

**SPOUSES REMPSON SAMSON AND MILAGROS SAMSON; AND
REMPSON REALTY & DEVELOPMENT CORPORATION,
PETITIONERS, VS. JUDGE MAURICIO M. RIVERA, IN HIS CAPACITY
AS PRESIDING JUDGE OF THE RE...**

G.R. No. 154355. May 20, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In denying the Petition, this Court applies the well-entrenched rule that the buyer in an extrajudicial foreclosure sale is entitled to possession of the purchased property. Any question regarding the regularity and validity of the mortgage and foreclosure sale may be determined only after the issuance of the writ of possession.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to set aside the March 7, 2002 Resolution [2] and the July 18, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR SP No. 69266. The March 7, 2002 Resolution disposed as follows:

“WHEREFORE, the instant petition is DISMISSED.”[4]

The July 18, 2002 Resolution denied reconsideration.

The Facts

The pertinent facts are undisputed. Petitioner Spouses Rempson and Milagros Samson incurred from Far East Bank and Trust Company (FEBTC) loan obligations, the principal of which amounted to fifty-five million pesos (P55,000,000).[5] On October 10, 1994 and February 22, 1996, in order to secure the payment of the loan obligations, Spouses Samson executed in favor of FEBTC two real estate mortgages covering five parcels of commercial property located at Antipolo City, Rizal.[6]

Petitioner spouses failed to settle their loan obligations. Thus, on May 16, 2000, FEBTC filed an Application for Extra-Judicial Foreclosure of Real Estate Mortgage[7] before the Office of the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court (RTC) of Antipolo City.[8] In their application, FEBTC requested the said office to foreclose the two mortgages extrajudicially, in the manner and form prescribed by Act 3135, as amended, to satisfy the debt of P72,219,158.45, inclusive of interest, penalties and other charges.[9]

Acting on the application, the Office of the Clerk of Court and Ex-Officio Sheriff issued a Notice of Sheriff Sale dated May 19, 2000,[10] setting the foreclosure sale on June 22, 2000.[11] There was only one bidder during the foreclosure sale, so in accordance with AM 99-10-05-0,[12] the sheriff postponed the auction to July 5, 2000.[13]

On July 5, 2000, the auction sale proceeded with two bidders participating -- FEBTC and Lenjul Realty and Development Corporation, with the latter declared as the highest bidder in the amount of eighty million pesos (P80,000,000).[14] On July 11, 2000, a Certificate of Sheriff’s Sale was issued confirming the sale of the foreclosed properties to the winning bidder.[15] Shortly thereafter, the Certificate of Sale was registered with the

Registry of Deeds of Antipolo City.[16] On February 19, 2001, new Certificates of Title over the foreclosed properties were issued by the Register of Deeds of Antipolo City in favor of Lenjul Realty Corporation.[17]

On April 3, 2001, Private Respondent Lenjul Realty filed a Petition for the Issuance of a Writ of Possession, which sought an ex parte issuance of a writ of possession over the foreclosed properties.[18] The Petition was docketed as Land Registration Case No. 01-2698 and raffled to Branch 73 presided by Judge Mauricio M. Rivera.[19] On June 11, 2001 and June 15, 2001, Spouses Samson and Rempson Corporation filed their respective Answer/Opposition.[20]

While the Petition was pending, Spouses Samson and Rempson Corporation filed with the Antipolo City RTC, an action for Annulment of Extra-Judicial Foreclosure and/or Nullification of Sale and the Certificates of Title, plus Reconveyance and Damages with Prayer for a Temporary Restraining Order and/or Writ of Preliminary Injunction. Petitioners filed it against Lenjul Realty Corporation, FEBTC, Bank of the Philippine Islands, Joselita Malibao-Santos in her capacity as the clerk of court and ex officio sheriff of the Antipolo City RTC, and the Register of Deeds of Antipolo City. The case was docketed as Civil Case No. 01-6219 and raffled to Branch 71 presided by Judge Felix S. Caballes.[21] On August 15, 2001, upon motion of Petitioner Rempson Realty and Development Corporation, Judge Caballes issued an Order directing the consolidation of the civil case with the land registration case.[22]

