

**SPOUSES SALVADOR F. DE VERA AND FELIZA V. DE VERA,
PETITIONERS, VS. HON. GUILLERMO P. AGLORO, PRESIDING JUDGE,
RTC – BRANCH 83 MALOLOS, BULACAN AND BPI FAMILY SAVINGS
BANK, INC....**

G.R. NO. 155673. January 14, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari with urgent application for temporary restraining order/preliminary injunction of the March 22, 2002 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 67164.

On March 25, 1996, the Spouses Salvador F. De Vera and Feliza V. De Vera secured a loan in the amount of P1,200,000.00 from the BPI Family Savings Bank, Inc. (the Bank, for brevity).[2] To secure the payment thereof, the Spouses executed a Real Estate Mortgage over their property located in Guiguinto, Bulacan, with an area of 232 square meters covered by Transfer Certificate of Title (TCT) No. T-85716.[3] When the Spouses De Vera defaulted in the payment of the balance of their loan amounting to P1,091,484.01 and failed to pay despite demands of the Bank, the latter filed a petition[4] with the ex-officio sheriff of the Regional Trial Court (RTC) of Malolos, Bulacan, for the extrajudicial foreclosure of the real estate mortgage. At the public auction scheduled on October 9, 1998, the Bank was declared the highest bidder for the property. On October 18, 1998, the Sheriff executed a certificate of sale[5] in favor of the Bank. On November 18, 1999, the Bank filed in the Office of the Register of Deeds an affidavit for the consolidation of its ownership over the property.[6] Thus, on December 1, 1999, TCT No. T-133862 was issued in the name of the Bank.[7]

On February 11, 2000, the Spouses De Vera filed a Complaint[8] for the nullification of the real estate mortgage against the Bank and the Sheriff with the RTC of Malolos, Bulacan, as well as the extrajudicial sale of the property at public auction. The Spouses prayed that, after due proceedings, judgment be rendered in their favor as follows:

WHEREFORE, it is most respectfully prayed that, after hearing, judgment be rendered:

1. Setting aside the Mortgage Loan Agreement and any/all contracts, accessory or subsidiary thereto;
2. Setting aside the foreclosure proceedings and the issuance of new title to the defendant Bank;
3. Allowing the plaintiffs to pay to the defendant Bank what is legal, just and equitable under the premises;
4. Sentencing defendant Bank to pay plaintiffs the following items of damages:
 - a. At least P500,000.00 as actual or compensatory damages;
 - b. At least P100,000.00 as moral damages;
 - c. At least P100,000.00 as exemplary damages;
 - d. 25% of total recovery as attorney's fees;

e. Cost of suit.[9]

The case was docketed as Civil Case No. 109-M-2000 and was raffled to Branch 83 of the court. On February 23, 2000, the Bank filed an Ex Parte Petition for Writ of Possession with the RTC of Malolos, Bulacan, docketed as LRC Case No. P-97-2000. The case was raffled to Branch 83 of the court. The Bank impleaded the Spouses as respondents and prayed that after an ex parte hearing, an order be issued as follows:

1. Granting petitioner a writ of possession over the properties covered by TCT No. T-133862 of the Registry of Deeds of Bulacan, together with all the improvements thereon; and
2. Ordering the Sheriff or any of his duly authorized deputies to immediately place petitioner in possession thereof.
3. Petitioner further prays for such other reliefs as may be deemed just and equitable under the premises.[10]

The trial court set the petition for hearing at 8:30 a.m. of August 16, 2000 at the Building of the Bulwagan ng Katarungan, Provincial Capitol Compound in Malolos, Bulacan.[11]

When the petition was called for hearing on August 16, 2000, no oppositor appeared. Forthwith, the trial court authorized its Branch Clerk of Court to receive the evidence of the Bank ex parte,[12] and the Bank adduced its testimonial and documentary evidence ex parte on August 28, 2000.

On September 8, 2000, the Spouses De Vera filed in LRC Case No. P-97-2000 an Urgent Motion to Suspend Proceedings to await the resolution of Civil Case No. 109-M-2000 or for the consolidation of the two cases. The Spouses cited the rulings of this Court in *Barican v. IAC*[13] and *Sulit v. Court of Appeals*. [14] Opposing the motion, the Bank alleged that the pendency of Civil Case No. 109-M-2000 was not a bar to the petition for a writ of possession because the issuance of the said writ was ministerial on the part of the trial court. The petitioner cited the rulings of this Court in *Ong v. Court of Appeals*[15] and *Vaca v. Court of Appeals*. [16]

In an Order[17] dated February 13, 2001, the trial court denied the motion of the Spouses. Citing the case of *Vda. de Zaballero v. CA*, [18] the trial court ruled that the purchaser of the foreclosed property, upon ex parte application and the posting of the required bond, has the right to acquire possession of the foreclosed property during the 12-month redemption period. According to the trial court, this is sanctioned under Section 7 of Act No. 3135, as amended by Act No. 4118. The trial court also declared that considering that the redemption period had already expired, the Bank as purchaser, can, and with more reason, demand for a writ of possession.

