

HONORIO TORRES, JR., PETITIONER, VS. THE HONORABLE ANTONIO M. ESTEVES, PRESIDING JUDGE, REGIONAL TRIAL COURT, FIRST JUDICIAL REGION, BRANCH 5, BAGUIO CITY; NESTOR F. RIMANDO, SH...*G.R. NO. 155403. March 31, 2006*

Ponente: GARCIA, J.

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In this special civil action for certiorari and prohibition with application for a writ of preliminary injunction under Rule 65 of the Rules of Court, petitioner Honorio Torres, Jr. implores the Court to nullify and set aside, on ground of grave abuse of discretion, the Orders dated August 8, 2002[1] and September 18, 2002[2] of the respondent judge in Civil Case No. 4591-R as well as the writ of possession issued therein. The prohibition aspect of the petition seeks to enjoin the respondent judge from taking further proceedings in said case and for the other respondents from committing further acts of dispossession against the petitioner.

The facts:

Petitioner's father, Honorio T. Torres, Sr., is the elder brother of herein private respondent Ramon T. Torres. During his lifetime, Honorio, Sr. and his brother Ramon, together with their other siblings, were co-owners of a lot with an area of 1,601 square meters located at Upper Mabini, Baguio City, then covered by Transfer Certificate of Title (TCT) No. T-35524 of the Registry of Deeds of Baguio City.

Sometime in 1998, Honorio, Sr., via a deed of donation, donated his share on the aforementioned lot consisting of 304 square meters to his two sons, Michael Torres and herein petitioner Honorio, Jr. Said 304 square meters portion is the property subject of this case.

No one bothered to register the aforementioned deed of donation during the lifetime of Honorio, Sr. who appeared to have died on July 5, 1990.[3] More than eight (8) years later or on January 27, 1999, the Register of Deeds of Baguio City issued TCT No. T-70954[4] in the names of herein petitioner Honorio, Jr. and his brother Michael Torres over the subject property. On its face, TCT No. T-70954 was entered in the Registry of Deeds of Baguio City on January 27, 1999 at 2:35 p.m.

The following day, January 28, 1999, Honorio, Jr. mortgaged his one-half share or 152 square meters of the subject property to his uncle, herein private respondent Ramon T. Torres, and the latter's wife, Agnes Torres. The covering Deed of Real Estate Mortgage[5] recites, among other things, as follows:

That, for and in consideration of ONE MILLION EIGHT HUNDRED SIXTY NINE THOUSAND SIX HUNDRED FORTY & 78/100 (P1,869,640.78) PESOS, Philippine Currency, obtained by HONORIO TORRES, JR. from the MORTGAGEE, RAMON T. TORRES, the MORTGAGOR does hereby transfer and convey by way of mortgage unto the MORTGAGEE, his successors or assigns the parcel of land, pertaining to the MORTGAGOR'S share which is 50.00% which is equivalent to ONE HUNDRED FIFTY TWO (152)

SQUARE METERS over the whole property of containing an area of THREE HUNDRED FOUR (304) SQUARE METERS, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon, xxx

The mortgage document further provides that in the event the petitioner, as mortgagor, fails to pay the mortgage indebtedness, the mortgagee may foreclose the mortgage, sell the mortgaged property in a public auction in accordance with Act No. 3135, as amended, with the mortgagor (i.e., petitioner) expressly waiving his right of redemption.

Due to petitioner's failure to pay the mortgage debt, herein private respondents, the spouses Ramon Torres and Agnes Torres, filed with the Baguio City Sheriff's Office a petition for extrajudicial foreclosure under Act No. 3135, as amended. Pursuant thereto, a Sheriff's Notice of Auction Sale[6] was issued, therein announcing the auction sale of the subject property on January 11, 2000 at ten o'clock in the morning. In part, the notice reads:

WHEREAS, in a certain document executed on January 28, 1999 by Honorio Torres, Jr., as mortgagor with the conformity of Michael Torres, for and in consideration of the sum of P1,869,640.78 caused to be transferred and conveyed by way of mortgage in favor of Spouses Ramon and Agnes Torres his one-half (1/2) undivided share in the above described property consisting of ONE HUNDRED FIFTY TWO (152) SQUARE METERS together with the building improvements erected thereon; [7]

Soon, petitioner filed against the spouses Torres, the Sheriff of Baguio City and the City Register of Deeds a complaint[8] for Declaration of Nullity of Real Estate Mortgage and the Sheriff's Notice of Auction Sale and Damages With Prayer for Writ of Preliminary Injunction and Temporary Restraining Order before the Regional Trial Court (RTC) of Baguio City, which complaint was thereat docketed as Civil Case No. 4591-R.