On September 18, 2001, Judge Rivera issued an order denying the consolidation of the Petition for Writ of Possession and the civil case for annulment of foreclosure.[23] On October 22, 2001 and December 4, 2001, respectively, Rempson Corporation and Spouses Samson moved for a reconsideration of the September 18, 2001 Order denying consolidation.[24]

On November 5, 2001, Judge Rivera gave due course to the Petition for the Issuance of a Writ of Possession and denied the Opposition of Spouses Samson and Rempson Corporation. [25] Thus, they filed their respective Motions for Reconsideration on December 4, 2001 and December 7, 2001.[26]

On February 11, 2002, Judge Rivera denied reconsideration of the Order giving due course to the Petition for the Issuance of the Writ of Possession and directed the issuance of such writ of possession.[27]

On February 20, 2002, Judge Rivera issued an Order granting petitioners' Motion for Reconsideration with regard to the September 18, 2001 Order denying the consolidation of cases.[28]

On February 26, 2002, a Writ of Possession[29] was issued directing the sheriff of the Antipolo City RTC to place Lenjul Realty Corporation in physical possession of the foreclosed properties. On the same date, the sheriff issued a Notice to Vacate[30] addressed to Rempson Corporation, ordering it to leave the properties on or before March 2, 2002.

On February 22, 2002, petitioners filed with the Court of Appeals the aforesaid Special Civil Action for Certiorari with Prohibition/Mandamus under Rule 65 with an Application for Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order to annul the November 5, 2001 and the February 11, 2002 Orders of Judge Rivera.[31]

Ruling of the Court of Appeals

The Court of Appeals ruled that certiorari was improper, because there was an adequate remedy in the ordinary course of law. Citing Section 8 of Act No. 3135, it opined that petitioners' remedy was to file a petition to set aside the foreclosure sale and to cancel the writ of possession in LR Case No. 01-2698. The CA further noted that certiorari was premature inasmuch as petitioners had failed to file a motion for reconsideration of the Order directing the issuance of the writ of possession.[32]

In denying the Motion for Reconsideration, the Court of Appeals held that the issuance of a writ of possession was a ministerial function that was done upon the filing of the proper motion and the approval of the corresponding bond.[33] It further ruled that prohibition did not lie to enjoin the implementation of the writ.[34]

Hence this Petition.[35]

The Issues

In their Memorandum, petitioners assign the following issues for our consideration:

“1.) Whether or not the Court of Appeals had erroneously affirmed the ruling of x x x Judge Rivera ordering the immediate issuance of a writ of possession in favor of private respondent Lenjul Realty Corporation without first requiring presentation of evidence and formal offer thereof;

“2.) Whether or not the Court of Appeals had erroneously affirmed the ruling of x x x Judge Rivera upholding the validity of the issuance of new titles over the foreclosed properties in the name of Private Respondent Lenjul Realty Corporation despite the fact that the consolidation of ownership therein was done prior to the expiration of the 1-year period of redemption.

“3.) Whether or not the Court of Appeals had erroneously affirmed the ruling of x x x Judge Rivera upholding the now 3-month period of redemption for juridical mortgagors under the General Banking Act of Year 2000 and the application of said law retroactively as to violate the equal protection clause of the [n]ew Constitution and the prohibition therein on non-impairment of contracts.

“4.) Whether or not the Court of Appeals had erroneously affirmed the ruling of x x x Judge Rivera refusing consolidation of the annulment case pending in the sala of Judge Caballes with the case below despite the fact that petitioners had already contested Private Respondent Lenjul Realty Corporation’s presumed ownership over the foreclosed properties so that the issue of such presumed ownership should first be resolved before the petition for writ of possession is heard.

“5.) Whether or not the Court of Appeals had erroneously affirmed the ruling of x x x Judge Rivera giving due course to the petition for writ of possession despite the fact that Private Respondent Lenjul Realty Corporation was not the winning bidder at the foreclosure sale, nor a transferee and/or successor-in-interest of the rightful winning bidder Lenjul Realty and Development Corporation.

“6.) Whether or not the Court of Appeals had erroneously affirmed the ruling of x x x Judge Rivera ignoring and disregarding existing rules of procedure and jurisprudence that foreclosed properties, consisting of separate lots covered by individual transfer certificates of title, should be sold separately and not en masse.

