

SAN FERNANDO RURAL BANK, INC., PETITIONER, VS. PAMPANGA OMNIBUS DEVELOPMENT CORPORATION AND DOMINIC G. AQUINO, RESPONDENTS.*G.R. NO. 168088. April 04, 2007*

Ponente: CALLEJO, SR., J.

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Before the Court is a Petition for Review under Rule 45 of the Rules of Court, assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 75787 as well as the Resolution[2] which denied the motion for reconsideration thereof. The appellate court set aside the Order[3] of the Regional Trial Court (RTC), San Fernando, Pampanga, Branch 44, in LRC No. 890, which in turn had granted the petition of San Fernando Rural Bank, Inc. (petitioner) for the issuance of a writ of possession.

The Antecedents

Pampanga Omnibus Development Corporation (respondent PODC) was the registered owner of a parcel of land in San Fernando, Pampanga (now San Fernando City). The 61,579-square-meter lot was covered by Transfer Certificate of Title (TCT) No. 275745-R.

Respondent PODC secured two loans from petitioner and Masantol Rural Bank, Inc. (MRBI) at an annual interest of 24%: P750,000.00 on April 20, 1989, to mature on April 15, 1990;[4] and another P750,000.00 on May 3, 1989, payable on April 28, 1990.[5] The loans were evidenced by separate promissory notes executed by Federico R. Mendoza and Anastacio E. de Vera. To secure payment of the loans, respondent PODC executed a real estate mortgage over the subject lot in favor of the creditor banks.[6] The contract provided that in case of failure or refusal of the mortgagor to pay the obligation secured thereby, the real estate mortgage may be extrajudicially foreclosed in accordance with Act No. 3135, as amended.[7]

Eliza M. Garbes (PODC President and daughter of Federico Mendoza), together with her husband Aristedes Garbes, secured a P950,000.00 loan from petitioner on March 27, 1992. The loan was to mature after 180 days or on September 23, 1992.[8] Mendoza signed as co-borrower in the promissory note executed by the spouses. The spouses also executed a chattel mortgage over their personal property as security for the payment of their loan account.[9]

Upon respondent PODC's failure to pay its loan to petitioner, the latter filed a petition for extrajudicial foreclosure of real estate mortgage and at the auction on April 23, 2001, petitioner emerged as the winning bidder for P1,245,982.05. The Ex-Officio Sheriff executed a Certificate of Sale[10] on May 9, 2001 which stated that "the period of redemption of the property shall expire one (1) year after registration in the Register of Deeds." The certificate was annotated at the dorsal portion of TCT No. 275745-R on June 7, 2001. Petitioner did not file a petition for a writ of possession during the redemption period.

On May 11, 2002, petitioner, through Eliza Garbes (with the authority of petitioner's board of directors),[11]

executed a notarized deed of assignment[12] in favor of respondent Dominic G. Aquino over its right to redeem the property. On May 29, 2002, respondent Aquino offered to redeem the property for P1,588,094.28, but petitioner rejected the offer and demanded the payment of P16,805,414.71 (including the loan of the spouses Garbes)[13] as redemption money. Respondent Aquino rejected the demand of petitioner.

On May 30, 2002, respondent Aquino remitted Cashier's Check No. 0000202756[14] for P1,588,094.28 to the Ex-Officio Sheriff as redemption money for the property for which he was issued Receipt No. 15582906 dated May 31, 2002.[15]

In a letter[16] dated June 4, 2002, the Ex-Officio Sheriff informed petitioner that the property had been redeemed by respondent Aquino for P1,588,094.28. She requested petitioner for the computation of the correct redemption price before the lapse of the reglementary period to redeem the property. Petitioner then submitted a statement of account indicating that the redemption price was P9,052,309.23, and including the loan of the spouses Garbes (P7,753,105.48), a total of P16,805,414.71.[17] Thereafter, the Ex-Officio Sheriff computed the redemption price (based on the General Banking Act [R.A. No. 8791], and The Rural Bank Act of 1992 R.A. No. 7353) to be P5,194,742.50.[18] When respondent Aquino was apprised of this, he remitted on June 7, 2002 a cashier's check for P3,606,648.52, representing the difference between the redemption price computed by the Ex-Officio Sheriff (P5,194,742.50) and the amount he had earlier paid (P1,588,094.28). The Ex-Officio Sheriff issued Official Receipt No. 15582907 to respondent Aquino, and on June 7, 2002, a Certificate of Redemption.[19] The certificate reads in part:

WHEREAS, before the expiration of the one (1) year period to redeem, by virtue of the Deed of Assignment executed by the President of the Pampanga Omnibus Dev't. Corp., Mr. DOMINIC G. AQUINO redeemed the said property in the total amount of FIVE MILLION ONE HUNDRED NINETY-FOUR THOUSAND SEVEN HUNDRED FORTY-TWO and 50/100 (P5,194,742.50) paid under Official Receipts Nos. 15582906 and 15582907 dated May 31, 2002 and June 7, 2002, respectively, and have issued this CERTIFICATE OF REDEMPTION under the guarantees prescribed by law.

City of San Fernando (P), June 7, 2002.[20]

On the same day, petitioner's representative Elvin Reyes went to the office of the Ex-Officio Sheriff and inquired how the amount of P5,194,742.50 was arrived at. The Ex-Officio Sheriff explained to him that she had accepted the redemption price in accordance with the provisions of R.A. Nos. 8791 and 7353. She further explained that she had furnished petitioner with a copy of the Certificate of Redemption she had earlier executed; however, Reyes refused to receive a copy of the Certificate of Redemption.[21]

On June 10, 2002, petitioner, through its president Rogelio D. Reyes, executed an Affidavit of Consolidation[22] over the property. It was alleged therein that respondent PODC or any other person/entity with the right of redemption did not exercise their right to repurchase within one year from June 7, 2001. The affidavit was filed with the Office of the Register of Deeds on the same day. The penultimate paragraph reads:

That the aforesaid Mortgagors nor any other persons or entity entitled with the right of redemption did not exercise their right of repurchase and a period of more than one (1) year from June 7, 2001 has already elapsed and by reason thereof, the San Fernando Rural Bank, Inc. do hereby request the Registry of Deeds of the province of Pampanga, after the payment of the lawful fees of this office to cancel Transfer Certificate of Title No. 275745-R and to issue a new Certificate of Title in favor of the San Fernando Rural Bank, Inc.[23]

The affidavit was entered in the Registry Book in the Office of the Register of Deeds as Entry No. 784. However, no new title was issued in favor of petitioner.

In a letter[24] dated June 10, 2002, the Ex-Officio Sheriff informed petitioner that respondent Aquino had

redeemed the property and requested petitioner, through its president, to turn over the owner's duplicate of TCT No. 275745-R before the redemption price of P5,194,742.50 would be remitted. She appended to the letter a copy of the Certificate of Redemption she had executed in favor of respondent Aquino. However, petitioner refused to do so.

Meanwhile, the Ex-Officio Sheriff fell ill and failed to report for work up to June 14, 2002. She then wrote petitioner, reiterating her request for the delivery of TCT No. 275745-R. She, however, failed to file the Certificate of Redemption with the Register of Deeds.[25]

When respondent Aquino learned that petitioner had filed an Affidavit of Consolidation, he sent a letter[26] dated June 14, 2002 to the Register of Deeds, informing the latter that he was the assignee under the Deed of Assignment executed by respondent PODC, and that as shown by the appended Certificate of Redemption he had redeemed the property on June 7, 2002. He also insisted that he had redeemed the property within the period therefor, and requested the Register of Deeds not to register the Affidavit of Consolidation and to cancel TCT No. 275745-R.[27]

On June 17, 2002, respondent Aquino filed the Certificate of Redemption executed by the Ex-Officio Sheriff with the Office of the Register of Deeds. The Register of Deeds entered the Certificate of Redemption in the Primary Entry Book of Entries under Entry No. 1205.[28] On even date, the Register of Deeds entered the deed of assignment executed by respondent PODC in favor of Aquino in the Primary Book of Entries as Entry No. 1208.

