SPOUSES GODOFREDO V. ARQUIZA AND REMEDIOS D. ARQUIZA, PETITIONERS, VS. COURT OF APPEALS AND EQUITABLE PCIBANK, RESPONDENTS.

G.R. NO. 160479. June 08, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 74592 and its Resolution denying the motion for reconsideration of the said decision. The assailed decision affirmed the decision of the Regional Trial Court (RTC) of Quezon City, Branch 221, granting the ex parte petition for the issuance of a writ of possession in LRC Case No. Q-14150(01).

The petitioners, spouses Godofredo V. Arquiza and Remedios D. Arquiza, obtained a loan from private respondent Equitable PCIBank for P2.5 million. To secure the payment thereof, the petitioners executed a Real Estate Mortgage over their parcel of land covered by Transfer Certificate of Title (TCT) No. N-143274 of the Registry of Deeds of Quezon City.[2]

When the spouses defaulted in the payment of their loan, the private respondent filed a petition for extrajudicial foreclosure of the real estate mortgage. A public auction was held on October 18, 1999 in accordance with Act No. 3135, as amended by Act No. 4118 during which the mortgaged property, together with all the improvements existing thereon, was sold to the private respondent as the highest bidder.[3] Accordingly, a Certificate of Sale[4] over the property was issued in favor of the private respondent. This was registered with the Registry of Deeds of Quezon City on November 22, 1999.[5]

Following the expiry date of the redemption period without the petitioners having exercised their right to redeem the property, the private respondent consolidated its ownership over the subject property.[6] As a consequence, the Registry of Deeds issued TCT No. N-221650[7] in the name of the private respondent, canceling the petitioners' former title.

The petitioners filed a complaint against the private respondent and the sheriffs with the Regional Trial Court (RTC) of Quezon City for the declaration of the nullity of the promissory note, real estate mortgage and the foreclosure sale and damages with a plea for injunctive relief for the suspension redemption period. The case was docketed as Civil Case No. Q-98-34094.[8]

Meanwhile, the private respondent demanded that the petitioners vacate and surrender possession of the subject property, but the latter refused to do so. This compelled the private respondent to file an Ex Parte Petition for Issuance of a Writ of Possession,[9] docketed as LRC Case No. Q-14150(01) also with the Quezon City RTC.

Instead of acting on the petition and receiving the evidence of the private respondent ex parte, as mandated by Act No. 3135, as amended, the RTC set the case for hearing at 8:30 a.m. of August 30, 2001, and ordered that a copy of the petition be served on the petitioners.[10] The latter filed their Answer alleging that (1) the private

respondent failed to incorporate a Certificate of Non-Forum Shopping in its petition; and (2) the petition was abated by the pendency of their complaint in Civil Case No. Q-98-34094 involving the non-payment of their mortgage obligation, the validity of the foreclosure sale of the mortgaged property and their failure to redeem the same. The petitioners prayed that the trial court dismiss the petition outright.[11] They appended to their answer a copy of their amended and supplemental complaint in Civil Case No. Q-98-34094.

The trial court conducted a hearing of the petition during which the petitioners and the private respondent adduced their respective evidence.

On February 22, 2002, the trial court rendered a Decision in LRC Case No. Q-14150(01) granting the petition, thus:

> WHEREFORE, the Court holds that the Instant Petition for Issuance of a Writ of Possession is meritorious and should be granted. Let a writ of possession be issued in favor of the petitioner and directing the Respondents Sps. Godofredo and Remedios Arquiza and all persons claiming rights and interest under them to vacate the premises and place the petitioner in possession thereof.
>
> The petitioner Equitable PCIBank is directed to coordinate with the Branch Clerk of Court, this Court, for the expeditious issuance and implementation of the Writ of Possession.
>
> SO ORDERED.[12]

The petitioners appealed the decision to the CA alleging that:

