CANDELARIA Q. DAYOT, PETITIONER, VS. SHELL CHEMICAL COMPANY, (PHILS.), INC., RESPONDENT.

G.R. NO. 156542. June 26, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Assailed in the Petition for Review on Certiorari before the Court is the July 30, 2002 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP. No. 70696 nullifying the January 8, 2002 Amended Order,[2] January 10, 2002 Alias Writ of Possession,[3] January 10, 2002 Notice to Vacate[4] and April 12, 2002 Order,[5] which were all issued by the Regional Trial Court (RTC) of Iloilo, Branch 29; and the CA December 23, 2002 Resolution[6] denying herein petitioner's Motion for Reconsideration.

The facts of the case are as follows:

On April 20, 1982, Panay Railways, Inc. (PRI) executed a real estate mortgage contract over six parcels of land located in Lapuz District, Iloilo City in favor of Traders Royal Bank (TRB) for purposes of securing its loan obligations to TRB.[7] The subject properties are denominated as follows: Lot No. 3834, covered by Transfer Certificate of Title (TCT) No. T-45727; Lot No. 1-A, covered by TCT No. T-45728; and Lot Nos. 6153, 6156, 6158 and 6159, all covered by TCT No. T-58200. PRI failed to pay its loan. As a consequence, the mortgaged properties were foreclosed and sold at public auction to TRB as the highest bidder. PRI failed to redeem the foreclosed properties. Hence, TRB consolidated its ownership over the subject parcels of land and, thereafter, certificates of title were issued in its name, to wit: TCT No. T-84233, which canceled TCT No. T-45728; TCT No. T-84234, which canceled TCT No. T-45727; and TCT Nos. T-84235, T-84236, T-84237 and T-84238, all of which canceled TCT No. T-58200.

Thereafter, TRB filed a Petition for Writ of Possession with the RTC of Iloilo City, docketed as LRC CAD. REC. NO. 1 ILOILO CITY and LRC CAD. REC. NO. 9616 ILOILO CITY.[8] In its Order dated October 22, 1990, the trial court granted the petition and ordered the issuance of a writ of possession in favor of TRB.[9] However, the writ was not fully implemented.

On November 20, 1990, TRB sold to spouses Edmundo and Candelaria Dayot (Spouses Dayot), by virtue of a Deed of Absolute Sale, five parcels of land which are portions of Lots 3834, 1-A and 6153.

Subsequently, on February 5, 1991, Candelaria Dayot (petitioner) filed a Supplemental Pleading before the RTC of Iloilo City, praying that she, being the transferee of all the rights and interests of TRB over the parcels of land subject of the Petition for Writ of Possession filed by the latter, be substituted as the new petitioner in LRC CAD. REC. NOS. 1 and 9616, and that an alias writ of possession be issued in her favor. The trial court granted petitioner's prayer in its Order dated March 12, 1991.[10] On April 1, 1991, the RTC issued an Alias Writ of Possession in favor of herein petitioner.[11]

On August 24, 1994, the spouses Dayot filed with the RTC of Iloilo City, a complaint for Recovery of Ownership

and Possession, Annulment of Documents, Cancellation of Titles, Reconveyance and Damages against TRB, Petron Corporation (Petron) and herein respondent Shell Chemical Company (Phil.), Inc. (Shell), praying that Shell be directed to vacate the portion of Lot No. 6153 which it actually possesses and for both Petron and Shell to surrender ownership and possession of portions of parcels of lands covered separately by TCT Nos. T-47484 and T-94116. The case was docketed as Civil Case No. 21957.[12]

On August 21, 1997, while Civil Case No. 21957 was pending resolution, herein petitioner filed in LRC CAD. REC. NOS. 1 and 9616 an Amended Supplemental Motion for the Issuance of Writ of Possession, praying that Shell be ejected from the portion of Lot 6153 which it actually possesses.

Shell lodged an Opposition to petitioner's Amended Supplemental Motion arguing, among others, that petitioner is guilty of forum shopping as it seeks the same relief being sought in Civil Case No. 21957 and that the parcels of land sold to petitioner do not include the portion of Lot 6153 being possessed by Shell.[13]

On May 7, 1999, the RTC of Iloilo, Branch 30 issued an Order denying herein petitioner's Motion for the Issuance of a Writ of Possession, insofar as Shell is concerned.[14]

Despite the issuance of the above-mentioned Order, petitioner filed two successive motions praying for the issuance of an alias writ of possession. Shell opposed these motions.