The trial court emphasized that it is its ministerial duty to issue the writ of possession in favor of a purchaser at public auction, and that such duty could not be defeated by the pendency of a civil case, in this instance Civil Case No. 109-M-2000.[19]

A motion for reconsideration was filed by the Spouses De Vera which was denied in an Order[20] dated September 7, 2001. The trial court cited the case of *Banco Filipino Savings and Mortgage Bank v. IAC*, [21] which reiterated the rule that a purchaser in a foreclosed sale of mortgaged property is entitled to a writ of possession and that upon an ex parte petition of the purchaser, it is ministerial upon the trial court to issue such writ in the latter's favor. It added that the pendency of a separate civil action questioning the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of the writ of possession.

Aggrieved, the Spouses De Vera filed a petition for certiorari and mandamus with temporary restraining order and writ of preliminary injunction before the CA docketed as CA-G.R. SP No. 67164. Therein, they alleged that:

A.

PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION IN NOT SUSPENDING THE PETITION FOR WRIT OF POSSESSION DESPITE THE PENDENCY OF CIVIL CASE NO. 109-M-2000, WHICH IS A VIRTUAL REFUSAL TO PERFORM A BOUNDEN DUTY ENJOINED BY LAW AND JURISPRUDENCE, TENDING TO RENDER SAID CASE MOOT AND ACADEMIC, AND EXPOSING THE PETITIONERS TO GREAT AND IRREPARABLE INJURIES AS THEY STAND TO BE OUSTED FROM THEIR HOUSE AND LOT.

B.

PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONERS' MOTION FOR RECONSIDERATION DESPITE CLEAR GROUND TO RECONSIDER THE ORDER DATED FEBRUARY 11, 2001.

The Bank posited that Section 7 of Act No. 3135, as amended by Act No. 4118, authorizes it to obtain a writ of possession by filing a petition under oath in the registration or cadastral proceedings in the form of an ex parte motion. It further emphasized that the issuance of a writ of possession is a ministerial duty of the trial court, as held in *Spouses Ong v. Court of Appeals*.^[22]

On March 22, 2002, the CA rendered a decision denying due course to and dismissing the petition. The dispositive portion reads:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit.^[23]

The CA ruled that the respondent judge did not act with grave abuse of discretion when he denied the petitioners' motion to suspend proceedings. It reasoned that since the subject parcel of land (with all its improvements) was not redeemed within one (1) year from the registration of the extrajudicial foreclosure sale, it follows that the bank, as purchaser thereof, acquired an absolute right to the writ of possession. It emphasized that the land registration court has the ministerial duty to issue the writ of possession upon mere motion, conformably to Section 7, Act No. 3135, as amended. Thus, the CA found that the Spouses De Vera failed to show that the injunctive relief prayed for was warranted.

The Spouses filed a motion for reconsideration which the appellate court denied in a Resolution^[24] dated October 15, 2002.

The Spouses forthwith filed their petition for review on certiorari under Rule 45 of the Rules of Court assailing the decision and the October 15, 2002 Resolution of the CA, asserting that:

A. THE COURT OF APPEALS ERRED IN NOT SUSPENDING THE PROCEEDINGS IN LRC CASE NO. N-3507 BECAUSE OF THE PENDENCY OF CIVIL CASE NO. 109-M-2000 FILED BY PETITIONERS SEEKING THE NULLITY, NOT ONLY OF THE FORECLOSURE AND AUCTION SALE, BUT ALSO OF THE MORTGAGE ITSELF.^[25]

B. THE RESPONDENT JUDGE SHOULD [HAVE] CONSOLIDATED THE P-97-2000 LRC CASE NO. 3507 WITH CIVIL CASE NO. 109-M-2000 (BRANCH 83, RTC, BULACAN).^[26]

The petition has no merit.