> - THAT THE LOWER COURT ERRED IN GIVING DUE COURSE TO THE "EX-PARTE PETITION FOR ISSUANCE OF WRIT OF POSSESSION" AND IN NOT DISMISSING THE SAME FOR BEING INDEROGATION OF THE APPELLANTS' RIGHT TO A DUE PROCESS OF LAW;
>
> - THAT THE LOWER COURT ERRED IN NOT APPLYING IN THIS CASE THE WELL-ESTABLISHED RULE ON "LITIS PENDENCIA" BY NOT DISMISSING THE "EX-PARTE PETITION, etc." IN QUESTION FOR THE REASON "THAT THERE IS ANOTHER ACTION PENDING BETWEEN THE SAME PARTIES FOR THE SAME CAUSE; (Sec. 1(e), Rule 16, Rules of Court).
>
> - THAT THE LOWER COURT ERRED IN IGNORING THE RULE AGAINST "FORUM SHOPPING" AND THE MANDATORY REQUIREMENT FOR A "CERTIFICATION OF NON-FORUM SHOPPING" IN AN INITIATORY PLEADING LIKE PETITIONER-APPELLEES' ÈX-PARTE PETITION, etc." IN QUESTION AND FOR NOT DISMISSING SAID PLEADING ON THE GROUND "THAT A CONDITION PRECEDENT FOR FILING THE CLAIM HAS NOT BEEN COMPLIED WITH" (Sec. 1(j), Rule 16, Rules of Court).
>
> - THAT THE LOWER COURT ERRED IN HOLDING TO THE EFFECT THAT SECTIONS 4 & 5, RULE 7 OF THE 1997 RULES OF CIVIL PROCEDURE DOES NOT APPLY TO THE "EX-PARTE PETITION, etc." IN QUESTION BECAUSE ALLEGEDLY THE CASE AT BAR IS A LAND REGISTRATION CASE.
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> - THAT THE LOWER COURT ERRED IN RENDERING A DECISION GRANTING THE RELIEF PRAYED FOR IN THE "EX-PARTE PETITION, etc." FOR THE ISSUANCE OF A WRIT OF POSSESSION AGAINST THE RESPONDENTS-APPELLANTS ALBEIT NO EVIDENCE WAS ADDUCED PROVING THAT THE SUBJECT REAL ESTATE MORTGAGE AND ITS FORECLOSURE, AMONG OTHER SUBSEQUENT PROCEEDINGS, ARE LAWFUL, VALID AND REGULAR, IN CIRCUMVENTION OF THE PREJUDICIAL ISSUES PRECISELY RAISED IN THE PENDING CIVIL CASE NO. Q-98-34094 INVOLVING THE DECLARATION OF NULLITY OF SAID MORTGAGE AND RELATED TRANSACTIONS.[13]

The CA rendered judgment affirming the appealed decision. The CA held that the petition for the issuance of a

writ of possession was not an initiatory pleading; hence, a certification against forum shopping was not necessary. The appellate court also held that there could be no forum shopping because a petition for the issuance of a writ of possession is but an incident in the transfer of title. The CA held that the rule requiring the highest bidder to be placed in possession of the property is founded on the right of ownership, which becomes absolute after title thereto has been issued in favor of the new owner, and that the court must aid in effecting its delivery.[14]

The motion for reconsideration of the decision having been denied by the CA, the petitioners filed their petition for review on certiorari with this Court and raised the following issues:

> Firstly, is it right, proper and just for the Court below to completely ignore and disregard a related prior and pending action between the same parties where the very basis of the right of possession over the subject property sought to be enforced as a result of the foreclosure of a "mortgage" is being assailed in court for being NULL AND VOID ab initio OR INEXISTENT?
>
> Secondly, is it right, proper and just for the Court below to summarily close its eyes to the patent and obvious flaw or irregularity of the "mortgage" in the appreciation of the evidence offered in support of the Ex-Parte Petition For the Issuance of a Writ of Possession?
>
> Thirdly, does the application of Section 7 of Act 3135, as amended by Act 4118, as the Court below did, exclude or preclude the effectivity or applicability of the mandate against forum shopping, of the requirement for certification in pleadings against forum shopping, of the principle of "litis pendentia," and of due process of law?[15]

The petitioners assert that the ex parte petition for the issuance of the writ of possession should have been dismissed by the RTC for failure to attach a certification against forum shopping. They claim that this requirement is mandatory and there is no law exempting the private respondent's ex parte petition from compliance therewith.[16]

The petitioners contend that they are legally entitled to be protected in their possession over the subject property pending the resolution of Civil Case No. Q-98-34094 for the declaration of nullity of the promissory note, real estate mortgage, and foreclosure sale. They argue that the issuance of a writ of possession preempted and pre-judged the outcome of Civil Case No. Q-98-34094. The petitioners maintain that the ex parte petition for the issuance of a writ of possession violated the petitioners' right to procedural due process considering that Section 4, Rule 15 of the Rules of Court requires every written motion to be set for hearing, except for those which would not prejudice the rights of the adverse party.[17]

The petitioners maintain that the private respondent failed to substantiate its ex parte petition for the issuance of the writ of possession. They fault the trial court for not scrutinizing judiciously the private respondent's evidence because had it done so, it would have noted the nullity of the mortgage, which appears to have been executed not by the owners of the subject property. They question the private respondent's failure to attach the promissory notes evidencing their loan, which would have shown that the real estate mortgage was executed prior to the execution of the said promissory notes. The petitioners aver that the private respondent failed to prove the validity and legality of the real estate mortgage, and without a valid mortgage, there can be no valid foreclosure sale or valid title.[18]

