

SPOUSES SANTIAGO AND MA. CONSUELO CARLOS, PETITIONERS, VS. THE COURT OF APPEALS, REGIONAL TRIAL COURT, BRANCH 204, AT MUNTINLUPA CITY, AND LAND BANK OF THE PHILIPPINES, RESPONDE...

G.R. NO. 164036. October 19, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails the Decision[1] dated June 16, 2004 in CA-G.R. SP No. 82571 of the Court of Appeals, which dismissed the petition for certiorari against the Orders[2] dated June 25, 2003, January 5, 2004 and February 23, 2004 in LRC Case No. 03-021 of the Regional Trial Court (RTC), Branch 204, Muntinlupa City. No motion for reconsideration was filed by the petitioners insofar as the June 16, 2004 decision herein assailed is concerned.

The antecedent facts in this controversy are as follows:

Respondent Land Bank of the Philippines (Land Bank) foreclosed petitioner-spouses' mortgaged properties for their failure to pay their obligation. Land Bank was the highest bidder at the foreclosure sale. After the lapse of the redemption period and the consolidation of the properties' title in its name, Land Bank filed an Ex Parte Petition for Issuance of Writ of Possession with the RTC of Muntinlupa City.[3]

Finding the petition to be sufficient in form and substance, the trial court issued an order requiring all interested parties to appear on the date of the hearing and to show cause why the petition should not be granted.[4] A copy of the order was sent to petitioners.

Petitioners filed a consolidated motion to intervene and to dismiss the petition on the grounds of lack of jurisdiction and forum shopping.[5] Petitioners alleged that there is a pending case for the declaration of nullity of the mortgage and foreclosure sale, docketed as Civil Case No. 00-181, with the RTC, Branch 256 also in Muntinlupa City.

On June 25, 2003, the trial court denied the motion to intervene and to dismiss.[6] It held that there was no forum shopping because the resolution of the case would not amount to res judicata in Civil Case No. 00-181, and that the petition for the issuance of the writ of possession to Land Bank could proceed independently of any action for annulment of the sale.

Petitioners moved for reconsideration but it was denied.[7]

In the meantime, the trial court continued to hear the main petition. In the scheduled hearing on September 9, 2003, Land Bank failed to appear thus the trial court dismissed the petition.[8]

On September 16, 2003, Land Bank moved for reconsideration, which was set for hearing on September 25, 2003. Petitioners received a copy of the motion on the day of the hearing. Petitioners opposed the motion for being a

mere scrap of paper since it failed to comply with the three-day prior notice required under Section 4,[9] Rule 15 of the Rules of Court. However, on January 5, 2004, the trial court granted reconsideration citing the policy of the Court to set aside technical rules of procedure in the interest of substantial justice and because a petition for a writ of possession may be granted ex parte.[10]

Petitioners moved for reconsideration but the same was denied on February 23, 2004. Thereafter, they filed with the Court of Appeals a petition for certiorari assailing the June 25, 2003, January 5, 2004 and February 23, 2004 Orders of the trial court.

On June 16, 2004, the Court of Appeals dismissed the petition. It held that a motion and/or petition for the issuance of a writ of possession is an exception to the three-day notice rule, and that the trial court can hear it ex parte.[11]

Hence, the instant petition, which raises the following issues:

I.

IS THE ALLEGED “EX-PARTE” NATURE OF A PROCEEDING UNDER ACT 3135, AS AMENDED, MEANT TO GAG A MORTGAGOR OF AT LEAST AN OPPORTUNITY TO OBJECT TO OR BE HEARD THEREON, AND THEREFORE VIOLATIVE OF THE DUE PROCESS CLAUSE OF THE CONSTITUTION?

II.

ARE THE RULES OF COURT, SPECIFICALLY THE RULES ON MOTION AND SERVICE AND EXISTING JURISPRUDENCE ON THE MATTER APPLICABLE IN A PROCEEDING FOR ISSUANCE OF A WRIT OF POSSESSION FILED AFTER A FORECLOSURE?

III.

