ANGELO DWIGHT PENSON, PETITIONER, VS. SPOUSES MELCHOR AND VIRGINIA MARANAN, RESPONDENTS.

G.R. NO. 148630. June 20, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Angelo Dwight Penson (petitioner), married to Jovita Lorna Penson (Jovita), is the registered owner of two parcels of land situated in Parañaque covered by Transfer Certificate of Title (TCT) Nos. 110503 and 110504, covering 640 square meters each. On this property stands their family home where they have been residing for more than 10 years.[1]

On July 22, 1999, petitioner received a copy of a writ of possession issued by the Regional Trial Court (RTC) of Parañaque City, Branch 257, in LRC Case No. 99-065. Upon inquiry, petitioner learned that the property was the subject of a Deed of Real Estate Mortgage dated August 17, 1992, which secured a promissory note dated August 14, 1992 covering a loan in the amount of P1,950,000.00 executed by Jovita, in her own behalf and as petitioner's attorney-in-fact, in favor of respondents. Petitioner alleged that the Deed of Real Estate Mortgage and the Special Power of Attorney dated July 9, 1992 were fraudulent.[2]

It appears that the writ of possession was issued pursuant to a Compromise Agreement dated March 7, 1997 between Jovita and respondents in Civil Case No. 95-0100, an action for annulment of contract with prayer for the issuance of a writ of preliminary injunction and restraining order, filed on May 9, 1995, by Jovita against respondents. The Compromise Agreement which was approved by the RTC in its Order dated March 7, 1997, provides for the following terms:

> - Plaintiff (Jovita) acknowledged her total obligation to the defendants (respondents) amounting to P6,082,373.00 consisting of the principal and interest as of October 17, 1996;
>
> - In consideration of the plaintiff's, [sic] her willingness to settle and paid [sic] her obligation, the defendants accept the offer of the plaintiff to pay the amount of THREE MILLION (P3,000,000.00) PESOS instead of the amount of P6,082.373.00 to be paid on six monthly installments to wit:
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> x x x x
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> - The aforestated payment shall be covered by postdated checks to be issued by the plaintiff upon the signing of this Compromise Agreement;
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> - If the plaintiff failed to pay one month installment or if any of the six (6) checks shall be dishonored by the drawee bank, the same shall be construed as a violation of this Compromise Agreement and the defendants shall have the right to foreclose the Real Estate Mortgage executed by the plaintiff in favor of the defendants on August 17, 1992 covering the parcels of land together with the improvements covered by TCT No. (110503) 64064 and TCT No. (110504) 64065 located at No. 5 Lawan Street, Unit[ed] Parañaque Subdivision, Parañaque, Metro Manila, as provided in #3 of the Deed of Real Estate Mortgage subject to the redemption period provided for by law;

> - The defendants may likewise move for the issuance of a Writ of Execution by mere motion from the Honorable Court in case of violation of this Compromise Agreement;[3]
>
> x x x x

Due to Jovita's failure to fulfill her obligation under the terms of the Compromise Agreement, the property was extrajudicially foreclosed on October 23, 1997, with respondents as the highest bidders in the foreclosure sale. The Deputy Sheriff issued a Certificate of Sale on November 6, 1997,[4] and TCT Nos. 139462 and 139463 were issued on November 18, 1998, in the name of respondents.[5] Respondents then moved for the issuance of a writ of possession, which was denied by the RTC in its Order dated March 19, 1999, on the ground that the Compromise Agreement does not contain a provision on the automatic issuance of a writ of possession.[6] Respondents filed a motion for reconsideration, which was also denied by the RTC in an Order dated May 4, 1999, for the reason that the remedy available to respondents is the filing of a petition for the issuance of a writ of possession under Act No. 3135.[7]

Thus, respondents filed an ex-parte petition for the issuance of a writ of possession with the same RTC of Parañaque City, Branch 257, docketed as LRC Case No. 99-065.[8] The RTC granted the petition in its Decision dated July 14, 1999,[9] which provides for the following dispositive portion:

> WHEREFORE, let a writ of possession issue ordering Jovita Lorna F. Penson and all persons claiming rights under her to deliver and transfer possession of the properties covered by Transfer Certificates of Title Nos. 139462 and 139463 of the Registry of Deeds of Parañaque to petitioners Sps. Melchor and Virginia Maranan.
>
> SO ORDERED.