For its part, the private respondent contends that the requirement for the filing of a certificate of non-forum shopping is not applicable, considering that the ex parte motion for the issuance of a writ of possession is not an initiatory pleading.[19] It submits that litis pendentia does not exist because there is no identity of the issues and the reliefs prayed for between the present case and Civil Case No. Q-98-34094. Hence, forum shopping cannot likewise exist.[20]

The private respondent maintains that after the expiration of the redemption period and the consolidation of ownership over the property, it had the right to be placed in possession thereof without the need of a separate and independent action. It posits that the right to possess an extrajudicially foreclosed property is not affected by the pendency of an action for annulment of foreclosure proceedings. The private respondent stresses that the issuance of a writ of possession is a ministerial function of the court, and should be issued as a matter of course upon the filing of the proper ex parte motion.[21]

It asserts that the petitioners were not denied their right to due process because, notwithstanding the grant of the writ of possession, they may still resort to another proceeding to question the regularity and validity of the foreclosure sale. It points out that the petitioners should appreciate the fact that the court a quo allowed them to participate in the proceedings even if the motion for issuance of a writ of possession was ex parte in nature.[22] Finally, the private respondent avers that it had presented sufficient evidence to show that it is entitled to the possession of the subject property.[23]

The petition is denied for lack of merit.

The assailed ruling of the CA is correct. The certification against forum shopping is required only in a complaint or other initiatory pleading.[24] The ex parte petition for the issuance of a writ of possession filed by the respondent is not an initiatory pleading. Although the private respondent denominated its pleading as a petition, it is, nonetheless, a motion. What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but rather its purpose. The office of a motion is not to initiate new litigation, but to bring a material but incidental matter arising in the progress of the case in which the motion is filed.[25] A motion is not an independent right or remedy, but is confined to incidental matters in the progress of a cause. It relates to some question that is collateral to the main object of the action and is connected with and dependent upon the principal remedy.[26] An application for a writ of possession is a mere incident in the registration proceeding. Hence, although it was denominated as a "petition," it was in substance merely a motion. Thus, the CA correctly made the following observations:

> Such petition for the issuance of a writ of possession is filed in the form of an ex parte motion, inter alia, in the registration or cadastral proceedings if the property is registered. Apropos, as an incident or consequence of the original registration or cadastral proceedings, the motion or petition for the issuance of a writ of possession, not being an initiatory pleading, dispels the requirement of a forum-shopping certification. Axiomatic is that the petitioner need not file a certification of non-forum shopping since his claims are not initiatory in character (Ponciano vs. Parentela, Jr., 331 SCRA 605 [2000])[27]

It bears stressing that Section 7 of Act No. 3135, as amended by Act No. 4118, specifically provides that the buyer at public auction may file a verified petition in the form of an ex parte motion.

> SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance (now Regional Trial Court) 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 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 Sec. 194 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 court shall, upon the filing of such petition, collect the fees specified in par. 11 of Sec. 114 of Act No. 496, and the court shall, upon the filing 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.

Indeed, it is well-settled that an ordinary action to acquire possession in favor of the purchaser at an extrajudicial foreclosure of real property is not necessary. There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale.[28] The basis of this right to possession is the purchaser's ownership of the property. The mere filing of an ex parte motion for the issuance of the writ of possession would suffice, and no bond is required.[29]

The Court rejects the contention of the petitioners that the RTC erred in not dismissing the petition of the private respondent on the grounds of forum shopping and litis pendentia, in view of the pendency of Civil Case No. Q-98-34094.

The requisites of litis pendentia are the following: (a) identity of parties, or at least such as representing the same interests in both actions; (b) 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.[30] And one element of res judicata is that the judgment or order must be on the merits of the case.[31]

As heretofore ruled by the Court, the petition of the private respondent for a writ of possession was not an ordinary action. Any order or decision of the RTC in LRC Case No. Q-14150(01) is not determinative of the merits of Civil Case No. Q-98-34094.

Well established is the rule that after the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function.[32] The issuance of the writ of possession being a ministerial function, and summary in nature, it cannot be said to be a judgment on the merits, but simply an incident in the transfer of title. Hence, a separate case for annulment of mortgage and foreclosure sale cannot be barred by litis pendentia or res judicata.[33]

Conversely, we reject the petitioners' argument that the ex parte petition for the issuance of a writ of possession should have been dismissed on the ground of forum shopping. 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.[34] In other words, when litis pendentia or res judicata does not exist, neither can forum shopping exist. Having settled that litis pendentia does not exist, it follows then that no forum shopping likewise exists in this case. The Court's ruling in Ong vs. Court of Appeals[35] is instructive, thus:

> 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 possession. Regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice of course to the eventual outcome of said case.[36]

Likewise barren of merit is the petitioners' contention that they were denied their right to due process by the RTC.

