

**NORMA S. FACTOR, FE S. FACTOR, HONESTO FACTOR DE LEON,
MARILYN FACTOR BURGOS, RUEBEN[] MA. FACTOR, BEATRIZ F.
CHAN and NARCISO S. FACTOR, JR., Petitioners, vs. ANTONIO V.
MARTEL...**

G.R. No. 161037. February 04, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Assailed in this petition for review on certiorari are the Decision[1] dated October 16, 2003 and Resolution[2] dated December 9, 2003 of the Court of Appeals in CA-G.R. SP No. 73906. The Court of Appeals had affirmed the Resolution[3] dated September 27, 2002 of the Regional Trial Court (RTC) of Las Piñas City, Branch 202, in Land Registration Case (LRC) Case No. 02-0030, and denied petitioners' motion for reconsideration.

The factual antecedents of this case are as follows:

Benito J. Lopez was the registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. S-61176,[4] at Barrio Almanza, Las Piñas City. On December 29, 1993, Lopez sold the land to Antonio V. Martel, Jr. for P75,000,000.[5] The latter had the land subdivided into five lots for which individual titles were issued including TCT Nos. T-69568[6] and T-69572,[7] subjects of the present controversy.

On May 25, 1995, Martel, Jr. learned of a Decision[8] dated December 8, 1994 of the Pasig RTC,[9] Branch 71 which granted an application for registration and confirmation of title to parcels of land in LRC Case No. N-9049. Said case was filed on December 9, 1975 by Teodorica, Enrique, Beatriz, Rueben, Mario, and the heirs of Ricardo and Narciso, all surnamed Factor, as applicants. Their claim was based on possession since time immemorial of lands, among which was the lot covered by TCT No. T-57471[10] from which the title of Benito J. Lopez emanated.

Aggrieved, Benito J. Lopez and Pepito L. Ng, joined by their spouses as formal parties, filed on May 30, 1995 a motion for leave to admit petition to reopen and review the decree of registration.

On January 27, 1997, the Pasig RTC reversed its earlier Order which directed the issuance of a decree of registration in favor of the Factors, thus:

WHEREFORE, premises considered, the Motion for Reconsideration, with Opposition to Motion for Reconsideration is hereby DENIED for lack of merit. The Decision dated December 8, 1994 is RECONSIDERED and SET ASIDE. The case is ordered DISMISSED without pronouncement as to costs.

SO ORDERED.[11]

On the strength of this ruling, Martel, Jr. filed an ex parte petition for the issuance of a writ of possession[12] over the lots covered by TCT Nos. T-69568 and T-69572. The case was docketed as LRC Case No. 02-0030 before the RTC of Las Piñas City, Branch 202, on March 15, 2002. In its Decision dated August 26, 2002, said RTC denied

relief to Martel, Jr. as follows:

WHEREFORE, in view of all the foregoing, the petition for issuance of a writ of possession over the property covered by Transfer Certificates of Title No. T-69568 and T-69572 of the Registry of Deeds of Las Piñas City is hereby DENIED.

SO ORDERED.[13]

Martel, Jr. moved for reconsideration. The same was granted in a Resolution dated September 27, 2002 as follows:

WHEREFORE, in the light of the foregoing, the motion for reconsideration is hereby GRANTED. The Decision dated August 26, 2002 is set aside.

Let a writ of possession be issued in the favor of petitioner Antonio V. Martel, Jr. and against Teodorica Factor, et al., and all persons claiming rights under them and ordering the Deputy Sheriff of this Court to place said petitioner in possession of the subject property.

SO ORDERED.[14]

Petitioners Factors brought the case to the Court of Appeals on certiorari. On October 16, 2003, the appellate court issued the assailed Decision, the fallo of which states:

WHEREFORE, premises considered, the instant petition is hereby DENIED for lack of merit.

SO ORDERED.[15]

Pending resolution of petitioners' motion for reconsideration, Martel, Jr. sold the lots to Pepito L. Ng for the sum of P151,800,000[16] on August 17, 2003. On December 9, 2003, the Court of Appeals denied reconsideration.

Hence, the instant petition raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN ISSUING A WRIT OF POSSESSION IN LRC CASE NO. 02-0030.

II.

