

ILUMINADA “LUMEN” R. POLICARPIO, PETITIONER, VS. ACTIVE BANK (FORMERLY MAUNLAD SAVINGS AND LOAN BANK), RESPONDENT.

G.R. No. 157125. September 19, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari are the Decision[1] dated August 21, 2002 and the Resolution[2] dated February 6, 2003 of the Court of Appeals in CA-G.R. SP No. 68939. The Court of Appeals affirmed the Resolution[3] dated January 18, 2002 of the Regional Trial Court (RTC) of Muntinlupa City, Branch 276 in LRC Case No. 00-058, which had ordered the issuance of a Writ of Possession[4] dated January 24, 2002 in favor of respondent.

The relevant facts are as follows:

The spouses Septem and Grelita Ricaza are the registered owners of a parcel of land located at Ayala Alabang, Muntinlupa City, covered by Transfer Certificate of Title (TCT) No. 207131[5] of the Registry of Deeds of Makati City.

On October 2, 1996, they mortgaged the property to respondent Active Bank (formerly Maunlad Savings and Loan Bank). For failure to settle their obligation, respondent foreclosed the mortgage. The spouses Ricaza also failed to redeem the property during the redemption period. Hence, respondent consolidated its ownership over the property.

Respondent subsequently filed a Petition for Issuance of Writ of Possession with the RTC of Muntinlupa City, Branch 276. Petitioner Iluminada "Lumen" R. Policarpio opposed it and submitted a Deed of Sale[6] of the property executed by Septem in her favor on April 22, 1998.

The trial court set the Opposition for hearing but neither petitioner nor her counsel appeared. On January 18, 2002, the trial court ordered the issuance of a Writ of Possession. It observed that the Deed of Sale appears to be void since only Septem signed it and it was not shown that he was authorized by Grelita to sell the conjugal property.

Thereafter, petitioner was served with the Resolution dated January 18, 2002, the Writ of Possession dated January 24, 2002 and the Notice to Vacate[7] dated January 25, 2002.

On February 1, 2002, the court sheriff together with respondent's employees entered the property and removed petitioner's personal belongings. However, respondent was able to occupy only a portion of the property due to the timely intervention of the Muntinlupa Police and the Ayala Alabang Village Security personnel.

Petitioner filed a petition for certiorari and prohibition with the Court of Appeals. She sought the nullification of the trial court's Resolution dated January 18, 2002, the Writ of Possession dated January 24, 2002 and the Notice to Vacate dated January 25, 2002.

Petitioner argued that the trial court could not issue the Writ of Possession in favor of respondent since she was a third party in possession of the property contemplated under Section 33, Rule 39 of the Rules of Court.

Respondent countered that the Deed of Sale in petitioner's favor was void since it was executed without Grelita's consent. It added that the sale, unlike the mortgage, had not been registered. It also contended that petitioner's possession came only after the mortgage was constituted and registered.

On August 21, 2002, the Court of Appeals denied the petition. It ruled that the validity of the sale in petitioner's favor was questionable since only Septem signed the deed. It also noted that unlike the mortgage, the Deed of Sale was not registered. Finally, while petitioner opposed the petition for issuance of Writ of Possession, she never pursued nor prosecuted her claim. Laches may be said to have worked against her, given the urgency and grave consequences that the writ entailed.

Petitioner moved for reconsideration which the appellate court denied. Hence, this recourse where petitioner assigns the following errors:

I.

THE COURT OF APPEALS ERRED IN NOT APPLYING SECTION 33, RULE 39 OF THE REVISED RULES OF CIVIL PROCEDURE TO THIS CASE.

II.

THE COURT OF APPEALS ERRED IN FINDING THAT THE DEED OF SALE BETWEEN PETITIONER AND SPOUSES RICAZA WERE QUESTIONABLE AND/OR VOID.

III.

THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER'S RIGHT OF ACTION WAS BARRED BY LACHES.[8]

The basic issue to be resolved is whether petitioner is a third party in possession of the property contemplated under Section 33, Rule 39 of the Rules of Court such as to preclude the trial court from issuing a Writ of Possession in favor of respondent.