Meanwhile, the Registrar of Deeds was in a quandary; he was not certain whether it was proper for him to issue a new title to petitioner. In a letter[29] dated June 18, 2002, he requested the Administrator of the Land Registration Authority (LRA), by way of consulta, to issue an opinion on whether a new title should be issued to petitioner, or the Certificate of Redemption in favor of respondent Aquino should be annotated at the dorsal portion of TCT No. 275745-R.

On October 15, 2002, petitioner filed a Petition for a Writ of Possession in the RTC of Pampanga. Petitioner alleged that it had purchased the property at public auction as evidenced by the Certificate of Sale appended thereto; the Certificate of Sale was annotated at the dorsal portion of TCT No. 275745-R on June 7, 2001; as far as he was concerned, the right of respondent PODC to redeem the property had already expired; and under Act No. 3135, as amended, it is entitled to the possession of the property during or even after the redemption period. It prayed that the corresponding writ of possession over the property be issued in its favor upon the filing of the requisite bond in an amount equivalent to the market value of the property or in an amount as the court may direct.[30] Petitioner appended to its petition a certified true copy of the Certificate of Sale executed by the Ex-Officio Sheriff in its favor over the property. The case was docketed as LRC No. 890.

The court set the hearing of the petition at 8:30 a.m. on November 28, 2002 and sent the corresponding notices to respondent PODC. [31]

During the hearing, respondent PODC opposed the petition on the following grounds: petitioner deliberately concealed the fact that the property had been redeemed on June 7, 2002; respondent Aquino had paid P5,194,742.00 as redemption money based on the computation of petitioner; the Ex-Officio Sheriff had executed a Certificate of Redemption in favor of respondent Aquino on June 7, 2002, a copy of which petitioner refused to receive; respondent Aquino, as assignee, had offered to redeem the property on May 29, 2002 and tendered the amount of P1,588,094.28, but petitioner insisted that the redemption price was P16,805,414.71, including the loan account of the spouses Garbes; that since respondent Aquino had redeemed the property from the Ex-Officio Sheriff on June 7, 2002 within the one-year period after paying the total amount of P5,194,742.50, it was respondent Aquino, and not petitioner, who is entitled to a writ of possession;[32] and that besides, he was already

in possession of the property.[33] It insisted that petitioner filed its petition to preempt the resolution of the LRA on the consulta of the Register of Deeds. The oppositor prayed that the petition be denied and that it be granted such other relief and remedies just and equitable under the premises.

In its Reply, petitioner averred that since respondent Aquino had offered an amount short of the redemption price of P16,805,414.71, under Section 47 of R.A. No. 8791 there was no valid redemption of the property. The loan of the spouses Garbes was intended for respondent PODC as borrower. Petitioner alleged that it would have been foolhardy for it to grant a P950,000.00 loan to the spouses without any security. Hence, unless the entire loan account of respondent PODC and the spouses Garbes (P16,805,414.71) was paid, the mortgage persisted.[34] It further posited that, since respondent PODC had already assigned its right to redeem the property, the oppositor had no more right or interest over the property; it was thus not the proper party as oppositor.

By way of rejoinder, respondent PODC averred that the Certificate of Redemption executed by the Ex-Officio Sheriff is presumed valid and legal; the RTC, acting as a Land Registration Court, had no jurisdiction to pass upon the validity of the Certificate of Redemption;[35] upon the execution of the Deed of Assignment in favor of respondent Aquino and the payment of redemption money, the latter had taken actual possession of the property; based on the Certificate of Redemption, he had developed the property and introduced a lot of improvements; and since a third party was in possession of the property, possession could no longer be given to petitioner via a writ of possession. Respondent PODC maintained that petitioner was not entitled to a writ of possession until the title was consolidated in its name.

On December 12, 2002, the LRA resolved the consulta of the Register of Deeds as follows:

While it is clear from the records that an agent of the assignee tried to redeem the property within the one (1) year period of redemption and, in fact, the Certificate of Redemption was executed by the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of San Fernando City, Pampanga on the last day of the redemption period, the same was not registered before the Registry of Deeds within the one (1) year period of redemption. Borne by the records is the receipt before the registry of the Certificate of Redemption and other related documents on June 17, 2002 for annotation. Hence, the same was not registered within the aforesaid one (1) year redemption period.