On July 21, 1999, a writ of possession was issued directing the deputy sheriff to implement the RTC's Decision.[10]

Before the writ of possession can be satisfied, petitioner filed a complaint for Annulment of Title with Damages and Urgent Prayer for Issuance of Temporary Restraining Order and/or Preliminary Injunction with the RTC of Parañaque City, Branch 260, docketed as Civil Case No. 99-0272.[11] Acting on petitioner's prayer for the issuance of a writ of preliminary mandatory injunction, the RTC issued an Order dated August 17, 1999, granting the same and enjoining respondents and all persons acting for and in their behalf to cease and desist from implementing the writ of possession, subject to petitioner's filing of a bond in the amount of P3,000,000.00.[12] Respondents moved for reconsideration but this was denied by the RTC.[13]

Respondents then filed a petition for certiorari with the Court of Appeals (CA), assailing the RTC Orders dated August 17, 1999 and March 20, 2000. Respondents contended that the RTC has no jurisdiction to issue a writ of preliminary injunction because this is in interference with the orders of a co-equal court. Respondents also claimed that they are already the owners of the property and petitioner has no more right in esse that needs protection.[14]

The CA sustained respondents' arguments and granted the petition, setting aside the RTC Orders dated August 17, 1999 and March 20, 2000 in the assailed Decision dated November 14, 2000.[15] The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the instant Petition for Certiorari is GRANTED and the Orders dated August 17, 1999 and March 20, 2000 of the Regional Trial Court of Parañaque City, Branch 260 are hereby SET ASIDE.
>
> SO ORDERED.

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Petitioner filed a motion for reconsideration, which was denied by the CA in its assailed Resolution dated June 20, 2001.[16]

Hence, the present petition for review on certiorari under Rule 45 of the Rules of Court based on the following grounds:

> A.
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> THE HONORABLE COURT OF APPEALS ERRED IN CONCLUDING THAT THE WRIT OF PRELIMINARY INJUNCTION ISSUED BY JUDGE HELEN BAUTISTA-RICAFORT CONSTITUTES UNLAWFUL INTERFERENCE WITH THE PROCESSES OF A CO-EQUAL AND COORDINATE COURT AND IS THUS INVALID.
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> B.
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> THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE WRIT OF POSSESION CANNOT BE ENJOINED BECAUSE THE PURCHASER IS ENTITLED TO SUCH WRIT AS A MATTER OF RIGHT AND IN APPLYING PNB V. ADIL, 118 SCRA 110.
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> C.
>
> THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE NOTARIZED SPECIAL POWER OF ATTORNEY IS ENTITLED TO THE PRESUMPTION OF VALIDITY.[17]

Petitioner argues that the case of PDCP Development Bank v. Vestil applied by the CA in annulling the RTC orders is not appropriate because unlike in the PDCP case where the spouses Suico jointly executed the mortgage on their property, the present case involves a mortgage solely executed by Jovita over a property exclusively owned by petitioner who did not give his consent nor was a privy thereto. Petitioner also argues that in the PDCP case, the sheriff was commanded to cause both spouses to vacate the property, while in this case, the order to the sheriff only covers Jovita and all persons claiming rights under her, and the sheriff has no authority to enforce it against petitioner.

Petitioner further contends that there is no interference by a co-equal court because the writ of preliminary injunction merely orders the sheriff not to enforce the writ of possession against persons other than Jovita. Petitioner likens the issuance of the writ of preliminary injunction in this case to a writ of preliminary injunction issued by a trial court enjoining the implementation of a writ of attachment against a property not belonging to a defendant. It is also argued that the issuance of a writ of possession is distinct from its enforcement. According to petitioner, the real issue in this case is whether the writ of possession may be enforced against petitioner who is not named in the writ.

Finally, petitioner questions the finding of the CA in its Decision that the Special Power of Attorney was valid and regular on its face, arguing that the CA is limited to jurisdictional issues in resolving the petition before it and cannot make such ruling, as it is a matter that should be threshed out in a proper trial.

The Court finds the petition devoid of merit.