On January 7, 2000, even before the complaint could be raffled to the proper branch of the RTC, petitioner filed in Civil Case No. 4591-R an Ex-Parte Motion for Special Raffle and for the Issuance Ex-Parte of a Temporary Restraining Order. [9]

Records show that on January 10, 2000, the complaint was raffled to Branch 5 of the RTC presided by the respondent judge. The following day, January 11, 2000, petitioner filed with the Office of the Executive Judge an Urgent Ex-Parte Motion for Issuance of a 72-hour Temporary Restraining Order,[10] thereunder alleging, as follows:

- That the above-entitled case was raffled yesterday to Branch 5 of this Court and that the said Court has yet to schedule the initial hearing for the preliminary injunction; hence this ex-parte Motion is being addressed to the Office of the Executive Judge;
- That the foreclosure sale will be conducted any time this day by the respondent Sheriff, and in order not to negate the possibility of the parties of amicably settling their differences and thresh out the issues surrounding the case, there is an urgent need to stop the scheduled foreclosure sale scheduled today, January 11, 2000;
- That there is great possibility of the parties for amicable settlement as the parties hereto are close relatives, they being uncle and nephew to each other;
- That since time is of the essence, and that the respondents could not be served immediately of the proper notice, it is imperative that the Honorable Executive Judge pursuant to Administrative Circular No. 20-95 of the Supreme Court issue a Restraining Order good for 72 hours and directing the respondent sheriff to cease and desist from conducting the foreclosure sale scheduled today, and preserve status quo in the meantime that the parties will have been given the chance to settle their differences.

In an Order[11] dated January 11, 2000, the Executive Judge denied petitioner's aforementioned motion,

explaining thus:

It appears, as gathered by undersigned, that the Honorable Judge of Branch 5, this Court, Judge Antonio Esteves, has set the hearing of the writ of preliminary injunction sometime on January 18, 2000, and he has therefore acquired definitive jurisdiction over this case. Therefore, Judge Esteves alone had and still has the prerogative to act on all incidents regarding this case. That he has not issued the Temporary Restraining Order prayed for by plaintiffs was an exercise of his judicial discretion. The same cannot be defeated by the subsequent actions of any other judge of the same court, not even the executive judge.

WHEREFORE, the motion for the issuance of a 72-hour temporary restraining order as executive judge should be, as it is, DENIED.

SO ORDERED.

Meanwhile, the Sheriff proceeded with the scheduled public auction sale on January 11, 2000 at which the herein private respondents were the sole and highest bidders with a bid of P2,800,000.00. On the same day, January 11, 2000, a Sheriff's Certificate of Sale^[12] was issued in favor of private respondents. Thereafter, or on February 3, 2000, the Sheriff, citing the provision in the deed of real estate mortgage relative to the mortgagor's express waiver of his right of redemption,^[13] issued a Final Certificate of Sale ^[14] in favor of the private respondent spouses.

On account of the foregoing developments, petitioner filed in Civil Case No. 4591-R an Amended Complaint,^[15] this time for Declaration of Nullity of Real Estate Mortgage; Annulment of Sheriff's Certification of Sale; Cancellation of Memorandum of Encumbrances ... on TCT No. E-70954 ... and Damages.

