial Foreclosure of Mortgage, as further amended on August 7, 2001.

As to the second issue, respondent maintains that there is no prejudicial question between Civil Case No. 99-03169-D and Spec. Proc. No. 99-00988-D since the pendency of a civil action questioning the validity of the mortgage and the extra-judicial foreclosure thereof does not bar the issuance of a writ of possession. Respondent also insists that petitioners should have filed their Petition to Annul the Certificate of Sale in the same case where possession is being sought, that is, in Spec. Proc. No. 99-00988-D, and not in a separate proceeding (Civil Case No. 99-01369-D) because the venue of the action to question the validity of the foreclosure is not discretionary since the use of the word "may" in Section 8 of Act No. 3135 refers to the filing of the petition or action itself and not to the venue. Respondent further argues that even if petitioners filed the Petition to Annul the Certificate of Sale in Spec. Proc. No. 99-00988-D, the writ of possession must still be issued because issuance of the writ in favor of the purchaser is a ministerial act of the trial court and the one-year period of redemption has already lapsed.

Anent the first issue, the Court finds that petitioners have a mistaken notion that the indivisibility of a real estate mortgage relates to the venue of extra-judicial foreclosure proceedings. The rule on indivisibility of a real estate mortgage is provided for in Article 2089 of the Civil Code, which provides:

Art. 2089. A pledge or mortgage is indivisible, even though the debt may be divided among the successors in interest of the debtor or of the creditor.

Therefore, the debtor's heir who has paid a part of the debt cannot ask for the proportionate extinguishment of the pledge or mortgage as the debt is not completely satisfied.

Neither can the creditor's heir who received his share of the debt return the pledge or cancel the mortgage, to the prejudice of the other heirs who have not been paid.

From these provisions is excepted the case in which, there being several things given in mortgage or pledge, each one of them guarantees only a determinate portion of the credit.

The debtor, in this case, shall have a right to the extinguishment of the pledge or mortgage as the portion of the debt for which each thing is specially answerable is satisfied.

This rule presupposes several heirs of the debtor or creditor^[25] and therefore not applicable to the present case. Furthermore, what the law proscribes is the foreclosure of only a portion of the property or a number of the several properties mortgaged corresponding to the unpaid portion of the debt where, before foreclosure proceedings, partial payment was made by the debtor on his total outstanding loan or obligation. This also means that the debtor cannot ask for the release of any portion of the mortgaged property or of one or some of the several lots mortgaged unless and until the loan thus secured has been fully paid, notwithstanding the fact that there has been partial fulfillment of the obligation. Hence, it is provided that the debtor who has paid a part of the debt cannot ask for the proportionate extinguishment of the mortgage as long as the debt is not completely satisfied.^[26] In essence, indivisibility means that the mortgage obligation cannot be divided among the different lots,^[27] that is, each and every parcel under mortgage answers for the totality of the debt.^[28]

On the other hand, the venue of the extra-judicial foreclosure proceedings is the place where each of the mortgaged property is located, as prescribed by Section 2 of Act No. 3135,^[29] to wit:

SECTION 2. Said sale cannot be made legally outside of the province in which the property sold is situated;

and in case the place within said province in which the sale is to be made is subject to stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated.

A.M. No. 99-10-05-0,[30] the Procedure on Extra-Judicial Foreclosure of Mortgage, lays down the guidelines for extra-judicial foreclosure proceedings on mortgaged properties located in different provinces. It provides that the venue of the extra-judicial foreclosure proceedings is the place where each of the mortgaged property is located. Relevant portion thereof provides:

Where the application concerns the extrajudicial foreclosure of mortgages of real estates and/or chattels in different locations covering one indebtedness, only one filing fee corresponding to such indebtedness shall be collected. The collecting Clerk of Court shall, apart from the official receipt of the fees, issue a certificate of payment indicating the amount of indebtedness, the filing fees collected, the mortgages sought to be foreclosed, the real estates and/or chattels mortgaged and their respective locations, which certificate shall serve the purpose of having the application docketed with the Clerks of Court of the places where the other properties are located and of allowing the extrajudicial foreclosures to proceed thereat. (Emphasis supplied)

The indivisibility of the real estate mortgage is not violated by conducting two separate foreclosure proceedings on mortgaged properties located in different provinces as long as each parcel of land is answerable for the entire debt. Petitioners' assumption that their total obligation is P20,874,030.40 because the two notices of extra-judicial sale indicated that petitioners' obligation is P10,437,015.20[31] each, is therefore flawed. Considering the indivisibility of a real estate mortgage, the mortgaged properties in Dagupan City and Quezon City are made to answer for the entire debt of P10,437,015.29.[32]

As to the second issue, that is, whether a civil case for annulment of a certificate of sale is a prejudicial question to a petition for issuance of a writ of possession, this issue is far from novel and, in fact, not without precedence. In *Pahang v. Vestil*,[33] the Court said:

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. 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. The rationale behind the principle of prejudicial question is to avoid two conflicting decisions.