Considering that the document first presented and entered in the Primary Entry Book of the registry is the Affidavit of Consolidation in favor of the creditors, the mortgagee bank and not the Certificate of Redemption in favor of the assignee of the debtor-mortgagor, although admittedly, the latter instrument was executed on the last day of the redemption period but not, in fact, registered within the same period, under the premises, the consolidating mortgagee is possessed with a superior right than the redemptioner. Under the law, the first in registration is the first in law.[36]

The dispositive portion of the Resolution of the LRA Administrator reads:

WHEREFORE, premises considered, this Authority is of the opinion and so holds that the Affidavit of Consolidation is superior over the Certificate of Redemption, hence, registrable on TCT No. 275745-R.

SO ORDERED.[37]

Respondents filed a motion for reconsideration of the Resolution of the LRA Administrator.

On December 20, 2002, the court in LRC No. 890 issued an Order granting the petition and ordered the issuance of a writ of possession, on a bond equivalent to the market value of the property. It ruled that petitioner, as purchaser at the foreclosure sale, was entitled to a writ of possession. The question of the validity of the redemption made by respondent Aquino, to whom respondent PODC had assigned its right to redeem the property, as well as the registrability of the Affidavit of Consolidation executed by petitioner, through its

president, and the validity of the Certificate of Redemption executed by the clerk of court and Ex-Officio Sheriff of the RTC cannot be raised as a justification for opposing the petition. It declared that the proceedings for the issuance of a writ of possession were ex-parte and it was the court's ministerial duty to issue the writ.

Furthermore, the court held that petitioner's right to the possession of the foreclosed property is bolstered by the fact that no third party was actually holding the property adverse to respondent PODC. Respondent Aquino, as assignee of respondent PODC's right to redeem could not be considered a party holding the property adversely to respondent PODC. Neither was there any pending civil case involving the rights of third parties. Consequently, it was the ministerial duty of the RTC to issue a writ of possession in favor of petitioner, as the winning bidder in the public auction.

The court declared that the purpose of the law in requiring the filing of a bond is to answer for the reasonable rental for a period of twelve months for the use of the property during the period of redemption. Since the period of redemption had already expired, a bond was no longer necessary. Nevertheless, the court granted petitioner's prayer to put up a bond in the amount equivalent to the market value of the property. The court ruled that petitioner was entitled to the possession of the property, together with improvements existing thereon, as a mere incident of its right of ownership.[38]

Respondents filed a motion for reconsideration of the order, contending that petitioner was entitled to a writ of possession after the lapse of the period for redemption only if a Torrens title had been issued in its favor. Since the one-year redemption period had lapsed without petitioner having been issued any Torrens title, the court erred when it granted the petition for a writ of possession. It also pointed out that petitioner had failed to present any title under its name.

For its part, petitioner stated in its Opposition to respondents' motion for reconsideration, that it was not necessary that a buyer in a public auction be issued a title in its name before it could be entitled to a writ of possession upon the expiration of the redemption period. The title is merely an evidence of ownership; it is the Certificate of Sale that vests ownership in the buyer over the property sold. It insisted that the purchaser was entitled to the possession of the property even after the lapse of the redemption period.[39]

On February 18, 2003, the court issued an Order denying the motion for reconsideration of respondents. The court ruled that petitioner, as purchaser at public auction, acquired the right to possess the property, and the right of the mortgagor from the time it purchased the property and not from the issuance of the title over the property in its name.[40]

On March 6, 2003, respondents filed a Petition for Certiorari with the CA, assailing the orders of the RTC as follows:

- Public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it granted private respondent's prayer for an issuance of writ of possession in its favor when serious issues affecting private respondent's right to possess the subject lot is still pending determination by the Land Registration Authority.
- Public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it allowed private respondent to post a redemption bond beyond the redemption period.[41]

They averred that the RTC should have denied the petition for a writ of possession pending the resolution of the consulta by the LRA. They asserted that the issues before the RTC were substantial, namely: (a) whether respondent Aquino, as the assignee of the right of respondent PODC to redeem the property, had the right to do so; (b) whether he had redeemed the property as evidenced by the Certificate of Redemption executed by the

Ex-Officio Sheriff; and (c) the redemption price. They insisted that the obligation of the RTC to issue the writ of possession ceased to be ministerial.

