

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. TEOFILO P. ICOT, ANOLITA ICOT PILAPIL, LENNIE P. ICOT, VILMA ICOT CUYOS, RESTITUTO C. ICOT, FLORIDO A. CUYOS, CAYETANO GARBO, TEO...

G.R. No. 168061. October 12, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the Court of Appeals' Decision[2] dated 7 January 2005 and Resolution dated 3 May 2005 in CA-G.R. SP No. 81495. The Court of Appeals reversed the Decision[3] dated 21 December 2001 and Order dated 29 July 2003 of the Regional Trial Court (RTC) of Mandaue City, Branch 56.

The Antecedent Facts

On 6 July 1976, spouses Vicente and Trinidad Velasco (spouses Velasco) obtained from petitioner Bank of the Philippine Islands (petitioner) a loan amounting to P50,000, secured by a real estate mortgage over a parcel of land located in Liloan, Cebu. The parcel of land was covered by Transfer Certificate of Title (TCT) No. 675, issued in the name of Vicente Velasco, and was particularly described as follows:

Lot No. 958, Pls-823; x x x containing an area of SEVEN THOUSAND ONE HUNDRED EIGHTY-NINE (7,189) SQUARE METERS x x x Bounded on the SE., along line 1-2-3 by Lot 980; Pls-823; along lines 3-4-5-6-7 by Lot 992; Pls-823; on the SW., along line 7-8 by Lot 957, Pls 823; on the NW., along line 8-9 by Road; and on the NE., along line 9-1 by Lot 993, Pls 823. x x x[4]

The spouses Velasco failed to pay the loan, resulting in petitioner foreclosing the mortgaged property. During the auction sale held on 6 July 1979, petitioner was the highest bidder. The spouses Velasco failed to redeem the property during the one-year redemption period; hence, petitioner's ownership was consolidated, and a Definite Deed of Sale was issued in its favor. TCT No. 675 was cancelled, and on 14 October 1982, a new title, TCT No. P-1619, was issued in the name of petitioner.

Meanwhile, Teofilo Icot (respondent) and the late Genaro and Felimon Icot (predecessors-in-interest of the other respondents) claimed to have been in quiet, open and continuous possession of the subject real property which they allegedly acquired from their father, Roberto Icot, through an extrajudicial settlement of estate in 1964. Upon learning of the mortgage of the subject real property, respondents filed separate cases for quieting of title against Velasco. These cases were docketed as Civil Case Nos. CEB-1493[5] and CEB-1494[6] in RTC Branch XXI of Cebu City, and were later consolidated.

On 22 November 1985, RTC Branch XXI of Cebu City issued an Order stating thus:

The defendant Vicente Velasco was given 60 days from September 23, 1985 within which to expedite the repurchase of the properties which plaintiffs herein seek to recover. x x x

However, defendant Vicente Velasco informed the Court that the Bank of Philippine Islands, Cebu Branch, to whom he made the offer to repurchase the properties mortgaged by him for the sum of P50,000.00 has reportedly indorsed his offer to Manila Office of said bank but up to the present no action has been received whether to accept or reject his offer.

x x x the defendant Vicente Velasco is hereby directed to expedite the negotiation and to inform the Court of the result thereof within 30 days from today.

The Bank of Philippine Islands, Cebu Branch, thru its manager is hereby requested for (sic) comment on the aforementioned negotiation for confirmation of said negotiation to the satisfaction of the plaintiffs and the Court. Furnish copy of this order to parties thru their respective counsel and the manager of the bank of Philippine Islands, Cebu Branch.

SO ORDERED.[7] (Emphasis supplied)

In compliance with the above RTC Order, petitioner BPI filed a Manifestation[8] stating that it has favorably endorsed Velasco's proposal to repurchase the real property to its Head Office, but the latter had yet to act on the recommendation.

On 14 August 1986, RTC Branch XXI of Cebu City rendered Judgment based on a Compromise Agreement entered into by the parties, stating thus:

The parties assisted by their respective counsel (sic) submitted the above-entitled two civil cases for judgment based on the following compromise agreement, viz:

1. That the defendant recognizes the ownership and title of the plaintiffs in Civil Case No. CEB-1493 - Teofilo Icot and Genaro Icot - and the plaintiff Filemon Icot in Civil Case No. CEB-1494 over the lands described in their respective complaints;
2. That these lands are among real properties purchased by the defendant from plaintiffs' predecessor-in-interest, unknowing that it had already been partitioned, hence, the defendant mortgaged the real properties purchased to the Bank of the Philippine Islands for P50,000.00;
3. That the whole property mortgaged was foreclosed and remains foreclosed to the present time, but with the awareness brought about by these cases that the properties claimed in the complaints had been included in the mortgage, the defendant had to negotiate with the bank to repurchase the foreclosed collateral to the end that the lands of the plaintiffs, as described in their complaints, would be freed from the encumbrance and plaintiffs' title thereto quieted and restored;
4. That the Bank has agreed at last to have the mortgaged property repurchased in five (5) installments at P10,000.00 an installment, the first installment for the month of July, 1986, having been paid on July 14, 1986, as evidenced by Bank of P.I. Miscellaneous receipt No. 273616 and by the month of November, 1986, the whole repurchase price shall have been paid and the mortgaged-foreclosed property will be freed from any and all encumbrance, including the parcels claimed by the plaintiffs in their complaints;
5. That the defendant had never been in possession of the parcels claimed by the plaintiffs and he executed the mortgage in good faith, without in the least intending to prejudice anyone by said mortgage;
6. That the plaintiffs acknowledge the good faith of the defendant and the fact that the latter had never bothered them in their possession of the lands subject-matter of these cases and factually had not prejudiced their possession thereof, except the doubt created by the mortgage to the bank;
7. That with the repurchase of the subject land in these cases by the defendant and the latter's acknowledgment of the ownership and title over the same in (sic) the individual plaintiffs in these cases, the Parties hereto would pray for a judgment based on the foregoing facts, with the plaintiffs waiving any and all damages alleged and

claimed in their complaint.

WHEREFORE, finding the compromise agreement to be not contrary to law, morals, good customs, public order and public policy, the same is hereby approved and judgment is hereby rendered on the basis thereof, with the terms of the compromise agreement constituting as dispositive part thereof and the parties are hereby enjoined to comply therewith in good faith.

SO ORDERED.[9]

On 17 October 1988, petitioner and Velasco entered into a Contract to Sell wherein the former agreed to sell to the latter the subject real property for P60,387, payable within a year on installment basis. Velasco failed to pay the amount due, prompting petitioner to cancel the Contract to Sell. In a letter dated 10 June 1993, petitioner reiterated its cancellation of the contract and requested Velasco to peacefully surrender possession of the subject property.[10]

On 23 February 1994, respondents Amancio P. Icot and Florido A. Cuyos wrote petitioner a letter offering to purchase the subject property for the amount of P150,000. The amount was later increased to P250,000, but the same was rejected by petitioner for being too low.[11]

On 26 October 1999, petitioner filed with the RTC of Mandaue City a Petition for the Issuance of a Writ of Possession, docketed as LRC Case No. 3.

The Trial Court's Ruling

On 21 December 2001, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, and finding the Petition meritorious, the same is hereby granted. Accordingly, let a Writ of Possession be issued to petitioner.

SO ORDERED.[12]

Respondents filed a Motion for Reconsideration, but this was denied by the RTC in its Order dated 29 July 2003.

The Court of Appeals' Ruling

Respondents filed with the Court of Appeals a Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure. On 7 January 2005, the Court of Appeals rendered judgment granting the petition and reversing the RTC decision. We quote the dispositive portion of the Court of Appeals' decision below.

WHEREFORE, premises considered, finding the petition meritorious, the same is hereby granted and the assailed Decision of the trial court dated December 21, 2001 as well as its Order dated July 29, 2003 are hereby reversed and set aside.

SO ORDERED.[13]

Petitioner's Motion for Reconsideration was denied by the Court of Appeals in its Resolution of 3 May 2005.[14]

Hence, this appeal.

The Issue

The sole issue for resolution in this case is whether petitioner is entitled to the issuance of a writ of possession of the subject property.

The Court's Ruling

We find the appeal without merit.

A writ of possession is generally understood to be an order whereby the sheriff is commanded to place a person in possession of a real or personal property.[15] A writ of possession may be issued under the following instances: (1) land registration proceedings under Section 17 of Act 496; (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; and (3) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118 (Act 3135).[16] This case involves the third instance. Under Section 7 of Act 3135, a writ of possession may be issued either (1) within the one year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond[17] or of a separate and independent action.[18] This is founded on the purchaser's right of ownership over the property which he bought at the auction sale and his consequent right to be placed in possession thereof.[19] However, this rule admits of an exception, that is, Section 33 (former Section 35) of Rule 39 of the Revised Rules of Court, which provides that the possession of the mortgaged property shall be given to the purchaser "unless a third party is actually holding the property adversely to the judgment obligor." [20] We quote section 33, to wit:

Sec. 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. --If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

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 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. (Emphasis supplied)

In the recent case of *Development Bank of the Philippines v. Prime Neighborhood Association*, [21] we reiterated our previous ruling in *Philippine National Bank v. Court of Appeals* [22] that "the obligation of a court to issue an ex parte writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor." We further held, thus:

Under [Article 433 of the Civil Code], [23] 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 ownership claims of the contending parties may be properly heard and adjudicated.

An ex parte petition for issuance of a possessory writ under Section 7 of Act 3135[, as amended,] is not, strictly speaking, a "judicial process" as 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."

It should be emphasized that an ex parte petition for issuance of a writ of possession is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act 3135, as amended. Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court, any property brought within

the ambit of the act 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 extrajudicially foreclosed realty, who claims a right superior to that of the original mortgagor, will have no opportunity to be heard on his claim in a proceeding of this nature. 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.