On January 21, 2002, petitioner filed in the same case an Application and Motion for the Issuance of Preliminary Mandatory and Prohibitory Injunction with Prayer for the Issuance Ex-Parte of a Temporary Restraining Order.^[16] For their part, the private respondents filed, on April 29, 2002, a Motion for the Issuance of a Writ of Possession.^[17] Resolving the private respondents' motion, the respondent judge, as Presiding Judge of RTC Branch 5 to which Civil Case No. 4591-R was raffled, issued the herein first assailed Order dated August 8, 2002,^[18] granting private respondents' motion for a writ of possession. Says the respondent judge in his challenged Order:

The [respondent] spouses Ramon Torres and Agnes Torres filed a motion for the issuance of a writ of possession through their counsel and states the following contention:

- On January 28, 1999, [petitioner] HONORIO TORRES, JR., with the conformity of MICHAEL TORRES entered into a REAL ESTATE MORTGAGE with [respondent] spouses Ramon and Agnes Torres of one half undivided share on the lot covered by Transfer Certificate of Title No. T-70954, issued by the Register of Deeds of the City of Baguio, with an area of ONE HUNDRED FIFTY TWO (152) SQUARE METERS, MORE OR LESS, together with the improvements thereon for and in consideration of the amount of ONE MILLION EIGHT HUNDRED SIXTY NINE THOUSAND SIX HUNDRED FORTY & 78/100 (P1,869,640.78) PESOS, Philippine Currency, to be paid within SIX (6) months from the date of the execution of mortgage.

- On the due date, [petitioner] failed to pay the said loan, hence an Extra Judicial Petition of Sale was filed by Spouses Ramon and Agnes Torres ... to satisfy the mortgage indebtedness ... which as of November 30, 1999 amounts to P2,145,767.98.

- That the property subject of this case was sold to [respondents] during the foreclosure sale last January 11, 2000 and was issued the corresponding Sheriff's Certificate of Sale which is attached to the record.

- Considering the waiver of the 1-year redemption period in the Real Estate Mortgage, a Sheriff's Final

Certificate of Sale was issued on February 3, 2000. A copy of which is attached to the record.

- The Capital Gains Tax and The Documentary Stamp Tax were already PAID by the herein [respondents] and the Title of the aforesaid mortgaged property was already consolidated to the Spouses Ramon and Agnes Torres.

The [petitioner], by and thru its counsel opposed the issuance of the Writ of Possession on the following grounds and considerations:

- On January 11, 2000, [petitioner's] application for the Writ of Preliminary Injunction with prayer for the issuance ex-parte of a 72-hour Temporary Restraining Order to enjoin the Extra-Judicial foreclosure sale of Transfer Certificate of Title No. T-70954 which is the subject of this case was denied.

- On February 7, 2000, [petitioner] filed suit for Judicial declaration as being null and void ab initio the following: a) the Real Estate Mortgage entered into by and between the [petitioner] as the mortgagor and the [respondents] as the mortgagees on January 28, 1999 for obvious lack of, or absence of cause or consideration — the sum of money being then applied for was not received by the [petitioner]; b) the Sheriff's Extra Judicial Foreclosure Sale conducted and the Sheriff's Certificate of Sale issued without factual and legal basis; c) Cancellation of Entry No. 263803-28-239 (Real Estate Mortgage) and the Entry No. 230-30-7 (Sheriff's Certificate of Sale) recorded/annotated on the Memorandum of Encumbrances of said TCT No. T-70954 Registry of Deeds, Baguio City.

- The [petitioner] admitted having [signed] the Real Estate Mortgage in question and alleged that to enable the [respondents] first to register with the Register of Deeds the Mortgage Document as a condition before the grant of loan of P1,869,640.78 to the [petitioner]. The Real Estate Mortgage was intended by the parties thereto to secure the repayment of the loan (P1,869,640.78) being then applied by [petitioner].

- The subject loan of P1,869,640.78 of the Real Estate Mortgage was not given by the [respondents] to the [petitioner] instead they had shown in their exhibits as payment the bank checks and check vouchers amounting to P1,136,000.00 in the name of Leonora Torres (mother of the [petitioner]) and quote "For the advances she had been receiving from the [respondent], Leonora Torres, ceded, by way of sale her undivided ½ share in the property of the [petitioner]. That to secure payment of Leonora Torres' obligation to the [respondents] which aggregated by the time to P1,869,640.78, [petitioner] agreed to assume in consideration of the title transfer to him, that [petitioner] shall also execute a Deed of Real Estate Mortgage covering said portion that will be placed in his name in favor of the [respondent] Ramon Torres and registered simultaneously on the title that may be issued in the name of the [petitioner] and his brother.

- On February 18, 1988 Honorio Torres Sr. and Leonora Torres (parents of the [petitioner]) signed a Deed of Donation in favor of their sons, [petitioner] and Michael Torres the entire property consisting of 304 square meters now under TCT No. T-70954.