ARE THE LAWS, RULES AND JURISPRUDENCE ON FINALITY OF JUDGMENT, THEIR EFFECTS, SPECIFICALLY ON THE JURISDICTION OF COURTS, APPLY IN A WRIT OF POSSESSION PROCEEDINGS?[12]

Simply put, the main issue is whether the Court of Appeals erred in upholding the Orders of the trial court issued on June 25, 2003, January 5, 2004 and February 23, 2004.

Petitioners assert that they were denied due process of law when they were not given a three-day prior notice, which is contrary to Section 1,[13] Article III of the Constitution. Petitioners consider Land Bank’s motion for reconsideration a mere scrap of paper and contend that the filing thereof did not toll the running of the reglementary period. Hence, according to the petitioners, the denial of Land Bank’s petition for the issuance of a writ of possession had attained finality.

Land Bank counters that due process was more than complied with when the trial court, despite the ex parte nature of the proceedings, allowed and entertained the petitioners. Land Bank contends that by the nature of the proceedings and the fact that the redemption period had lapsed, and that title over the property had already been consolidated in its name, the issuance of the writ had become a ministerial duty on the part of the trial court.

At the outset, it must be noted that the three assailed orders are only interlocutory and can only be assailed through an appropriate special civil action under Rule 65,[14] where it must be shown that the trial court acted with grave abuse of discretion in issuing these orders amounting to lack or excess of jurisdiction. It is well-settled that an act of a court or tribunal may only be considered to have been done in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack or excess of

jurisdiction.[15] Considering the circumstances of this case, we agree that there was no grave abuse of discretion on the part of the trial court.

In its June 25, 2003 Order, the trial court properly denied petitioners' motion to dismiss. This Court had consistently held that the pendency of a civil case for annulment of sale is not a sufficient ground to deny the issuance of a writ of possession.[16] The motion for issuance of a writ of possession can proceed independently and its issuance does not bar a separate case for annulment of mortgage and foreclosure sale.[17]

The Orders issued on January 5, 2004 and February 23, 2004 were also proper under Section 7[18] of Act 3135,[19] as amended. The law expressly authorizes the purchaser to petition for a writ of possession by filing an ex parte motion.[20] That being so, there is no need for the Land Bank to notify the parties of the proceedings. The trial court correctly held that the motion for issuance of a writ of possession is an exception to the general three-day notice rule for motions. Nevertheless, the ex parte nature of the proceeding does not deny due process to the petitioners because, to repeat, the issuance of the writ of possession does not bar a separate case for annulment of mortgage and foreclosure sale.

In sum, we rule that the trial court did not act with grave abuse of discretion in issuing the assailed orders, and that the Court of Appeals properly denied the petition for certiorari assailing these orders.

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated June 16, 2004 in CA-G.R. SP No. 82571 of the Court of Appeals is AFFIRMED.

Costs against petitioners.

SO ORDERED.

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

[1] Rollo, pp. 39-53. Penned by Associate Justice Vicente S. E. Veloso, with Associate Justices Marina L. Buzon and Amelita G. Tolentino concurring.

[2] Id. at 111-112, 168 & 172-174.

[3] Id. at 54-58.

[4] Id. at 65.

[5] Id. at 66-69.

[6] Id. at 111-112.

[7] Id. at 148-149.

[8] Id. at 150.

[9] SEC. 4. Hearing of motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[10] Rollo, p. 168.

[11] Id. at 52.

[12] Id. at 284.

[13] Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[14] RULES OF COURT, Rule 41, Sec. 1, par. (c).

SECTION 1. Subject of appeal. – . . .

No appeal may be taken from:

x x x x

(c) An interlocutory order;

x x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

[15] *Miranda v. Abaya*, G.R. No. 136351, July 28, 1999, 311 SCRA 617, 631.

[16] See *Ong v. Court of Appeals*, G.R. No. 121494, June 8, 2000, 333 SCRA 189, 198.

[17] See *Arquiza v. Court of Appeals*, G.R. No. 160479, June 8, 2005, 459 SCRA 753, 765-767.

[18] 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, . . . Such petition shall be made under oath and filed in form of an ex parte motion . . . (Emphasis supplied.)

[19] An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages.

[20] *Camacho v. Philippine National Bank*, G.R. No. 136365, August 16, 2001, 363 SCRA 352, 357, citing *De Gracia v. San Jose, et al.*, 94 Phil. 623, 625 (1954).

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