Besides, as earlier stressed, Article 433 of the Civil Code, cited above, requires nothing less than an action for ejectment 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.[24]

We also held in *Tan Soo Huat v. Ongwico*,[25] that:

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. There is neither legal ground nor reason of public policy precluding the court from ordering the sheriff in this case to yield possession of the property purchased at public auction where it appears that the judgment debtor is the one in possession thereof and no rights of third persons are involved. (Emphasis supplied)

Thus, the right of possession by a purchaser in an extrajudicial foreclosure of real property is recognized only as against the judgment debtor and his successor-in-interest, but not as against persons whose right of possession is adverse to the latter.[26] In this case, respondents are third parties in possession of the subject real property, holding the same under a title adverse to that of the mortgagor/judgment obligor, Velasco. Respondents are claiming title by virtue of an extrajudicial settlement of their father's estate executed in 1964. Upon learning of the mortgage of the real property by Velasco to petitioner, respondents filed a case for quieting of title against Velasco. The latter later acknowledged or "recognized" respondents' ownership of the real property in the Compromise Agreement executed by the parties in the quieting of title case. Velasco even agreed to undertake restitution of the subject property by contracting anew with and repurchasing the foreclosed property from petitioner.

Moreover, respondents are not parties to the mortgage contract between the spouses Velasco and petitioner. As correctly ruled by the appellate court, the mere mention of the mortgage of the real property in the Compromise Agreement did not make respondents privies to the mortgage contract between the spouses Velasco and petitioner. Moreover, respondents' offer to repurchase the foreclosed property from petitioner is not tantamount to stepping into the shoes of Velasco, nor would such offer qualify respondents as Velasco's successors-in-interest. Rather, the offer may be considered as respondents' last ditch effort to avoid being deprived of the property they claim to have possessed since time immemorial.

Petitioner's right to issuance of a writ of possession cannot be invoked against respondents. Respondents' possession of the subject real property is legally presumed to be pursuant to a just title which petitioner may endeavor to overcome in a judicial proceeding for recovery of property.

WHEREFORE, we DENY the petition. We AFFIRM the Court of Appeals' Decision dated 7 January 2005 and Resolution dated 3 May 2005 in CA-G.R. SP No. 81495.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice L. Yap, with Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos, concurring.

[3] Penned by RTC Judge Augustine A. Vestil.

[4] Rollo, p. 80.

[5] Entitled Teofilo Icot and Genaro Icot v. Vicente Velasco. CA rollo, pp. 14-17.

[6] Entitled Filemon Icot v. Vicente Velasco. Id. at 18-21.

[7] Rollo, p. 82.

[8] Undated; signed by BPI Cebu Branch Manager Andres V. Soriano. CA rollo, p. 36.

[9] Rollo, pp. 84-85.

[10] Id. at 90.

[11] Id. at 96-97.

[12] Id. at 120.

[13] Id. at 139.

[14] Id. at 164.

[15] *A.G. Development Corporation v. Court of Appeals*, 346 Phil. 136, 141 (1997), citing *Moreno*, *Philippine Law Dictionary* (1972).

[16] *Spouses Ong v. Court of Appeals*, 388 Phil. 857, 863-864 (2000), citing *Gatchalian v. Arlegui*, 166 Phil. 236, 248 (1977); *Estipona v. Navarro*, 161 Phil. 379, 388 (1976); *Ramos v. Mañalac*, 89 Phil. 270, 275 (1951); *Rivera v. Court of First Instance of Nueva Ecija*, 61 Phil. 201 (1935).

[17] *Spouses Ong v. Court of Appeals*, citing *Navarra v. Court of Appeals*, G.R. No. 86237, 17 December 1991, 204 SCRA 850, 856; *UCPB v. Reyes*, G.R. No. 95095, 7 February 1991, 193 SCRA 756, 760-761, 764; *Banco Filipino Savings and Mortgage Bank v. Intermediate Appellate Court*, 225 Phil. 530 (1986); *Marcelo Steel Corp. v. Court of Appeals*, 153 Phil. 362, 370-371 (1973); *De Gracia v. San Jose*, 94 Phil. 623 (1954).

Section 7 of Act 3135 provides:

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 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 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.

[18] IFC Service Leasing and Acceptance Corporation v. Nera, 125 Phil. 595, 599 (1967).

[19] Roxas v. Buan, G.R. No. L-53798, 8 November 1988, 167 SCRA 43, 48.

[20] Id.; IFC Service Leasing and Acceptance Corporation v. Nera, supra note 18.

[21] G.R. Nos. 175728 and 178914, 8 May 2009.

[22] 424 Phil. 757 (2002).

[23] 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.

[24] DBP v. Prime Neighborhood Association, supra note 21; PNB v. Court of Appeals, supra note 22 at 769-771.

[25] 63 Phil. 746, 749 (1936); reiterated in IFC Service Leasing and Acceptance Corporation v. Nera, supra note 18.

[26] DBP v. Prime Neighborhood Association, supra note 21, citing Roxas v. Buan, supra note 19.

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