“7.) Whether or not the Court of Appeals had erred in dismissing the special civil action for certiorari on grounds of perceived technicalities and/or alleged procedural imperfections rather than on its merits.”[36]

The issues to be addressed in this case are as follows: (1) whether the trial court committed grave abuse of discretion in granting the Petition for the Issuance of a Writ of Possession; and (2) whether the filing of a Petition for Certiorari with the Court of Appeals was the proper remedy.

The Court’s Ruling

The Petition has no merit.

First Issue:

Writ of Possession

The Court of Appeals correctly sustained the issuance of the Writ of Possession. The issuance of the Writ is explicitly authorized by Act 3135[37] (as amended by Act 4118), which regulates the methods of effecting an

extrajudicial foreclosure of mortgage.[38] Section 7 thereof provides:

“Section 7. Possession during redemption period. –In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] 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. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.”

Entitlement to Writ of Possession

Under the provision cited above, the purchaser in a foreclosure sale may apply for a writ of possession during the redemption period by filing for that purpose an ex parte motion under oath, in the corresponding registration or cadastral proceeding in the case of a property with torrens title. Upon the filing of such motion and the approval of the corresponding bond, the court is expressly directed to issue the writ.[39]

This Court has consistently held that the duty of the trial court to grant a writ of possession is ministerial.[40] Such writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the trial court.[41] Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8 of Act 3135.[42] Such question cannot be raised to oppose the issuance of the writ, since the proceeding is ex parte.[43] The recourse is available even before the expiration of the redemption period provided by law and the Rules of Court.[44]

The purchaser, who has a right to possession that extends after the expiration of the redemption period,[45] becomes the absolute owner of the property when no redemption is made. Hence, at any time following the consolidation of ownership and the issuance of a new transfer certificate of title in the name of the purchaser, he or she is even more entitled to possession of the property. [46] In such a case, the bond required under Section 7 of Act 3135 is no longer necessary, since possession becomes an absolute right of the purchaser as the confirmed owner.[47]

The Petition for Writ of Possession Not Stayed by the Annulment Case

This Court has long settled that a pending action for annulment of mortgage or foreclosure does not stay the issuance of a writ of possession.[48] Therefore, the contention of petitioners that the RTC should have consolidated Civil Case No. 01-6219 with LR Case No. 01-2698 and resolved the annulment case prior to the issuance of the Writ of Possession is unavailing.

Their reliance on *Active Wood Products Co., Inc. v. Court of Appeals*[49] is misplaced. In that case, the sole issue was the consolidation of a civil case regarding the validity of the mortgage and a land registration case for the issuance of a writ of possession. It did not declare that the writ of possession must be stayed until the questions on

the mortgage or the foreclosure sale were resolved. Moreover, the issue of consolidation in the present case has become moot, considering that the trial court has already granted it.

Second Issue: Proper Remedy

The Court of Appeals correctly declared that petitioners pursued the wrong remedy. A special civil action for certiorari could be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[50]

No Grave Abuse of Discretion

There is grave abuse when the court -- in the exercise of its judgment -- acts in a capricious, whimsical, arbitrary or despotic manner equivalent to acting with lack of jurisdiction.[51] Considering that the trial court issued the Writ of Possession in compliance with the express provisions of Act 3135, it cannot be charged with having acted in excess of its jurisdiction or with grave abuse of discretion.[52]

Since there was no grave abuse of discretion, petitioner should have filed an ordinary appeal instead of a petition for certiorari. In *GSIS v. CA*,[53] this Court held that “the wisdom or soundness of the x x x order granting [the] writ of possession x x x is a matter of judgment [in] which the remedy is ordinary appeal.”[54] An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as “grave abuse of discretion.”[55] Errors of judgment are correctible by appeal, while those of jurisdiction are reviewable by certiorari.[56]

Available Remedy

Section 8 of Act 3135 provides the plain, speedy, and adequate remedy in opposing the issuance of a writ of possession. [57] The provision reads:

“Section 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)

A party may petition for the setting aside of a foreclosure sale and for the cancellation of a writ of possession in the same proceedings where the writ of possession was requested. In petitioners’ case, the filing of the Petition is no longer necessary because the pendency of Civil Case No. 01-6219 (which was consolidated with the present case) already challenged the foreclosure sale.