- Leonora Torres cannot validly sell ½ pertaining to her alleged conjugal property to the [respondents] in 1995 and 1997 because of the presence of the Deed of Donation. Likewise the Deed of Sale made in 1995 and 1997 is being questioned being not notarized and with incomplete dates.

In consideration of the facts presented both by the [petitioner] and the [respondents], laws and jurisprudence are clear that purchaser at the foreclosure sale is entitled as a right to a writ of possession, regardless whether or not there is a pending suit for the annulment of the mortgage or the foreclosure itself. Thusly, despite the suit filed by the [petitioner] for the annulment of the Real Estate Mortgage, Sheriff's Extra-judicial Foreclosure Sale and the issuance of Sheriff's Certificate of Sale, this Court hereby grants a Writ of Possession to [respondents] on the 304 square meters of land covered by Certificate of Title No. T-70954, grounded particularly on the following laws and jurisprudence.

Section 7 of Act 3135, as amended by Act 4118, grants to the purchaser at an extrajudicial foreclosure sale, an

absolute right to possession of the property sold during the one-year period of redemption and a fortiori after the lapse of said period without any redemption being made. Possession may be obtained under a writ, which may be applied for ex-parte.

The long catena of Supreme Court decisions provide the following settled principle:

"It is ministerial upon the court to issue a writ of possession in favor of the purchaser in foreclosure sale of the mortgaged property, it follows that the execution of the writ of possession can not be suspended, much less, restrained by respondent judge." (Delos Angeles v. Court of Appeals, et al., 60 SCRA 116)

In the case of Spouses Eduardo Vaca and Ma. Luisita Pilar vs. Court of Appeals, G.R. NO. 109672, July 14, 1994, which is similar in the case at bar, the Supreme Court in this occasion ruled that the pendency of a case for prohibition or injunction questioning the validity of the mortgage as well as the foreclosure sale is not a valid ground to stop the issuance of a writ of possession in favor of the winning bidder in the foreclosure sale.

"The pendency of a separate civil suit questioning the validity of the mortgage cannot bar the issuance of the writ of possession, because the same is a ministerial act of the trial court after title on the property has been consolidated in mortgage." (Vda. De Jacob vs. Court of Appeals). The ruling was reiterated in Navarra vs. Court of Appeals in which held as a rule any question regarding the validity of the mortgage or its foreclosure cannot be legal ground for refusing the issuance of a writ of possession.

The issuance of a Writ of Possession to a purchaser in an extrajudicial foreclosure, after the period of redemption, is a ministerial function of the court. It is also a ministerial function of the court to issue the writ, upon mere motion, without need of instituting a separate action for the purpose, as enunciated under Section 7, Act 3135.

WHEREFORE, this Court hereby GRANTS [respondents'] Motion for the issuance of a Writ of Possession and the Sheriff is directed to enforce the said writ against [petitioner] and all others claiming right from him over the subject property. This is without prejudice to the prosecution of the case in chief.

SO ORDERED. (Words in brackets added).

On August 14, 2002, shortly after the respondent judge issued the aforequoted order, petitioner's brother, Michael, who was then the owner of the other one-half portion of the subject property, sold the said other half to Torrent Development Corporation[19] of which herein private respondent Ramon T. Torres is himself the president.

On August 22, 2002, a writ of possession[20] was ordered issued by the respondent judge not only for the one-half portion earlier mortgaged by the petitioner to the private respondent spouses, but for the entire 304 square meters or the entirety of the subject property covered by TCT No. T-70954. In time, petitioner moved for a reconsideration of the order directing the issuance of the writ.

In the herein second assailed Order dated September 18, 2002, [21] the respondent judge denied the petitioner's motion for reconsideration, to wit:

Submitted for resolution is [petitioner's] MOTION FOR RECONSIDERATION TO SET ASIDE THE ORDER GRANTING A WRIT OF POSSESSION and the COMMENT and/or OPPOSITION TO MOTION FOR RECONSIDERATION TO SET ASIDE THE ORDER GRANTING A WRIT OF POSSESSION filed by [respondents] RAMON and AGNES TORRES through counsel.

After carefully evaluating the issues raised in the said Motion, the Court resolves to deny the same for being a mere reiteration which have already been resolved and passed upon in the Order of the Court subject of the instant motion.