Section 6 of Act No. 3135^[27] provides that the mortgagor or his successor-in-interest may redeem the foreclosed property within one (1) year from the registration of the sale with the Register of Deeds. Under Section 7^[28] of the law, if the mortgagor fails to redeem the property, the buyer at public auction may file, with the RTC in the province or place where the property or portion thereof is located, an ex parte motion for the issuance of a writ of possession within one (1) year from the registration of the Sheriff's Certificate of Sale, and the court shall grant

the said motion upon the petitioner's posting a bond in an amount equivalent to the use of the property for a period of twelve (12) months. On the strength of the writ of possession, the Sheriff is duty-bound to place the buyer at public auction in actual possession of the foreclosed property.[29] After the one-year period, the mortgagor loses all interest over it.[30] The purchaser, who has a right to possession that extends after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made.[31] Thus, the bond required under Section 7 of Act No. 3135 is no longer needed. The possession of land becomes an absolute right of the purchaser as confirmed owner.[32] The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function.[33]

In the present case, the petitioners-mortgagors failed to redeem the property within one (1) year from the registration of the Sheriff's Certificate of Sale with the Register of Deeds. The respondent, being the purchaser of the property at public auction, thus, had the right to file an ex parte motion for the issuance of a writ of possession; and considering that it was its ministerial duty to do so, the trial court had to grant the motion and to thereafter issue the writ of possession.

The bare fact that the petitioners were impleaded in the ex parte petition for a writ of possession filed by the respondent did not alter the summary nature of the proceedings in Act No. 3135. Indeed, there was no need for the respondent to implead the petitioners as parties-respondents in its petition with the RTC. Hence, the petitioners cannot claim that they were denied due process when the RTC took cognizance of the respondent's petition without prior service of copies of the petition and of the notice of hearing thereof on them.

Neither was there a need for the court to suspend the proceedings merely and solely because the petitioners filed a complaint in the RTC for the nullification of the real estate mortgage, the sale at public auction and the Sheriff's Certificate of Sale issued in favor of the respondent.

First. An ex parte petition for the issuance of a possessory writ under Section 7 of Act No. 3135 is not, strictly speaking, a "judicial process" as contemplated in Article 433 of the Civil Code.[34] It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party "sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong." It is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act No. 3135, as amended.[35] It is brought for the benefit of one party only, and without notice to, or consent by any person adversely interested.[36] It is a proceeding where the relief is granted without an opportunity for the person against whom the relief is sought to be heard.[37] No notice is needed to be served upon persons interested in the subject property. Hence, there is no necessity of giving notice to the petitioners since they had already lost all their interests in the property when they failed to redeem the same.[38]

Second. As a rule, any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of execution.[39] The right of the purchaser to have possession of the subject property would not be defeated notwithstanding the pendency of a civil case seeking the annulment of the mortgage or of the extrajudicial foreclosure.[40] Indeed, under Section 8 of Act No. 3135,[41] even if the mortgagor files a petition assailing the writ of possession granted to the buyer and the sale at public auction within thirty (30) days from the issuance of a writ of possession in favor of the buyer at public auction of the property, and the court denies the same, the buyer may appeal the order of denial. However, the buyer at public auction remains in possession of the property pending resolution of the appeal. We have consistently ruled that it is the ministerial duty of the court to issue writ of possession in favor of the purchaser in a foreclosure sale. The trial

court has no discretion on this matter.[42]

On the issue of whether the RTC was mandated to consolidate LRC Case No. P-97-2000 and Civil Case No. 109-M-2000, we agree with the following ruling of the CA:

... Neither can the prayer for mandamus be granted under the present circumstances. The reason is simple: Mandamus as a remedy applies only where petitioner's right is founded clearly in law and not when it is doubtful. It will not issue to give to him something to which he is not clearly and conclusively entitled.

Here, respondent JUDGE's ministerial duty in issuing the questioned issuance of the writ of possession finds ample support not only in the jurisprudence laid down by the Supreme Court in *Navarra*, but also in the case of *Philippine National Bank v. Adil*:

"The rule, therefore, is that after the redemption period has expired, the purchaser of the property has the right to be placed in possession thereof. Accordingly, it is the inescapable duty of the Sheriff to enforce the writ of possession especially as in this case, a new title has already been issued in the name of the purchaser." (Emphasis supplied)

Therefore, petitioners, who failed to establish a clear right, cannot compel respondent JUDGE to deviate from his duty to issue the writ of possession which is ministerial in nature, not requiring the exercise of sound discretion, especially since, as we have said, the redemption period has expired and a new title has already been issued in the name of BPI. As correctly pointed out in the assailed Order dated February 13, 2001:

"x x x it is its ministerial duty to issue the writ of possession in favor of a purchaser in a foreclosure sale and the right of the petitioner cannot be defeated notwithstanding the pendency of Civil Case No. 109-M-2000 being invoked by herein oppositor."[43]

Section 1, Rule 31 of the Rules of Court, as amended, reads:

Section 1. Consolidation. – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

It is plain as day that the trial court is not mandated to consolidate two or more related cases. The trial court is vested with discretion whether or not to consolidate two or more cases.[44] The grant of discretion to the trial court is incompatible with the clear legal duty, the existence of which is essential to warrant the issuance of a writ of mandamus.