In the present case, the complaint of the petitioners for Annulment of Extrajudicial Sale is a civil action and the respondent's petition for the issuance of a writ of possession of Lot No. 3-A, Block 1, Psd-07-021410, TCT No. 44668 is but an incident in the land registration case and, therefore, no prejudicial question can arise from the existence of the two actions. A similar issue was raised in *Manalo v. Court of Appeals*, where we held that: At any rate, it taxes our imagination why the questions raised in Case No. 98-0868 must be considered determinative of Case No. 9011. The basic issue in the former is whether the respondent, as the purchaser in the extrajudicial foreclosure proceedings, may be compelled to have the property repurchased or resold to a mortgagor's successor-in-interest (petitioner); while that in the latter is merely whether the respondent, as the purchaser in the extrajudicial foreclosure proceedings, is entitled to a writ of possession after the statutory period for redemption has expired. The two cases, assuming both are pending, can proceed separately and take their own direction independent of each other.[34]

In the present case, Civil Case No. 99-01369-D and Spec. Proc. No. 99-00988-D are both civil in nature. The issue in Civil Case No. 99-01369-D is whether the extra-judicial foreclosure of the real estate mortgage executed by the petitioners in favor of the respondent and the sale of their properties at public auction are null and void,

whereas, the issue in Spec. Proc. No. 99-00988-D is whether the respondent is entitled to a writ of possession of the foreclosed properties. Clearly, no prejudicial question can arise from the existence of the two actions. The two cases can proceed separately and take their own direction independently of each other.

Nevertheless, there is a need to correct the CA's view that petitioners violated Section 8 of Act No. 3135 and disregarded the proscription on multiplicity of suits by instituting a separate civil suit for annulment of the certificate of sale while there is a pending petition for issuance of the writ of possession in a special proceeding.

Section 8 of Act No. 3135 provides:

Sec. 8. Setting aside of sale and writ of possession. — The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal. (Emphasis supplied)

Under the provision above cited, the mortgagor may file a petition to set aside the sale and for the cancellation of a writ of possession with the trial court which issued the writ of possession within 30 days after the purchaser mortgagee was given possession. It provides the plain, speedy, and adequate remedy in opposing the issuance of a writ of possession.[35] Thus, this provision presupposes that the trial court already issued a writ of possession. In *Sps. Ong v. Court of Appeals*,[36] the Court elucidated:

The law is clear that the purchaser must first be placed in possession of the mortgaged property pending proceedings assailing the issuance of the writ of possession. If the trial court later finds merit in the petition to set aside the writ of possession, it shall dispose in favor of the mortgagor the bond furnished by the purchaser. Thereafter, either party may appeal from the order of the judge in accordance with Section 14 of Act 496, which provides that "every order, decision, and decree of the Court of Land Registration may be reviewed...in the same manner as an order, decision, decree or judgment of a Court of First Instance (RTC) might be reviewed." The rationale for the mandate is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on his right of ownership.[37]

Accordingly, Section 8 of Act No. 3135 is not applicable to the present case since at the time of the filing of the separate civil suit for annulment of the certificate of sale in RTC Branch 44, no writ of possession was yet issued by RTC Branch 43.

Similarly, the Court rejects the CA's application of the principle of *litis pendentia* to Civil Case No. 99-03169-D in relation to Spec. Proc. No. 99-00988-D. *Litis pendentia* refers to that situation wherein another action is pending between the same parties for the same cause of actions and that the second action becomes unnecessary and vexatious. For *litis pendentia* to be invoked, the concurrence of the following requisites is necessary: (a) identity of parties or at least such as represent the same interest in both actions; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and, (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.[38]

Applying the foregoing criteria in the instant case, *litis pendentia* does not obtain in this case because of the absence of the second and third requisites. The issuance of the writ of possession being a ministerial function, and

summary in nature, it cannot be said to be a judgment on the merits, but simply an incident in the transfer of title. Hence, a separate case for annulment of mortgage and foreclosure sale cannot be barred by *litis pendentia* or *res judicata*.^[39] Thus, insofar as Spec. Proc. No. 99-00988-D and Civil Case No. 99-03169-D pending before different branches of RTC Dagupan City are concerned, there is no *litis pendentia*.

To sum up, the Court holds that the rule on indivisibility of the real estate mortgage cannot be equated with the venue of foreclosure proceedings on mortgaged properties located in different provinces since these are two unrelated concepts. Also, no prejudicial question can arise from the existence of a civil case for annulment of a certificate of sale and a petition for the issuance of a writ of possession in a special proceeding since the two cases are both civil in nature which can proceed separately and take their own direction independently of each other.