As the issue regarding the share of his brother MICHAEL TORRES being included in the writ of possession issued by this Court, the same is likewise without merit considering the fact that the said share had been sold to

the [respondents] Ramon and Agnes Torres who are entitled to possession as a result thereof.

Further, the issue raised by the [petitioner] that the writ of possession should have been issued in an LRC case, the same is not applicable because the writ of possession issued by this Court was the result of a foreclosure sale, the validity of which is the subject matter of this case. Unlike in a petition for a writ of possession in an LRC case which is issued ex-parte, the [petitioner] in this case was even given the opportunity to comment and/or oppose the same.

Considering the foregoing, the Sheriff of this Court is hereby ordered to immediately implement the Order dated August 8, 2002 and to make a return within five (5) days from receipt hereof.

SO ORDERED. (Words in brackets supplied).

On September 25, 2002, the petitioner filed with the trial court a Notice of Appeal,[22] therein making known that he is taking an appeal from the respondent judge's orders of August 8, 2002 and September 18, 2002 on the ground that said orders "are contrary to law, morals, public policy, the facts, and the evidence...". In an order dated October 8, 2002,[23]the respondent judge gave due course to petitioner's notice of appeal and accordingly directed the elevation of the records of Civil Case No. 4591-R to the Court of Appeals.

On September 27, 2002, the Register of Deeds of Baguio City issued TCT No. T-78391[24] placing the entirety of the subject property in the name of Torrent Development Corporation.

On October 14, 2002, however, before his receipt of the aforesaid order of October 8, 2002, the petitioner went directly to this Court via the present recourse with a preface Urgent Ex-Parte Motion to Admit Petition. Petitioner's sworn verification and certification on non-forum shopping concealed the fact that he had filed a notice of appeal intended to assail the very same orders being questioned in the instant petition.

Misled as it was, the Court, in its Resolution[25]of October 28, 2002, granted petitioner's aforementioned urgent ex-parte motion and even issued in his favor a temporary restraining order (TRO), viz:

After deliberating on the petition for certiorari with prayer for preliminary injunction and/or restraining order, the Court, without giving due course thereto, Resolves to: (a) REQUIRE respondents to file a COMMENT thereon, not a motion to dismiss, within ten (10) days from notice hereof; (b) ISSUE, effective immediately and continuing until further orders from this Court, a TEMPORARY RESTRAINING ORDER, enjoining respondent judge, private respondents and their agents, representatives and anyone acting on their behalf, from implementing and enforcing the Orders dated 8 August 2002 and 18 September 2002 issued by the Regional Trial Court of Baguio City, Branch 5 in Civil Case No. 4591-R entitled "Honorio Torres, Jr., et al. vs. Spouses Ramon Torres and Agnes Torres, et al." and the Writ of Possession dated 22 August 2002 issued in connection therewith; and (c) REQUIRE petitioner to POST a BOND within five (5) days from notice hereof in the amount of TEN THOUSAND PESOS (P10,000.00) in cash or surety issued by a reputable surety company of indubitable solvency and with terms and conditions acceptable to this Court, otherwise the temporary restraining order herein issued shall be rendered of no force and effect.

However, before he received notice of this Court's aforementioned October 28, 2002 Resolution and TRO, together with a copy of the requirements for surety bond, petitioner already filed an "Urgent Motion with Leave of Court to Withdraw Petition" bearing date October 23, 2002,[26]via registered mail on October 24, 2002.

Expectedly, after knowing that this Court had issued a TRO in his favor, petitioner immediately filed with the Court the corresponding "Manifestations with Urgent Motion to Retract Previous "Urgent Motion with Leave of Court to Withdraw Petition"" on November 7, 2002, at exactly 10:53 a.m.[27] On the same day, at 10:58 a.m.,[28] petitioner posted a cash bond in the amount of Ten Thousand Pesos for the TRO.

In the meantime, the private respondent spouses Torres filed their "Opposition to the Motion with Leave of Court

to Withdraw Petition with Motion to Cite Petitioner and Counsel for Contempt of Court" [29] on November 12, 2002, filing their comment[30] to the main petition on that same day.