Pending proceedings assailing the issuance of the writ, the purchaser in a foreclosure sale is entitled to possession of property. If the trial court later finds merit in a petition to set the writ aside, it shall dispose in favor of the mortgagor the bond furnished by the purchaser.[58]

It should also be noted that prior to the filing of a petition for certiorari, a motion for reconsideration is generally required.[59] Petitioner may have filed a Motion for Reconsideration with regard to the trial court’s Order giving due course to the Petition, but not with regard to the Order directing the issuance of a writ of possession.

Finally, petitioners' allegation that the RTC issued the Writ of Possession despite failing to receive evidence is unsupported by the record. The documents submitted to this Court show sufficient basis for the trial court to rule accordingly. Despite the ex parte nature of the proceedings, and aside from the oral arguments, the RTC allowed petitioners to file pleadings to oppose the Petition for the issuance of the Writ of Possession.

Other Issues

The other issues raised by petitioners are factual matters which, subject to certain exceptions not applicable here,[60] this Court does not review. Moreover, petitioners rely on factual matters on which the trial court has yet to make any finding. The tenability of their arguments should be ventilated in Civil Case No. 01-6219, an "Annulment of Extra-Judicial Foreclosure and/or Nullification of Sale and the Certificates of Title, plus Reconveyance and Damages." Those factual issues cannot be ruled upon in these proceedings.

WHEREFORE, the Petition is DENIED, and the assailed Resolutions of the Court of Appeals AFFIRMED. Costs against petitioners.

SO ORDERED.

Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

Davide, Jr., C.J., (Chairman), on official leave.

[1] Rollo, pp. 26-115.

[2] Id., pp. 116-118. Second Division. Penned by Justice Marina L. Buzon, with the concurrence of Justices Cancio C. Garcia (Division chair) and Alicia L. Santos (member).

[3] Id., pp. 119-121.

[4] Id., p. 118.

[5] Petitioners' Memorandum, p. 14 (rollo, p. 660); private respondent's Memorandum, p. 2.

[6] Ibid.

[7] Rollo, pp. 151-154.

[8] Petitioners' Memorandum, p. 15 (rollo, p. 661); private respondent's Memorandum, p. 3.

[9] Rollo, p. 153.

[10] Annex "H"; rollo, p. 155.

[11] Petitioners' Memorandum, p. 16 (rollo, p. 662); private respondent's Memorandum, p. 3.

[12] Supreme Court En Banc Resolution in AM No. 99-10-05-0, promulgated December 14, 1999, provides the procedure in an extrajudicial foreclosure of mortgage. Under Section 5, "(n)o auction sale shall be held unless there are at least two (2) participating bidders, otherwise the sale shall be postponed to another date."

[13] Petitioners' Memorandum, p. 16 (rollo, p. 662); private respondent's Memorandum, p. 3; and as reflected in the Minutes of Auction Sale dated June 22, 2000 (rollo, p. 158).

[14] As reflected in the Minutes of the Auction Sale dated July 5, 2000; rollo, p. 159.

[15] Petitioners' Memorandum, p. 18 (rollo, p. 664); private respondent's Memorandum, p. 4.

[16] Petitioners claim that the sale was registered on July 31, 2000 (petitioners' Memorandum, p. 20; rollo, p. 666), while private respondent claims it to be July 11, 2000 (private respondent's Memorandum, p. 4).

[17] Petitioners' Memorandum, p. 22 (rollo, p. 668); private respondent's Memorandum, p. 4.

[18] *Id.*, pp. 3 & 649.

[19] *Ibid.*

[20] *Ibid.*

[21] *Id.*, pp. 4 & 650.

[22] *Ibid.*

[23] Petitioners' Memorandum, p. 5 (rollo, p. 651); private respondent's Memorandum, p. 6.

[24] *Ibid.*

[25] *Ibid.*

[26] *Ibid.*

[27] Petitioners' Memorandum, p. 7 (rollo, p. 652); private respondent's Memorandum, p. 7.

[28] *Ibid.*

[29] Writ of Possession dated February 26, 2002; rollo, pp. 274-276.

[30] Sheriff's Notice to Vacate; rollo, p. 277.