Section 33, Rule 39 of the Rules of Court which relates to the right of possession of a purchaser of property in an extrajudicial foreclosure sale provides:

SEC. 33. ...

Under 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 as of the time of the 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.

Ordinarily, a purchaser of property in an extrajudicial foreclosure sale is entitled to possession of the property. Thus, whenever the purchaser prays for a writ of possession, the trial court has to issue it as a matter of course.[9] However, the obligation of the trial court to issue a writ of possession ceases to be ministerial once it appears that there is a third party in possession of the property claiming a right adverse to that of the debtor/mortgagor.[10] Where such third party exists, the trial court should conduct a hearing to determine the nature of his adverse possession.[11]

In this case, the trial court conducted the required hearing but neither petitioner nor her counsel appeared. We cannot therefore fault the trial court for evaluating the only documentary evidence submitted by petitioner, the

Deed of Sale dated April 22, 1998 and the certified true copy of TCT No. 207131 which Septem gave her.

There is nothing objectionable with the summary manner by which the trial court resolved petitioner's claim. As it is, the trial and appellate courts found the validity of the sale in petitioner's favor questionable since only Septem signed the Deed of Sale and it was not shown that he was authorized by Grelita to sell the conjugal property. In our view, however, even if both Ricaza spouses had signed, the result would still be the same, given the circumstances in this case. In any event, we note that the deed was not even registered, a truly fatal defect in this case.

Petitioner's reliance on the certified true copy of TCT No. 207131, which was given to her by Septem, is misplaced. It is settled that a person dealing with registered property is charged with notice only of such burdens and claims which are annotated on the title.^[12] Yet, petitioner simply believed Septem's assurance that the title was clean and accepted a copy consisting only of the first page sans the dorsal page where respondent's mortgage was annotated. What is more, we find it hard to believe that petitioner did not compel the spouses Ricaza to register the sale in her favor and to have the proper title issued in her name. As a lawyer, petitioner should have been more circumspect in protecting her interests.

Finally, petitioner relies on *Philippine National Bank v. Court of Appeals*,^[13] to support her claim. In *PNB*, the third party possessor had been occupying the property even prior to the mortgage in favor of the bank. More importantly, the bank was aware that there was a third party possessor before it granted the loan to the original owners of the property. Such is not the case here. The mortgage in favor of respondent preceded the sale in favor of petitioner. There was no allegation either that respondent was at any point of time aware that petitioner occupied the property.

Thus, we are in agreement that no reversible error was committed by the appellate court nor by the trial court. Respondent has no legal obligation to honor petitioner's possession of the property. Rather conversely, it is petitioner who has the legal obligation to honor respondent's prior ownership and existing right to possess the property.

WHEREFORE, the instant petition is DENIED for lack of merit. The Decision dated August 21, 2002 and the Resolution dated February 6, 2003 of the Court of Appeals in CA-G.R. SP No. 68939 are AFFIRMED.

SO ORDERED.

Tinga, Chico-Nazario,[*] Velasco, Jr., and Brion, JJ., concur.

[*] Additional member in place of Associate Justice Conchita Carpio Morales who took no part due to prior action in the Court of Appeals.

[1] Rollo, pp. 24-30. Penned by Associate Justice Conchita Carpio Morales (now a member of this Court), with Associate Justices Martin S. Villarama, Jr. and Mariano C. Del Castillo concurring.

[2] Id. at 66. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Buenaventura J. Guerrero and Martin S. Villarama, Jr. concurring.

[3] CA rollo, p. 19.

[4] Id. at 20-21.

[5] Id. at 24.

[6] Id. at 22-23.

[7] Rollo, p. 57.

[8] Id. at 9-10.

[9] China Banking Corporation v. Ordinario, G.R. No. 121943, March 24, 2003, 399 SCRA 430, 434.

[10] Philippine National Bank v. Court of Appeals, G.R. No. 135219, January 17, 2002, 374 SCRA 22, 30.

[11] Unchuan v. Court of Appeals (Fifth Division), No. L-78775, May 31, 1988, 161 SCRA 710, 716.

[12] Du v. Stronghold Insurance Co., Inc., G.R. No. 156580, June 14, 2004, 432 SCRA 43, 51.

[13] Supra note 10, at 22.

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