On November 27, 2002, petitioner filed a "Motion to Supplement" [31] his previous motion to retract previous motion to withdraw alleging therein that prior to the elevation of the records of Civil Case No. 4591-R to the Court of Appeals pursuant to the order of the respondent judge giving due course to his Notice of Appeal, he had filed before the RTC an "Urgent Motion to Withdraw Appeal."

On January 13, 2003, the Court issued a resolution[32] granting, among others, petitioner's motion to retract and required petitioner to comment on the motion to cite him and his counsel for contempt of court. In its Resolution of March 10, 2003,[33] the Court also denied private respondent spouses' motion to recall TRO.

After thoroughly going over the records and reviewing the arguments raised by the parties in their respective pleadings, the Court is of the considered view that it erred in not immediately dismissing this petition at the very inception due to the violation of this Court's policy on the hierarchy of courts. For sure, the present petition runs counter to this established rule in this jurisdiction.

For almost twenty years now, a strict observance and implementation of this policy had been consistently enjoined, and direct recourse to this Court proscribed. Thus, the Court in the 1987 case of Vergara vs. Suelto[34] held:

x x x. As a matter of policy such a direct recourse to this Court should not be allowed. The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor. Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another, are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe. (Emphasis supplied.)

It cannot be over-emphasized that where the issuance of the extraordinary writ of certiorari as invoked by the petitioner in this case against the interlocutory orders of RTC, Baguio City is concurrently within the competence of this Court and the Court of Appeals, litigants must observe the principle of hierarchy of courts. This Court's original jurisdiction to issue extraordinary writs should be exercised only where absolutely necessary, or where serious and important reasons therefor exist. We find no such need in this case.

Assuming that counsel for petitioner was unsure, as he claimed he was, whether to pursue an appeal from the RTC's Orders of August 8, 2002 and September 18, 2002 or assail the same via a petition for certiorari under Rule 65, counsel must have filed this original action for certiorari with the Court of Appeals and not directly with this Court. This procedural practice had been in force for more than twenty years now and there is no excuse for counsel not to be aware thereof.

Perforce, this petition must be forthwith DISMISSED.

On hind sight, petitioner's first motion to withdraw petition as well as his subsequent motion to retract his previous withdrawal motion should have been outrightly denied and the TRO thereafter immediately lifted not only for violating the policy on hierarchy of courts but also for other cogent reasons.

To say the least, petitioner's ambivalence makes a mockery of the Court. He cannot, at the first instance and pending a notice of appeal before the RTC, invoke the jurisdiction of the Court and later, after securing the RTC's approval of his notice of appeal, withdraw from such jurisdiction only to once more invoke it by making a turnaround simply because this Court initially looked upon with favor his petition by issuing a TRO. The Court cannot simply accept hook-line-and-sinker petitioner's rationalization that "he subsequently realized that after all he was right in coming to this Court." For sure, petitioner would not have initially opted to withdraw this petition had not his Notice of Appeal been given due course by the RTC and this Court is definitely certain that he would not have subsequently retracted said motion to withdraw had not this Court issued a TRO in his favor. The Court, like all other courts, is governed by clearly defined set of procedural rules which cannot be trifled with or belittled by advocates coming to this Court.

In a very real sense, petitioner even misled the Court by swearing under oath that he has not commenced any other action involving the same issues in this Court, the CA or any other tribunal when he is absolutely aware that he filed a Notice of Appeal in the RTC, which if given due course by the respondent judge, who eventually did give due course thereto in his Order of October 8, 2002, would definitely initiate the appellate proceedings before the Court of Appeals. In this sense, his Notice of Appeal is akin to an initiatory pleading in accordance with the spirit behind the purpose for which the requirement of certification against forum shopping is enshrined in the Rules, which is to prevent party litigants from submitting the same or related causes involving the same issues and/or subject matter before two or more courts in the hope that at least one of these courts would favorably rule on his case.

While strictly speaking, petitioner and counsel may not be held liable for forum shopping because the CA never actually acquired jurisdiction as no appeal was completed in this case due to the non-elevation of the record on appeal, and the subsequent withdrawal of the appeal, petitioner and counsel were nevertheless at the verge of it. It behooved petitioner and counsel to have been candid with this Court by disclosing the fact that they had filed a Notice of Appeal with the RTC. The Court frowns upon such lack of candidness which may even be indicative of bad faith on their part.