Section 7 of Act No. 3135, as amended, specifically provides that a petition (for a writ of possession) is in the nature of an ex parte motion in which the court hears only one side of the controversy.[37] An ex parte proceeding presupposes a right of the petitioners to which there is no adverse party.[38] An ex parte proceeding merely means that it is taken or granted at the instance and for the benefit of one party, and without notice to or contestation by any party adversely affected.[39]

In this case, the RTC opted not to conduct an ex parte hearing. It went out of its way and set the application for a

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writ of possession for hearing as shown by the trial court's Order[40] dated June 25, 2001. Moreover, the petitioners were allowed to file an Answer,[41] and a Rejoinder[42] to the private respondent's Reply. The petitioners were even allowed to adduce and offer documentary evidence.[43] What the fundamental law prohibits is total absence of opportunity to be heard. When a party has been afforded opportunity to present his side, such party cannot feign denial of due process.[44]

The petitioners' contention that the private respondent failed to sufficiently establish its right to a writ of possession is belied by the evidence. In support of its application for a writ of possession, the private respondent submitted the following documentary evidence: (1) real estate mortgage; (2) TCT No. N-143274 in the name of the petitioners, and the annotations on its back of the real estate mortgage, certificate of sale, and the consolidation of ownership; (3) the petition for sale; (4) affidavit of publication of the extrajudicial sale; (5) TCT No. N-221650 in the name of the private respondent; (6) notice to vacate; (7) petitioners' reply to the notice to vacate; and (8) affidavit of consolidation of ownership.

The petitioners fault the trial court for not delving into the validity of the mortgage and the foreclosure proceeding before granting the petition for a writ of possession. This contention is barren of legal basis. The judge to whom an application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure. In the issuance of a writ of possession, no discretion is left to the trial court. Any question regarding the cancellation of the writ or in respect of the validity and regularity of the public sale should be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135.[45]

IN VIEW OF ALL THE FOREGOING, the petition is DENIED for lack of merit. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 74592 are AFFIRMED. Costs against the petitioner.

SO ORDERED.

Austria-Martinez, (Acting Chairman), Tinga, and Chico-Nazario, JJ., concur.
Puno, (Chairman), J., on official leave.

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[1] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang, concurring.

[2] Rollo, p. 88.

[3] Id. at 88-89.

[4] Id. at 95-96.

[5] Id. at 130.

[6] Id.

[7] Id. at 125.

[8] Rollo, p. 61.

[9] Id. at 88-89.

[10] Records, p. 12.

[11] Rollo, pp. 19-23.

[12] Id. at 148-149.

[13] CA Rollo, pp. 17-18.

[14] Id. at 30-31.

[15] Rollo, p. 12.

[16] Id. at 20.

[17] Rollo, pp. 13-14.

[18] Id. at 16-17.

[19] Id. at 212.

[20] Id. at 210-211.

[21] Rollo, pp. 207-210.

[22] Id. at 208.

[23] Id. at 212.

[24] Section 5, Rule 7 of the Rules of Court.

[25] State vs. McNerny, 239 Neb. 887, 479 N.W. 2d 454 (1992).

[26] Donald J. v. Evna M., 81 Cal. App. 3d 929 (1978).

[27] Rollo, p. 30.

[28] United Coconut Planters Bank vs. Reyes, G.R. No. 95095, 7 February 1991, 193 SCRA 756.

[29] Chailease Finance Corporation vs. Ma, G.R. No. 151941, 15 August 2003, 409 SCRA 250, citing Laureano vs. Bormaheco, Inc., G.R. No. 137619, 6 February 2001, 351 SCRA 270.

[30] Panganiban vs. Pilipinas Shell Petroleum Corporation, G.R. No. 131471, 22 January 2003, 395 SCRA 624.

[31] See Dela Rama vs. Mendiola, G.R. No. 135394, 29 April 2003, 401 SCRA 704.

[32] Yulienco vs. Court of Appeals, G.R. No. 141365, 27 November 2002, 393 SCRA 143.

[33] Ong vs. Court of Appeal, G.R. No. 121494, 8 June 2000, 333 SCRA 189.

[34] Philippine Nails and Wires Corporation vs. Malayan Insurance Company, Inc., G.R. No. 143933, 14 February 2003, 397 SCRA 431.

[35] G.R. No. 121494, 8 June 2000, 333 SCRA 189.

[36] Id. at 198.

[37] Black's Law Dictionary, 5[th] ed.

[38] Janin v. Logan, 273 SW 531 (1925).

[39] Regalado, Remedial Law Compendium, Vol. I, 5[th] ed., p. 235.

[40] Records, p. 12.

[41] Id. at 19.

[42] Id. at 37.

[43] Id. at 80.

[44] Dayrit vs. Philippine Bank of Communications, G.R. No. 140316, 1 August 2002, 386 SCRA 117.

[45] China Banking Corporation vs. Ordinario, G.R. No. 121943, 24 March 2003, 399 SCRA 430.

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