WHETHER OR NOT A PETITION FOR THE ISSUANCE OF A WRIT OF POSSESSION IS A PROPER ACTION TO TAKE POSSESSION OF THE PROPERTIES SUBJECT OF [THE] CASE.[17]

Simply put, petitioners are asking this Court to resolve the following questions: (1) whether the issuance of the writ of possession was erroneous; and (2) whether respondent had availed of the appropriate remedy to recover possession of the lands. Both questions are inter-related and have to be addressed jointly.

Petitioners contend that a writ of possession may be issued only pursuant to a decree of registration in an original land registration proceeding. They insist that the writ was erroneously issued inasmuch as the ex parte petition for its issuance was filed by Martel, Jr. outside the original land registration proceeding which was concluded in 1905. Petitioners stress that LRC Case No. N-9049 was brought at their instance, and is still pending appeal; thus, no execution can be had. They contend that Martel, Jr.'s successor Ng ought to file an action for ejectment instead.

Ng counters that the right of a successful party in a land registration case to ask for a writ of possession does not prescribe. He adds that the writ may issue not only against the person defeated in the case but also against anyone

adversely occupying the land or any part thereof during the proceeding until the final decree of registration has been issued. He relies on petitioners' allegation in LRC Case No. N-9049 that they and their predecessors-in-interest have been in continuous possession of the lots since time immemorial. Consequently, they are among those against whom the writ of possession may issue. Ng negates laches reasoning that his predecessor immediately filed an opposition upon learning of LRC Case No. N-9049, and applied for a writ of possession even while the case was on appeal.

After a thorough consideration of the circumstances in this case, we agree that the petition has merit.

A writ of possession is employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment.[18] It may be issued under the following instances: (1) land registration proceedings under Section 17 of Act No. 496;[19] (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (3) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135[20] as amended by Act No. 4118;[21] and (4) in execution sales.

In land registration proceedings, a writ of possession is an order issued by the RTC directing the sheriff to place the applicant or oppositors, or whoever is the successful litigant, in possession of the property.[22]

In this case, Ng advanced two grounds for the allowance of the ex parte petition for a writ of possession: (1) a writ has yet to be issued to enforce the decree of registration awarded to his predecessors-in-interest in the original land registration proceedings; and (2) the Court of Appeals favorably resolved Martel, Jr.'s opposition to the registration of the lots in the name of petitioners.

Ng invokes Original Certificate of Title (OCT) No. 25 issued on January 20, 1905 by virtue of Decree No. 428 in the original land registration case. OCT No. 25 is the title from which TCT No. S-61176 in the name of Benito J. Lopez, and thereafter TCT Nos. T-69568 and T-69572 in the name of his predecessor, Martel, Jr., were derived. Ng's invocation rests on petitioners' claim that they and their predecessors-in-interest had continuously possessed the lots since time immemorial; thus, by tacking the latter's possession to petitioners, a writ of possession may issue against petitioners who are considered adverse possessors of the lots even prior to the issuance of the decree in 1905. On this point, however, we are unable to agree with Ng.

It is well established that a writ of possession may be issued only pursuant to a decree of registration in original land registration proceedings not only against the person who has been defeated in a registration case but also against anyone adversely occupying the land or any portion thereof during the proceedings up to the issuance of the decree.[23]

Here, petitioners applied for registration and confirmation of the land covered by TCT No. S-61176 in 1975, long after the decree of registration was issued in 1905. Neither were petitioners parties to the original registration case. Clearly, they are not the adverse occupants contemplated by law against whom a writ of possession may be enforced. Hence, the appellate court erred gravely when it issued a writ of possession in favor of Martel, Jr.

It is a settled rule that when parties against whom a writ of possession is sought have been in possession of the land for at least 10 years, and they entered into possession apparently after the issuance of the final decree, and none of them had been a party in the registration proceedings, the writ of possession will not issue. A person who took possession of the land after final adjudication of the same in registration proceedings cannot be summarily ousted through a writ of possession secured by a mere motion. Regardless of any title or lack of title of persons to hold possession of the land in question, they cannot be ousted without giving them their day in court in the proper independent proceedings.[24]

Ng's predecessor, Martel, Jr., filed the ex parte petition to implement the Order dated January 27, 1997 of the Pasig RTC in LRC Case No. N-9049. The Order confirmed ownership of the lots in Martel, Jr.'s predecessor, Lopez. In a Manifestation dated August 15, 2007, Ng informed this Court that the Court of Appeals had affirmed the decision in LRC Case No. N-9049. Ultimately, he wants us to execute the Pasig RTC decision in LRC Case No. N-9049 through the petition before the Las Piñas RTC in LRC Case No. 02-0030. However, such a procedural short-cut cannot be done.