In any event, even if the Court takes the lenient stance of relaxing the rules and ignoring petitioner's fatal procedural lapses, still the instant petition fails on the merits.

To stress, petitioner came to this Court via the special civil action of certiorari which lie only when issues of jurisdiction or grave abuse of discretion amounting to lack or in excess of jurisdiction are raised.

For one, the petition, as filed, sweepingly imputes grave abuse of discretion on the part of the respondent judge in issuing the assailed orders, raising therein numerous factual issues which are beyond the corrective hand of certiorari. It should be stressed that this Court is not a trier of facts. Besides, the factual issues being raised are yet to be threshed out before the RTC, where trial on the merits has not even commenced yet. What were resolved by the respondent judge in his assailed orders of August 8, 2002 and September 18, 2002 are mere incidents in the main case, Civil Case No. 4591-R. In fact, in his Order of August 8, 2002, the respondent judge made it emphatically clear that said order "is without prejudice to the prosecution of the case in chief."

More importantly, petitioner imputes grave abuse of discretion on the respondent judge for ordering the issuance of a writ of possession for the entire lot consisting of 304 square meters instead of only for the 152 square meters or one-half portion thereof allegedly mortgaged by the petitioner and which was properly the subject of the extrajudicial foreclosure proceedings. Assuming that the respondent judge committed grave abuse of discretion in that regard, or, even worse, absolutely lacked jurisdiction to bind such one-half portion which is not even the property involved in the case lodged before his court, this actuation by the respondent judge may only be properly

contested in the proper forum by petitioner's brother Michael Torres, who has rights and interests over said affected portion of TCT No. T-70954. There is no doubt at all that petitioner is not the proper party and, therefore, has no legal standing or personality to question before this Court the respondent judge's actuations.

Insofar as petitioner's one-half portion of TCT No. T-70954 is concerned, the respondent judge committed no grave abuse of discretion in ordering the issuance of the questioned writ of execution. And with the reality that petitioner's brother, Michael, had already sold to Torrent Development Corporation, of which private respondent Ramon T. Torres is himself the president, his (Michael's) one-half share of the property earlier covered by TCT No. T-70954, petitioner is now bereft of cause of action.

WHEREFORE, the instant petition is DISMISSED. The Court's Resolution dated January 13, 2003 granting petitioner's Manifestations with Urgent Motion to Retract Previous "Urgent motion with Leave of Court to Withdraw Petition," and Resolution dated March 10, 2003, which denied the motion to recall the temporary restraining order, as well as the Resolution dated October 28, 2002 issuing a Temporary Restraining Order are REVOKED and SET ASIDE.

Cost against petitioner.

SO ORDERED.

Puno, J., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ, concur

[1] Rollo, pp. 26-29.

[2] Id. at 32.

[3] Id. at 412.

[4] Id. at 88.

[5] Id. at 74-80.

[6] Id. at 84-85.

[7] Id. at 84.

[8] There is no copy of the Complaint in the Rollo.

[9] Rollo, pp. 33-36.

[10] Id. at 37.

[11] Id. at 38-39.

[12] Id. at 86-87.

[13] In case of the sale pursuant to the provisions of this paragraph, such sale, whether made to the MORTGAGEE or to any other person or persons shall be made free from any right of redemption on the part of the MORTGAGOR, the right of redemption granted by Section 6 of said Act No. 3135 being hereby expressly waived by the MORTGAGOR ... (Id. at 76)

[14] Id. at 278-279.

[15] Id. at 40-71.

[16] Id. at 147-161.

[17] Id. at 167-174.

[18] Supra note 1.

[19] Deed of Absolute Sale; Rollo, pp. 220-221.

[20] Id. at 30-31.

[21] Supra note 2.

[22] Rollo, pp. 280-281.

[23] Id. at 245.

[24] Id. at 283.

[25] Id. at 222.

[26] Id. at 238-240.

[27] Id. at 247.

[28] See Certification's stamp of receipt at the upper right-hand corner thereof; Id. at 237.

[29] Id. at 255-257.

[30] Id. at 258-285.

[31] Id. at 300-302.

[32] Id. at 436.

[33] Id. at 442.

[34] G.R. No. L-74766, December 21, 1987, 156 SCRA 753.

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