Respondents maintained that they had the right to redeem the property. Since there were grave doubts about the parties' contentions as to who had the right to possess the property, the RTC should have dismissed the petition for a writ of possession pending determination of the substantial issues by the LRA. The trial court should have relied on the rulings of this Court in *Rivero de Ortega v. Natividad*,^[42] *Barican v. Intermediate Appellate Court*,^[43] and *Sulit v. Court of Appeals*.^[44] Respondents asserted that petitioner was not entitled to a writ of possession because contrary to Section 7 of Act No. 3135, it posted a bond beyond the period for redemption. The case was docketed as CA-G.R. SP No. 75787.

In its Comment on the petition, petitioner insisted on its right to a writ of possession and that the trial court acted in accordance with law and the facts of the case. Moreover, it averred that the RTC, sitting as a land registration court, had jurisdiction over the petition for a writ of possession; thus, the remedy of respondents was to appeal the assailed order and not to file a petition for certiorari in the CA.

The CA failed to resolve the plea of respondents for a temporary restraining order. Petitioner filed a motion for execution of the December 20, 2002 Order of the trial court in LRC No. 890. The RTC granted the motion and issued a writ of possession on May 14, 2003.^[45] The Sheriff implemented the writ and placed petitioner in possession of the property.

On September 4, 2003, petitioner filed a Complaint^[46] against respondents and the Ex-Officio Sheriff in the RTC of Pampanga, for the nullification of the Deed of Assignment executed by PODC in favor of Aquino and of the Certificate of Redemption executed by the Ex-Officio Sheriff, and for damages with a plea for injunctive relief. Petitioner filed an Amended/Supplemental Complaint and prayed that judgment be rendered in its favor, thus:

WHEREFORE, it is prayed that a judgment be rendered in favor of the plaintiff and against the defendants:

a) Annuling the Deed of Assignment dated May 11, 2002 executed by and between defendants PODC and AQUINO.

b) Declaring the Certificate of Redemption dated June 7, 2001 issued by the defendant Clerk of Court and Ex-Officio Sheriff as null and void ab initio.

c) Ordering the defendants, jointly and severally, to pay the plaintiff the amount of:

- P100,000.00 as and for moral damages.

- P100,000.00 as and for exemplary damages.

- P50,000.00 as and for attorney's fees plus the costs of suit.

OTHER RELIEF and remedies just equitable are also prayed for.^[47]

The case was docketed as Civil Case No. 12785.

Meanwhile, the LRA Administrator issued a Resolution recalling the Resolution dated December 12, 2002 and declared that the Certificate of Redemption executed by the Ex-Officio Sheriff was superior to the Affidavit of Consolidation filed by petitioner. Based on the June 14, 2002 letter of the Ex-Officio Sheriff and the Certificate of Redemption, respondent Aquino, who was the assignee of respondent PODC, had redeemed the property on June 7, 2002. Petitioner was already aware as early as June 7, 2002 of the redemption of the property by respondent Aquino; hence, the date of registration of the Certificate of Redemption on June 17, 2002 was of no legal consequence.

Accordingly, on September 10, 2003, respondents filed (in LRC No. 890) a Joint Motion to quash the writ of possession issued by the trial court and for the issuance of a new TCT. They averred that the LRA Administrator finally resolved that the Certificate of Redemption issued by the Ex-Officio Sheriff was superior to the Affidavit of Consolidation of petitioner. On the basis of the LRA Order, the Register of Deeds issued TCT No. 544978-A over the property in the name of respondent Aquino as the registered owner.

The court denied the joint motion on November 10, 2003, holding that respondent Aquino, as the registered owner of the subject property, should initiate the appropriate action in the proper court in order to exclude petitioner or any other person from the physical possession of his property.[48] The court ruled that after placing petitioner in possession of the property, the court had lost jurisdiction over the case.

On November 27, 2003, respondents filed before the CA their Joint Notice of Appeal[49] from the November 10, 2003 Order of the RTC in LRC No. 890. The appeal was docketed as CA-G.R. CV No. 81607.