Indeed, jurisprudence is replete with the well-settled rule that the issuance of a writ of possession concomitant to an extrajudicial foreclosure proceeding is a ministerial duty of the court, and it issues as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new transfer certificate of title in the name of the purchaser.[18]

Jurisprudence is also replete with the rule that no court has the power to interfere by injunction with issuance or enforcement of a writ of possession issued by another court of concurrent jurisdiction having the power to issue

such writ.[19]

The foregoing rules, however, are not without exception. Under Section 35, Rule 39 of the Rules of Court, which is made suppletory to the extrajudicial foreclosure of real estate mortgages by Section 6 of Act 3135, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure unless a third party is actually holding the property adversely to the judgment debtor. In Philippine National Bank v. Court of Appeals,[20] the Court held that the obligation of a court to issue an ex-parte writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor, to wit:

> Thus, in Barican v. Intermediate Appellate Court, we held that the obligation of a court to issue an ex-parte writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor. The same principle was inversely applied in a more recent case, where we ruled that a writ of possession may be issued in an extrajudicial foreclosure of real estate mortgage, only if the debtor is in possession and no third party had intervened. Although the factual nuances of this case may slightly differ from the aforecited cases, the availing circumstances are undeniably similar - a party in possession of the foreclosed property is asserting a right adverse to the debtor/mortgagor and is a stranger to the foreclosure proceedings in which the ex-parte writ of possession was applied for.[21]

Thus, the question that now arises is whether petitioner is a "third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor." The answer is no.

Records show that the Promissory Note dated August 14, 1992 and the Deed of Real Estate Mortgage dated August 17, 1992 were all signed by Jovita and by petitioner, through Jovita who acted as the latter's attorney-in-fact. Jovita's power to act in behalf of petitioner was based on a Special Power of Attorney dated July 9, 1992, authorizing Jovita to "apply for any business, commercial or agricultural loan with any bank or lending institution, government or private, any amount which my attorney-in-fact shall deem necessary or proper for our business with the Penta Petroleum Marketing Corporation", and to "offer as collateral or security for the said loan any property, real or personal, constituting our conjugal property, exclusive property, or property of the Penta Petroleum Marketing Corporation, to secure the payment of the said loan."[22] These documents show that petitioner is a party to the loan applied for with respondents and the mortgage constituted over the properties. Petitioner, therefore, cannot be deemed as a "third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor." Moreover, his right to possess the properties is based on the titles of ownership which were already conveyed to respondents who were the highest bidders in the foreclosure sale, and who already hold transfer certificates of title in their names over these properties. The fact that he is not named in the writ of possession does not render the writ of possession unenforceable against him since he was a party to the documents which were the bases of the foreclosure.

Petitioner also bewails that he cannot be ousted from his possession of the properties by a mere ex-parte petition for writ of possession.

By its very nature, an ex-parte petition for issuance of a writ of possession is a non-litigious proceeding authorized under Act No. 3135, as amended. Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court, any property brought within the ambit of the Act is foreclosed by the filing of a petition, not with any court of justice, but with the office of the sheriff of the province where the sale is to be made. Thus, any third person in possession of an extrajudicially foreclosed realty who claims a right superior to that of the original mortgagor, will not have the opportunity to be heard on his claim in a proceeding of this nature.[23] This is precisely why a "third party in possession of the property who is claiming a right adverse to that of the

debtor/mortgagor" may not be dispossessed on the strength of a mere ex-parte possessory writ, since to do so would be tantamount to his summary ejectment, in violation of the basic tenets of due process. But inasmuch as petitioner is not such a third party, the writ of possession issued ex-parte can be enforced against him.

The Court does not find any justifiable reason to disturb the CA's prima facie finding that the Special Power of Attorney dated July 9, 1992 is valid. As petitioner himself put it, such presumption of validity is rebuttable and can be overturned by evidence.[24] The CA's finding was, understandably, merely preliminary; it was done in order to resolve the issue before it regarding petitioner's right in esse that needs to be protected by injunctive relief. It was petitioner himself who brought up the matter of the alleged forgery, and the CA, necessarily, has to determine the merit of petitioner's allegation. The CA's prima facie finding will not in any way bind the RTC of Parañaque City, Branch 260, where Civil Case No. 99-0272, petitioner's action for "Annulment of Title with Damages and Urgent Prayer for Issuance of Temporary Restraining Order and/or Preliminary Injunction," is presently pending. It should be stressed that such presumption of validity is still subject to petitioner's presentation of controverting evidence in support of his allegation of forgery in said RTC.