Subsequently, the petition for the issuance of a writ of possession was re-raffled to Branch 29 of the RTC of Iloilo, as the presiding judge of Branch 30 inhibited himself from hearing the case.

On January 8, 2002, Branch 29 promulgated an Amended Order, the dispositive portion of which reads:

> Wherefore, let an Alias Writ of Possession issue on the affected portions of Lots 3834, 1-A and 6153, all situated in the City of Iloilo, with a total land area of 14,940 sq. meters occupied by Shell and 17,000 sq. meters occupied by Petron and to place and install petitioner Candelaria Dayot in possession thereof.
>
> Mr. Redentor Rodriguez, Sheriff IV of this Court is hereby directed to implement this order.
>
> SO ORDERED.[15]

On January 10, 2002, the Branch Clerk of Court of RTC Iloilo, Branch 29, issued an Alias Writ of Possession.

On even date, the Sheriff served upon Shell a Notice to Vacate.

Thereafter, Shell and Petron moved for the reconsideration of the January 8, 2002 Order of the RTC but the trial court denied it via its Order dated April 12, 2002.

Shell then filed a petition for certiorari and prohibition with the CA praying for the nullification of the January 8, 2002 and April 12, 2002 Orders of RTC Iloilo, Branch 29, as well as the Alias Writ of Possession and Notice to Vacate both dated January 10, 2002. The petition also sought to permanently enjoin the RTC from enforcing the assailed orders and processes and from acting and conducting further proceedings in the subject case.

On July 30, 2002, the CA promulgated its presently assailed Decision, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the Petition is GRANTED and the questioned four (4) rulings of the court a quo are hereby declared NULL and VOID. No costs.
>
> SO ORDERED.[16]

Petitioner's Motion for Reconsideration was denied by the CA in its Resolution dated December 23, 2002.

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Hence, herein petition for review on certiorari, anchored on the following grounds:

> - THAT RESPONDENT IS BARRED FROM FILING THE PETITION FOR CERTIORARI WITH THE COURT OF APPEALS, ASSAILING THE AMENDED ORDER DATED JANUARY 8, 2002 OF HON. RENE B. HONRADO, PRESIDING JUDGE, REGIONAL TRIAL COURT, ILOILO CITY, BRANCH 29, AFTER RESPONDENT LOST ITS RIGHT TO APPEAL BECAUSE A SPECIAL CIVIL ACTION FOR CERTIORARI IS NOT AND CANNOT BE A SUBSTITUTE FOR A LOST OR EXPIRED APPEAL THUS, THE DECISION PROMULGATED JULY 30, 2002 AND THE RESOLUTION PROMULGATED DECEMBER 23, 2002 OF THE HONORABLE COURT OF APPEALS WERE ISSUED CONTRARY TO PREVAILING JURISPRUDENCE AND THAT SAID COURT DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT AND THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.
>
> - THAT PETITIONER IS ENTITLED TO THE POSSESSION OF THE ENTIRE LOTS 3834, 1-A, 6153, 6156, 6158 AND 6159 INCLUDING THE AREA OF 14,940 SQ. METERS OCCUPIED BY RESPONDENT WHICH AREAS ARE PORTIONS OF LOTS 6153, 3834 AND 1-A, OCCUPATION THEREOF BY RESPONDENT BEING THAT OF MERE INTRUDER OR TRESSPASSER.[17]

In her first assigned error, petitioner argues that respondent should have been barred from filing a special civil action for certiorari before the CA because this recourse is available only when there is no speedy and adequate remedy in the course of law. Petitioner further argues that respondent should have appealed the Amended Order of the RTC dated April 12, 2002, but it did not. Petitioner avers that respondent can no longer resort to the filing of a petition for certiorari because this remedy is not a substitute for a lost appeal.

Anent the second assigned error, petitioner claims that she is not guilty of forum shopping, as Civil Case No. 21957 involves the issue of ownership while the present case is for the recovery of possession; and that the subject matter of the present case is different from that of Civil Case No. 21957. Even granting that the same parcels of land are involved in these cases, petitioner argues that a writ of possession can still be validly issued and implemented in consonance with the rule that proceedings incident to extra-judicial foreclosure of mortgages to resolve the possession of third-party claimants may proceed independently of the action which said claimants may bring to enforce or protect their claim of ownership over the property.