On November 28, 2003, petitioner filed a Manifestation,[50] stating that under Section 47 of R.A. No. 8791, the period to exercise the right to redeem shall be until but not after the registration of the Certificate of Foreclosure Sale with the Register of Deeds which is in no case shall be more than three (3) months after the foreclosure, whichever is earlier.[51] The Certificate of Foreclosure Sale was registered on June 7, 2001 and since respondent PODC had assigned/transferred the right to redeem the property to respondent Aquino only on May 11, 2002, the redemption period had already lapsed.

On December 18, 2003, the CA rendered judgment in CA-G.R. SP No. 75787 granting the petition of respondents and setting aside the assailed orders of the trial court. The fallo of the decision reads:

WHEREFORE, the petition is GRANTED and the orders dated December 20, 2002[2] and February 18, 2003 of respondent judge are VACATED and SET ASIDE.

SO ORDERED.[52]

The appellate court ruled that the December 20, 2002 Order of the RTC granting the petition for a writ of possession was interlocutory and not final; hence, it may be questioned only via petition for certiorari under Rule 65 of the Rules of Court, not by appeal. The CA cited the ruling of this Court in *City of Manila v. Serrano*. [53]

The CA further held that the RTC committed grave abuse of discretion amounting to excess or lack of jurisdiction when it granted the application of petitioner for a writ of possession. Respondent Aquino, as successor-in-interest of respondent PODC, had redeemed the property on June 7, 2002 in accordance with Section 6 of Act No. 3135, as amended, and in relation to Section 27(a), Rule 39 of the Rules of Court. Thus, although the Certificate of Redemption was not registered before the Register of Deeds, he was entitled to the possession thereof; the registration of the Certificate of Redemption in the Office of the Register of Deeds is merely required to bind third persons. According to the CA, petitioner may not refuse the redemption by respondent Aquino because the right of petitioner over the property was merely inchoate until after the redemption period had lapsed without the right being exercised by those allowed by law.

Petitioner moved for the reconsideration of its decision on the ground that, under Section 47 of R.A. No. 8791, respondent PODC had only up to the registration of the Certificate of Foreclosure Sale (June 7, 2001) but not more than three (3) months from the public auction, whichever is earlier, within which to redeem the property; respondent PODC, on the other hand, assigned its right to redeem the property on May 11, 2002, long after the redemption period had expired; hence, respondent PODC had no more right to assign it to respondent Aquino. Consequently, the latter had no right to redeem the property, and the Certificate of Redemption executed by the Ex-Officio Sheriff was null and void. Moreover, respondent Aquino failed to pay the correct amount of the

redemption price. Petitioner claimed that it acted in good faith when it had its Affidavit of Consolidation registered in the Register of Deeds. In sum, petitioner ascribes error on the part of the CA in nullifying the order of the RTC.

However, the CA denied the motion of petitioner on the ground that by invoking Section 47 of R.A. No. 8791, it thereby changed its theory on appeal which, as held by this Court in *Dalumpines v. Court of Appeals*,^[54] is prohibited.^[55]

Petitioner SFRBI then filed a petition for review on certiorari with this Court for the reversal of the Decision and Resolution of the CA, and raised the following issues:

I

Whether or not the Court of Appeals seriously erred when it sanctioned the Respondents' resort to Certiorari under Rule 65 of the Revised Rules of Court, questioning a final order and not an interlocutory order of the RTC.

II

Whether or not the respondents are guilty of forum shopping by taking both the remedy of appeal and certiorari on the same issues and substantially the same set of facts.

III

Whether or not the Court of Appeals committed serious error when it ruled on a matter that was not and could not have been submitted for its adjudication.

IV

Whether or not the Honorable Court is precluded from reviewing the factual findings of the Court of Appeals.

V

Whether or not the petitioner SAFER Bank, as well as the Honorable Court, is precluded from applying the governing law, under which the redemption period had clearly expired.^[56]

On the first issue, petitioner avers that the December 20, 2002 Order of the RTC granting the writ of possession in its favor was final; hence, the remedy of respondents herein, as oppositors below, was to appeal to the CA and not to file a special civil action for certiorari. In fact, petitioner asserts, the writ of possession issued by the RTC had already been implemented when respondents filed their petition in the CA on December 10, 2003.