So too, the Court has no recourse but to rely on such presumption of validity in resolving the merits of the present petition. The long-standing rule is that documents acknowledged before a notary public have the evidentiary weight with respect to their due execution and regularity.[25] The Deed of Real Estate Mortgage dated August 17, 1992 is a notarized document and therefore, presumed to be valid and duly executed. The RTC of Parañaque City, Branch 257, in LRC Case No. 99-065, can neither exercise discretion nor judgment in granting the writ. As held in Philippine National Bank v. Sanao Marketing Corporation,[26] the judge to whom an application for writ of possession is filed, need not look into the validity of the mortgage or the manner of its foreclosure.

> The judge issuing the order following these express provisions of law cannot be charged with having acted without jurisdiction or with grave abuse of discretion. If only to stress the writ's ministerial character, we have, in previous cases, disallowed injunction to prohibit its issuance, just as we have held that the issuance of the same may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.
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> x x x x
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> In the issuance of a writ of possession, no discretion is left to the trial court. Any question regarding the cancellation of the writ or in respect of the validity and regularity of the public sale should be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135.[27]

Perforce, the writ of possession issued in LRC Case No. 99-065 is in order, and the RTC of Parañaque City, Branch 260, erred in issuing its Order dated August 17, 1999, enjoining its implementation. As the Court stated in Medina v. Greenfield Development Corporation:[28]

> Equally pertinent is the rule that courts should avoid issuing a writ of preliminary injunction, which in effect, would dispose of the main case without trial. The ground relied upon by the trial court in issuing the writ of preliminary injunction in this case is its doubt over the acquisition of the properties by respondent. Such basis would be virtually recognizing petitioners' claim that the deeds of conveyances and the titles are a nullity without further proof, to the detriment of the doctrine of presumption of validity in favor of these documents. There would, in effect, be a prejudgment of the main case and a reversal of the rule on the burden of proof since it would assume the proposition which the petitioners are inceptively duty bound to prove.

To emphasize, any reference to the presumptive validity of the notarized documents in this case is merely preliminary. Petitioner still has in his favor the opportunity to refute such presumption and disprove the authenticity of the documents and deeds, which were the bases for the issuance of the writ of possession, in Civil Case No. 99-0272.

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WHEREFORE, the petition is DENIED. The assailed Decision dated November 14, 2000 and Resolution dated June 20, 2001 rendered by the Court of Appeals in CA-G.R. SP No. 59016 is AFFIRMED.

Costs against petitioner.

SO ORDERED.

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

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[1] Rollo, p. 5.

[2] Id. at 6-7.

[3] Records, pp. 159-160.

[4] Id. at 183-184.

[5] CA rollo, pp. 56-59.

[6] Records, p. 193.

[7] Id. at 209.

[8] CA rollo, pp. 35-36.

[9] Id. at 39-40.

[10] Id. at 41.

[11] Id. at 95-107.

[12] Id. at 17.

[13] Id. at 18.

[14] Id. at 8-12.

[15] Penned by Associate Justice Eugenio S. Labitoria (retired), and concurred in by Associate Justices Eloy R. Bello, Jr. (retired) and Eliezer De Los Santos.

[16] Id. at 198.

[17] Rollo, p. 10.

[18] Sps. Ong v. Court of Appeals, 388 Phil. 857, 865-866 (2000); Samson v. Rivera, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 768; Idolor v. Court of Appeals, G.R. No. 161028, January 31, 2005, 450 SCRA 396, 402; Philippine National Bank v. Sanao Marketing Corporation, G.R. No. 153951, July 29, 2005, 465 SCRA 287, 301.

[19] PDCP Development Bank v. Vestil, 332 Phil. 507, 510 (1996); Autocorp Group and Autographics, Inc. v Court of Appeals, G.R. No. 157553, September 8, 2004, 437 SCRA 678, 690; Philippine National Bank v. Sanao Marketing Corporation case, supra.

[20] 424 Phil. 757 (2002).

[21] Id. at 769.

[22] CA rollo, p. 29.

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[23] Philippine National Bank v. Court of Appeals case, supra note 20, at 770.

[24] Rollo, p. 21.

[25] Veloso v. Court of Appeals, 329 Phil. 398, 407 (1996); Bravo-Guerrero v. Bravo, G.R. No. 152658, July 29, 2005, 465 SCRA 244, 264.

[26] Supra note 18; Idolor v. Court of Appeals case, supra note 18.

[27] PNB v. Sanao Marketing Corporation, id. at pp. 303 and 305.

[28] G.R. No. 140228, November 19, 2004, 443 SCRA 150, 161.

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