Lastly, petitioner asserts that respondent's TCT No. T-47484 refers to a lot which is different from those being contested in the instant case.

In its Comment, respondent contends that it did not err in resorting to the remedy of filing a petition for certiorari with the CA. It argues that even when appeal is available as a proper remedy, the Supreme Court will allow a writ of certiorari if the petition appears to be genuinely meritorious or if filed on the basis of a patent, capricious and whimsical exercise of discretion by a trial judge, or when an appeal will not promptly relieve petitioner from the injurious effects of the disputed orders; that the Amended Order of the RTC dated January 8, 2002 collaterally attacked respondent's title over the disputed property; that petitioner is not a buyer in good faith; that, as a transferee, petitioner merely acquired the rights and interests that TRB had by reason of the foreclosure of the mortgage made in its favor; that the contested Alias Writ of Execution is barred by res judicata and litis pendentia; and that respondent has the right to possess the disputed property as it has satisfactorily shown that it is the registered owner of and has title over the subject property.

The Court finds the petition bereft of merit.

It bears to emphasize at the outset that the present petition for review arose by reason of the special civil action for certiorari filed by respondent Shell with the CA questioning the January 8, 2002 Amended Order, Alias Writ of Possession, Notice to Vacate and the April 12, 2002 Order issued by the RTC of Iloilo, Branch 29. Accordingly,

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any discussions on the issues raised as well as rulings by this Court in the present petition apply only insofar as the claim of respondent Shell is concerned.

As to the first assigned error, it is true that as a rule while certiorari as a remedy may not be used as a substitute for an appeal, especially for a lost appeal, this rule should not be strictly enforced if the petition is genuinely meritorious.[18] It has been held that where the rigid application of the rules would frustrate substantial justice, or bar the vindication of a legitimate grievance, the courts are justified in exempting a particular case from the operation of the rules.[19] The Court has given due course to petitions for certiorari although appeal is the proper remedy where the equities of the case warranted such action, mindful that dismissals based on technicalities are looked upon with disfavor.[20]

In the present case, the Court finds no error on the part of the CA in giving due course to the petition for certiorari filed by respondent as its case is genuinely meritorious for reasons that will be discussed forthwith.

As to the second assigned error, the Court agrees with petitioner that she is not guilty of forum shopping.

There is forum shopping when a party avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other courts.[21]

The test to determine whether a party violated the rule against forum shopping is whether the elements of litis pendentia are present, or whether a final judgment in one case will amount to res judicata in another.[22] In other words, when litis pendentia or res judicata does not exist, neither can forum shopping exist.[23]

The requisites of litis pendentia are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to res judicata in the other.[24]

On the other hand, the elements of res judicata, also known as "bar by prior judgment," are: (1) the former judgment must be final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter, and causes of action.[25]

It bears to note that the proceedings conducted subsequent to the filing of a petition for the issuance of a writ of possession are ex parte and summary in nature. The order for the issuance of the writ is simply an incident in the transfer of title in the name of the petitioner.[26] Hence, such order cannot be said to be a judgment on the merits, i.e., one rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case. Thus, in the present case, any order or decision of the RTC in LRC CAD. REC. NOS. 1 and 9616 cannot be considered as determinative of the merits of Civil Case No. 21957.

Moreover, the aforementioned cases cannot be said to be identical as the basic issue in LRC CAD. REC. NOS. 1 and 9616 is possession while in Civil Case No. 21957 the issue raised is essentially that of ownership of the disputed lots.

Based on the foregoing, there can be no litis pendentia or res judicata. Since neither litis pendentia nor res judicata exists in the instant case, petitioner may not be held guilty of forum shopping.

Nonetheless, the Court finds that under applicable laws and jurisprudence, respondent cannot be ejected from the property by means of an ex-parte writ of possession.

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Article 433 of the Civil Code states:

> 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.

Under the aforequoted provision, one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The term "judicial process" could mean no less than an ejectment suit or reivindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated.[27] In the present case, petitioner had already complied with this procedure by filing Civil Case No. 21957.