Furthermore, since the one-year period to redeem the foreclosed properties lapsed on October 1, 1999, title to the foreclosed properties had already been consolidated under the name of the respondent. As the owner of the properties, respondent is entitled to its possession as a matter of right.^[40] The issuance of a writ of possession over the properties by the trial court is merely a ministerial function. As such, the trial court neither exercises its official discretion nor judgment.^[41] Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession.^[42] Regardless of the pending suit for annulment of the certificate of sale, respondent is entitled to a writ of possession, without prejudice of course to the eventual outcome of said case.^[43]

WHEREFORE, the petition is DENIED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Cancio C. Garcia (now Associate Justice of this Court) and Romeo A. Brawner (now retired).

[2] Records, pp. 7-8.

[3] Id. at 11-13.

[4] Id. at 20-23.

[5] Id. at 19.

[6] Id. at 52.

[7] Id.

[8] Id. at 64.

[9] Id. at 58-64.

[10] Id. at 1.

[11] Id. at 74.

[12] Should be P10,437,015.29 per Notice of Extra-Judicial Sale, records, p. 52.

[13] Id. at 135.

[14] Id. at 188.

[15] Id. at 195.

[16] Id. at 327.

[17] CA rollo, p. 1.

[18] Id. at 130.

[19] Id. at 134-137.

[20] Id. at 158.

[21] Petition, rollo, p. 15; and Memorandum, rollo, pp. 143-144.

[22] Id. at 143.

[23] Id.

[24] Comment, rollo, p. 114; and Memorandum, rollo, p. 152.

[25] *Rose Packing Co., Inc. v. Court of Appeals*, G.R. No. L-33084, November 14, 1988, 167 SCRA 309, 322; *Central Bank of the Philippines v. Court of Appeals*, G.R. No. L-45710, October 3, 1985, 139 SCRA 46, 57.

[26] *Philippine National Bank v. De los Reyes*, G.R. Nos. 46898-99, November 28, 1989, 179 SCRA 619, 626; *Philippine National Bank v. Amores*, G.R. No. L-54551, November 9, 1987, 155 SCRA 445, 451; *Gonzales v. Government Service Insurance System*, 194 Phil. 465, 475 (1981).

[27] *Aquino v. Macondray & Co. Inc.*, 97 Phil. 731, 741 (1955).

[28] *Philippine National Bank v. Mallorca*, 128 Phil. 747, 752 (1967); *Goquiolay v. Sycip*, 108 Phil. 947, 974 (1960).

[29] Entitled "An Act To Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages," approved on March 6, 1924.

[30] Dated December 14, 1999 and further amended by the Resolutions of January 30, 2001 and August 7, 2001.

[31] *Supra*, note 12.

[32] Id.

[33] G.R. No. 148595, July 12, 2004, 434 SCRA 139.

[34] Id. at 145-146, citing *Yulienco v. Court of Appeals*, 441 Phil. 397, 405-407 (2002) and *Manalo v. Court of Appeals*, 419 Phil. 215, 232 (2001).

[35] *Samson v. Rivera*, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 770; *Marcelo Steel Corporation v. Court of Appeals*, 153 Phil. 362, 373 (1973).

[36] 388 Phil. 857 (2000).

[37] Id. at 865. Reiterated in *Philippine National Bank v. Sanao Marketing Corporation*, G.R. No. 153951, July 29, 2005, 465 SCRA 287, 303.

[38] *Agilent Technologies Singapore (Pte.) Ltd. v. Integrated Silicon Technology Philippines Corporation*, G.R. No. 154618, April 14, 2004, 427 SCRA 593, 601; *Intramuros Administration v. Contacto*, 450 Phil. 704, 713 (2003).

[39] Arquiza v. Court of Appeals, G.R. No. 160479, June 8, 2005, 459 SCRA 753, 765; Sps. Ong v. Court of Appeals, *supra*, note 36 at 867-868.

[40] De Vera v. Agloro, G.R. No. 155673, January 14, 2005, 448 SCRA 203, 214; Chailease Finance Corporation v. Ma, G.R. No. 151941, August 15, 2003, 409 SCRA 250, 253.

[41] Philippine National Bank v. Sanao Marketing Corporation, *supra*, note 37 at 303.

[42] Idolor v. Court of Appeals, G.R. No. 161028, January 31, 2005, 450 SCRA 396, 403; Sps. Ong v. Court of Appeals, *supra*, note 36 at 866.

[43] Idolor v. Court of Appeals, *supra*, note 42 at 403; Sps. Ong v. Court of Appeals, *supra*, note 36 at 866-867.

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