Noteworthy, Section 34 of Presidential Decree No. 1529 provides:

SEC. 34. Rules of procedure. – The Rules of Court shall, insofar as not inconsistent with the provisions of this Decree, be applicable to land registration and cadastral cases by analogy or in a suppletory character and whenever practicable and convenient.

Thus, Section 1, Rule 39 of the Rules of Court is pertinent:

SECTION 1. Execution upon judgments or final orders. --- Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution. (Emphasis supplied).

Nothing in Ng's manifestation indicated that the appellate court's decision has become final and executory. Besides, even if the same has become final, a writ of possession remains unavailing as the motion for its issuance was not filed in the same case for which execution was sought.

Pending the final outcome of LRC Case No. N-9049, the only remedy by which Ng can take possession of the lots is through an accion reivindicatoria against petitioners. Accion reivindicatoria is an action to recover ownership over real property, which must be filed in the RTC where the realty is situated. This is so because a writ of possession cannot issue against possessors who claim ownership. Actual possession under claim of ownership raises a disputable presumption of ownership and the true owner must resort to judicial process for the recovery of the property, not summarily through a motion for the issuance of a writ of possession.[25]

WHEREFORE, the petition is GRANTED. The Decision dated October 16, 2003, and Resolution dated December 9, 2003 of the Court of Appeals in CA-G.R. SP No. 73906 are REVERSED and SET ASIDE. LRC Case No. 02-0030 is hereby DISMISSED.

SO ORDERED.

Carpio, Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[*] Reuben in some parts of the records.

[**] The motion for substitution of Pepito L. Ng was noted by the Court in its Resolution dated August 15, 2005.

[1] Rollo, pp. 29-34. Penned by Associate Justice Eliezer R. De los Santos, with Associate Justices B.A. Adefuin-De la Cruz and Jose C. Mendoza concurring.

[2] Id. at 36.

[3] Id. at 60-63. Penned by Presiding Judge Elizabeth Yu Guray.

[4] Records, pp. 99-100.

[5] Id. at 99-102.

[6] Id. at 103-105.

[7] Id. at 106-108.

[8] Rollo, pp. 145-152.

[9] Formerly the RTC of Rizal.

[10] Records, pp. 19-22.

[11] Id. at 114.

[12] Rollo, pp. 38-49.

[13] Id. at 54.

[14] Id. at 63.

[15] Id. at 33.

[16] Id. at 282-288.

[17] Id. at 382.

[18] H. BLACK, BLACK'S LAW DICTIONARY 1611 (6th ed.).

[19] The Land Registration Act.

Sec. 17. The Court of Land Registration, in all matters over which it has jurisdiction, may enforce its orders, judgments, or decrees in the same manner as orders, judgments, and decrees are enforced in the Courts of First Instance, including a writ of possession directing the governor or sheriff of any province or of the city of Manila to place the applicant in possession of the property covered by a decree of the court in his favor and, upon the request of the judge of the Court of Land Registration, the governor or sheriff of any province or of the city of Manila, as the case may be, shall assign a deputy to attend the sittings of the court in that province or city. The governor or sheriff of the province who shall, in person or by his deputy, attend the sittings of the court in any province outside the city of Manila, in accordance with the provisions of this section, shall be allowed three dollars per day, in money of the United States, for each day the courts is in session in his province for attendance by himself and necessary deputies. This allowance shall be in addition to the fees for service of process, and shall be paid from the provincial treasury.

[20] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.

Sec. 7. 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 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 Four hundred and ninety-six, as amended by 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.

[21] *Mendoza v. Salinas*, G.R. No. 152827, February 6, 2007, 514 SCRA 414, 420.

[22] A. NOBLEJAS, *REGISTRATION OF LAND TITLES AND DEEDS* 127 (1992 revised ed.).

[23] *Serra Serra v. Court of Appeals*, G.R. Nos. 34080 and 34693, March 22, 1991, 195 SCRA 482, 490.

[24] *Bernas v. Nuevo*, Nos. L-58438 and L-60423, January 31, 1984, 127 SCRA 399, 402-403.

[25] *Serra Serra v. Court of Appeals*, *supra* note 23, at 491-492.

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