The ex-parte petition for issuance of a possessory writ filed by petitioner's predecessor, TRB, in LRC CAD. REC. NOS. 1 and 9616, strictly speaking, is not the kind of "judicial process" contemplated above. Even if the same may be considered 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 or protection of a right, or the prevention or redress of a wrong."[28]

The second paragraph of Section 33, Rule 39, of the Rules of Court relating to the right of possession of a purchaser of property in an extra-judicial foreclosure sale provides:

> Sec. 33. Deed and possession to be given at expiration of redemption period; by whom executed or given.
>
> x x x
>
> Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property at the time of levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor. (emphasis supplied)

Thus, in Barican v. Intermediate Appellate Court,[29] this Court held that the obligation of a court to issue a writ of possession in favor of the purchaser in an extra-judicial foreclosure sale of a mortgaged property ceases to be ministerial once it is shown that there is a third party in possession of the property who is claiming a right adverse to that of the mortgagor and that such third party is a stranger to the foreclosure proceedings in which the ex-parte writ of possession was applied for.

It bears emphasis that an ex-parte petition for issuance of a writ of possession is a non-litigious proceeding authorized in an extra-judicial foreclosure of mortgage pursuant to Act 3135, as amended.[30] It is brought for the benefit of one party only, and without notice to, or consent by any person adversely interested.[31]

Furthermore, unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court where an action for foreclosure is brought before the RTC where the mortgaged property or any part thereof is situated, any property brought within the ambit of Act 3135 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. As such, a third person in possession of an extra-judicially foreclosed property, who claims a right superior to that of the original mortgagor, is thus given no opportunity to be heard in his claim.[32] It stands to reason, therefore, that such third person 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.[33]

Besides, as earlier stressed, Article 433 of the Civil Code, cited above, requires nothing less than ejectment or reivindicatory action to be brought even by the true owner. After all, the actual possessor of a property enjoys a legal presumption of just title in his favor, which must be overcome by the party claiming otherwise.

In the case at bar, it is not disputed that herein respondent had been in possession of the subject lots since 1975 and that it has in its premises bulk plant and fuel storage facilities for the purpose of conducting its business. In this respect, the Court agrees with the findings of the CA that petitioner had knowledge of respondent's prior possession of the disputed properties. Yet, instead of pursuing Civil Action No. 21957 where respondent will be given a chance to substantiate its claim of ownership, petitioner still insists on obtaining a writ of possession pursuant to its alleged right as purchaser of the properties which had been extra-judicially foreclosed. The Court cannot sanction this procedural shortcut. To enforce the writ against herein respondent, an unwitting third party possessor who took no part in the foreclosure proceedings, would be tantamount to the taking of real property without the benefit of proper judicial intervention.

Hence, it was not a ministerial duty of the trial court under Act No. 3135 to issue a writ of possession for the ouster of respondent from the lot subject of this instant case, particularly in light of the latter's opposition and claim of ownership and rightful possession of the disputed properties.

Moreover, the trial court was without authority to grant the ex-parte writ, since petitioner's right of possession under said Act could be rightfully enforced only against PRI as the original mortgagor and its successors-in-interest,[34] but not against respondent which possesses the property subject of execution under a claim of ownership, having bought the same from the Development Bank of the Philippines (DBP).

In the present case, the questioned Amended Order of the RTC Iloilo, Branch 29 dated January 8, 2002 was issued on the strength of the Writ of Possession issued by the RTC of Iloilo, Branch 30 dated October 24, 1990. It is clear from the said writ that the sheriff is directed to eject PRI or any person claiming interest under it from Lot Nos. 3834, 1-A, 6153, 6156, 6158 and 6159 and to place TRB in possession thereof. However, respondent is not a successor-in-interest of PRI. Instead, respondent claims ownership over the subject lot by virtue of a Deed of Absolute Sale dated June 30, 1975, wherein the property was sold to it by the DBP. As a consequence of such sale, respondent obtained TCT No. 47484 on July 28, 1977. Clearly, respondent's right of possession is adverse to that of PRI or TRB.