It bears stressing that consolidation is aimed to obtain justice with the least expense and vexation to the litigants. The object of consolidation is to avoid multiplicity of suits, guard against oppression or abuse, prevent delays and save the litigants unnecessary acts and expense.[45] Consolidation should be denied when prejudice would result to any of the parties or would cause complications, delay, prejudice, cut off, or restrict the rights of a party.[46]

In the present case, the trial court acted in the exercise of its sound judicial discretion in denying the motion of the petitioners for the consolidation of LRC Case No. P-97-2000 with Civil Case No. 109-M-2000.

First. The proceedings in LRC Case No. P-97-2000 is not, strictly speaking, a judicial process and is a non-litigious proceeding; it is summary in nature. In contrast, the action in Civil Case No. 109-M-2000 is an ordinary civil action and adversarial in character. The rights of the respondent in LRC Case No. P-97-2000 would be prejudiced if the said case were to be consolidated with Civil Case No. 109-M-2000, especially since it had already adduced its evidence.

Second. The matter of whether or not consolidation is proper has certainly become moot and academic. The RTC

had already issued an order granting the writ of possession in favor of the respondent herein, and declared that the latter had already been placed in actual possession of the property per its Order of November 8, 2002. The petitioners herein had already appealed the said order of the RTC granting the writ of possession to the CA on December 2, 2002. In the meantime, Civil Case No. 109-M-2000 is still pending trial in Branch 83 of the RTC of Malolos, Bulacan.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. The decision of the Court of Appeals in CA-G.R. SP No. 67164 is AFFIRMED. Costs against the petitioners.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Martin S. Villarama, with Associate Justices Conchita Carpio-Morales (now an Associate Justice of the Supreme Court) and Sergio L. Pestaño, concurring; Rollo, pp. 27-34.

[2] Exhibit “C,” Folder of Exhibits, p. 2.

[3] Records, pp. 7-8.

[4] Folder of Exhibit, pp. 6-9.

[5] Exhibit “P,” Folder of Exhibits, p. 17.

[6] Exhibit “Q,” Folder of Exhibits, p. 18.

[7] Exhibit “R,” Folder of Exhibits, p. 19.

[8] Records, pp. 161-165.

[9] Id. at 164.

[10] Id. at 5.

[11] Id. at 20.

[12] Id. at 26.

[13] 162 SCRA 358 (1988).

[14] 268 SCRA 441 (1997).

[15] 209 SCRA 350 (1992).

[16] 234 SCRA 146 (1994).

[17] Records, p. 84.

[18] 229 SCRA 810 (1994).

[19] Records, pp. 83-84.

[20] Id. at 118.

[21] 142 SCRA 44 (1986).

[22] 333 SCRA 189 (2000).

[23] Rollo, p. 33.

[24] Id. at 35.

[25] Id. at 14.

[26] Id. at 21.

[27] Sec. 6. Redemption. – In all cases in which an extrajudicial sale is made under the special power herein before referred to, the debtor, his successors-in-interest or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of section four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

[28] Sec. 7. Possession during redemption period. – In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in the 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 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.

[29] Chailease Finance Corporation v. Ma, 409 SCRA 250 (2003).

[30] Yulienco v. Court of Appeals, 393 SCRA 143 (2002).

[31] Spouses Rempson Samson and Milagros Samson; and Rempson Realty & Development Corporation v. Judge Mauricio M. Rivera, et. al., G.R. No. 154355, May 20, 2004.

[32] Chailease Finance Corporation v. Ma, supra.

[33] Yulienco v. Court of Appeals, supra.

[34] Art. 433. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

[35] Philippine National Bank v. Court of Appeals, 374 SCRA 22 (2002).

[36] Laureano v. Bormaheco, Inc., 351 SCRA 270 (2001).

[37] Government Service Insurance System v. Court of Appeals, 169 SCRA 244 (1989).

[38] Laureano v. Bormaheco, Inc., supra.

[39] Ong v. Court of Appeals, *supra*.

[40] Spouses Rempson Samson and Milagros Samson; and Rempson Realty & Development Corporation v. Judge Mauricio M. Rivera, et. al., *supra*.

[41] 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.

[42] China Banking Corporation v. Ordinario, 399 SCRA 430 (2003).

[43] Rollo, pp. 32-33.

[44] Philippine Airlines, Inc. v. Teodoro, Sr., 97 Phil. 461 (1955).

[45] Raymundo v. Felipe, 42 SCRA 615 (1971).

[46] 1 CJS, Actions pp. 1347-1348.

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