[31] Petitioners' Memorandum, p. 8 (rollo, p. 654); private respondent's Memorandum, p. 7.

[32] CA Resolution dated March 7, 2002, p. 2; rollo, p. 117.

[33] CA Resolution dated July 18, 2002, pp. 1-2; rollo, pp. 119-120.

[34] *Ibid.*

[35] This case was deemed submitted for decision on April 9, 2003, upon receipt of private respondent's Memorandum, signed by Atty. Wilfredo L. Bathan. Petitioners' Memorandum, signed by Attys. Tomas Z. Roxas Jr. and Aristotle Q. Sarmiento, was received by this Court on March 14, 2003.

[36] Petitioners' Memorandum, pp. 23-24; rollo, pp. 669-670.

[37] An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages, approved March 6, 1924.

[38] *PNB v. Adil*, 203 Phil. 492, 499, November 2, 1982.

[39] *Chailease Finance, Corporation v. Spouses Ma*, GR No. 151941, August 15, 2003; *Sulit v. Court of Appeals*, 335 Phil. 914, 924, February 17, 1997.

[40] *China Banking Corporation v. Ordinario*, 399 SCRA 430, March 24, 2003; *Spouses Ong v. Court of Appeals*, 388 Phil. 857, 864, June 8, 2000; *Veloso v. Intermediate Appellate Court*, 205 SCRA 227, 234, January 21, 1992.

[41] *Chailease Finance, Corporation v. Spouses Ma*, *supra*; *China Banking Corporation v. Ordinario*, *supra*; *Sulit v. Court of Appeals*, *supra*; *Spouses Ong v. Court of Appeals*, *supra*, p. 866; *Marcelo Steel Corporation v. Court*

of Appeals, 153 Phil. 362, 373, November 28, 1973.

[42] Sulit v. Court of Appeals, *supra*; Marcelo Steel Corporation v. Court of Appeals, *supra*.

[43] *Ibid*.

[44] Sulit v. Court of Appeals, *supra*.

[45] Banco Filipino Savings & Mortgage Bank v. IAC, 225 Phil. 530, 535, April 8, 1986; IFC Service Leasing and Acceptance Corp. v. Nera, 125 Phil. 595, 598, January 30, 1967.

[46] Chailease Finance, Corporation v. Spouses Ma, *supra*.

[47] *Ibid*.

[48] Manalo v. Court of Appeals, 419 Phil. 215, 235, October 8, 2001; Mirasol v. Intermediate Appellate Court, 162 SCRA 306, 311, June 20, 1988; Songco v. CFI, 212 Phil. 299, 305, January 31, 1984; Veloso v. Intermediate Appellate Court, *supra*.

[49] 181 SCRA 774, January 20, 1989.

[50] §1, Rule 65 of the Rules of Court.

[51] Land Bank of the Philippines v. Court of Appeals, GR No. 129368, August 25, 2003; Intestate Estate of Carmen de Luna v. Intermediate Appellate Court, 170 SCRA 246, 254, February 13, 1989.

[52] Spouses Ong v. Court of Appeals, *supra*; Marcelo Steel Corporation v. Court of Appeals, *supra*, p. 373.

[53] 169 SCRA 244, January 20, 1989.

[54] *Id.*, p. 253, per Medialdea, J.

[55] Soriano v. Atienza, 171 SCRA 284, 290, March 16, 1989.

[56] Land Bank of the Philippines v. Court of Appeals, *supra*; Fortich v. Corona, 352 Phil. 461, 477, April 24, 1998; Nocon v. Geronimo, 101 Phil. 735, 739, May 1, 1957; Bimeda v. Perez, 93 Phil. 636, 639, August 26, 1953.

[57] Marcelo Steel Corporation v. Court of Appeals, *supra*; Spouses Ong v. Court of Appeals, *supra*, p. 865.

[58] Spouses Ong v. Court of Appeals, *supra*, p. 865.

[59] Lasco v. United Nations Revolving Fund for Natural Resources Exploration, 311 Phil. 795, 799, February 23, 1995; Butuan Bay Wood Export Corp. v. Court of Appeals, 97 SCRA 297, 305, April 28, 1980.

[60] CIR v. Embroidery and Garments Industries (Phil.), Inc., 364 Phil. 541, 546, March 22, 1999.

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