Furthermore, registration of the lots in petitioner's name does not automatically entitle the latter to possession thereof.[35] As discussed earlier, petitioner must resort to the appropriate judicial process for recovery of the properties and cannot simply invoke its title in an ex-parte proceeding to justify the ouster of respondent,[36] especially in view of the fact that the latter also has in its possession a Transfer Certificate of Title over the subject properties. The court cannot just ignore the claim of herein respondent, who is in actual possession of the subject properties, that it has been the owner thereof since 1975 and, therefore, has the better right to possess them. Neither can the RTC rely on the Surveyor's Report dated August 3, 1997 because respondent was not given the opportunity to refute it, the same being submitted in the ex-parte proceedings for the issuance of a writ of possession in favor of Dayot. Due process dictates that herein respondent cannot simply be ejected on the strength of the subject Surveyor's Report without giving it (respondent) the opportunity to present its own evidence. All of these issues must be ventilated and resolved on the merits after a proper hearing. In the instant case, the proper forum is Civil Case No. 21957.

Finally, it is expressly stipulated in the Additional Stipulations of Real Estate Mortgage executed by PRI in favor of TRB that it "excludes those areas already sold to Shell Co., Inc. with total area of 14,920 sq. meters, known as Lot No. 6153-B and portion of Lot No. 5."[37]

Petitioner insists that respondent's TCT No. T-47484 refers to a different parcel of land. Whether respondent's title refers to the same property subject of the present case and whether the parcels of land sold to herein petitioner are the same properties foreclosed by TRB are issues which should properly be resolved in Civil Case No. 21957.

This is not the proper forum to determine who between the parties is entitled to ownership of the disputed lands, as the issue in the present case is merely limited to the propriety of the issuance of a writ of possession relating to foreclosure of mortgage.

WHEREFORE, the instant petition is DISMISSED. The Decision and Resolution of the Court of Appeals dated July 30, 2002 and December 23, 2002 in CA-G.R. SP. No. 70696 are AFFIRMED insofar as respondent Shell Chemical Company (Phils.), Inc. is concerned.

Costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, and Nachura, JJ., concur.

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[1] Penned by Justice Andres B. Reyes, Jr. and concurred in by Justices Conrado M. Vasquez, Jr. and Mario L. Guariña III; CA rollo, Vol. 2, p. 828.

[2] CA rollo, Vol. I, p. 46.

[3] Id. at 49.

[4] Id. at 51.

[5] Id. at 52.

[6] Rollo, p. 62.

[7] CA rollo, p. 169.

[8] Id. at 127.

[9] Id. at 164.

[10] Rollo, p. 79.

[11] Id. at 80.

[12] Id. at 185.

[13] Id. at 178.

[14] Id. at 209.

[15] Id. at 48.

[16] CA rollo, Vol. 2, p. 828.

[17] Rollo, pp. 22-23.

[18]China Banking Corporation v. The Board of Trustees, Home Development Mutual Fund, 366 Phil. 913, 921 (1999).

[19] Id.

[20]Davao New Town Development Corporation v. Commission on the Settlement of Land Problems (COSLAP), G.R. No. 141523, June 8, 2005, 459 SCRA 491, 505.

[21] Navarro Vda. De Taroma v. Taroma, G.R. No. 160214, December 16, 2005, 478 SCRA 336, 345-346.

[22] Arquiza v. Court of Appeals, G.R. No. 160479, June 8, 2005, 459 SCRA 753, 765.

[23] Arquiza v. Court of Appeals, id. at 765.

[24] Panganiban v. Pilipinas Shell Petroleum Corporation, 443 Phil. 753, 766 (2003).

[25] Lugayan v. Tizon, G.R. No. 147958, March 31, 2005, 454 SCRA 488, 490-491.

[26] Ong v. Court of Appeals, 388 Phil. 857, 867 (2000).

[27] Philippine National Bank v. Court of Appeals, 424 Phil. 757, 769-770 (2002).

[28] Idolor v. Court of Appeals, G.R. No. 161028, January 31, 2005, 450 SCRA 396, 404-405.

[29] G.R No. L-79906, June 20, 1988, 162 SCRA 358.

[30] De Vera v. Agloro, G.R. No. 155673, January 14, 2005, 448 SCRA 203, 215.

[31] Id. at 215.

[32] Capital Credit Dimension, Inc. v. Chua, G.R. No. 157213, April 28, 2004, 428 SCRA 259, 263.

[33] PNB v. Court of Appeals, supra note 27, at 770.

[34] PNB v. Court of Appeals, supra note 27, at 771.

[35] PNB v. Court of Appeals, supra note 27, at 771.

[36] Id. at 771-772.

[37] Rollo, p. 168.

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