Petitioner also claims that the assailed order of the RTC was in accordance with the law and the Rules of Court; even if it is merely an error of judgment and not a jurisdictional error, resort to a petition for certiorari was inappropriate. Respondents were, thus, proscribed from filing a petition for certiorari in the CA since the appeal was an adequate and speedy remedy in the ordinary course of law and, indeed, they appealed the November 10, 2003 Order of the RTC in LRC No. 890 to the CA in CA-G.R. CV No. 81607. It had also posted a bond in the RTC to answer for any damages. The ruling of this Court in *City of Manila v. Serrano*^[57] is, therefore, not applicable.

Petitioner further avers that the CA erred in applying Act No. 3135, as amended, instead of Section 47 of R.A. No. 8791, the General Banking Act of 2000. Respondent PODC had the right to redeem the property not later than June 7, 2001. Undisputably, respondent PODC failed to redeem the property before the registration of the Certificate of Sale; hence, when respondent PODC executed the deed of assignment on May 11, 2002 in favor of respondent Aquino, it had no more right to redeem the property. Thus, it could not have assigned the right to

redeem the property to respondent Aquino. The latter redeemed the property only on June 7, 2002, long after the Certificate of Sale was registered on June 7, 2001. Since there was no valid redemption of the property by respondent Aquino, petitioner claimed that it was entitled to the writ of possession of the property. It further insisted that the RTC, acting as a Land Registration Court, had limited jurisdiction; it had no jurisdiction to resolve the issues on the validity of the deed of assignment and the legality of respondent Aquino's redemption of the property, as well as its ownership. Only the RTC in the exercise of its general jurisdiction in Civil Case No. 12765 (where petitioner assailed the deed of assignment and the Certificate of Redemption executed by the Ex-Officio Sheriff) was vested with jurisdiction to resolve these issues. In resolving these issues, the CA thereby preempted the RTC in Civil Case No. 12765 and deprived it of due process. In any event, according to petitioner, the pronouncement of the CA on the validity of the Deed of Assignment and Certificate of Redemption was merely an obiter dictum.

Petitioner posits that the CA's reliance on the rulings of this Court in Rivero and Barican was erroneous because the right of third parties holding the property adverse to respondent PODC was not involved. Neither was the pendency of the consulta of the Register of Deeds in the LRA a bar to the issuance of a writ of possession in its favor by the RTC acting as a land registration court. It was the ministerial duty of the RTC to issue a writ of possession over the property to petitioner as purchaser at the foreclosure sale during and after the redemption period.

Petitioner further maintains that respondents filed their petition for certiorari in the CA and delineated the issues to be resolved. It did not change its theory in the CA when it filed its motion for reconsideration of the CA decision. Citing the ruling in *Rivera v. Court of Appeals*,^[58] petitioner avers that a theory of the case is that which refers to the facts on which the cause of action is based. The facts are those alleged in the complaint and satisfactorily proven at the trial. It insists that it did not change the set of facts that it submitted and presented to the CA. It was not estopped from citing Section 47 of R.A. No. 8791. It had posited in the RTC that respondents failed to redeem the property before the expiration of the redemption period. Besides, as held by this Court in *Liang Lumber Company v. Liang Timber Co., Inc.*,^[59] a party may change his theory on appeal when the factual basis thereof would not require presentation of any further evidence by the adverse party to enable it to properly meet the issue raised in the new theory. The failure of a party to invoke an applicable law in a given case does not create a vested right, and an erroneous interpretation does not give rise to estoppel. Even if petitioner did not invoke R.A. No. 8791, it behooved the CA to apply the law before it, prescinding from the theory advocated by the parties. Neither may respondents invoke estoppel. They were aware of the provisions of the law as well as the facts and circumstances warranting the application thereof.

Petitioner also imputes forum shopping to respondents because the latter raised the issue of possession in both CA-G.R. SP No. 75787 and CA-G.R. CV No. 81607. Petitioner also accuses respondents of using the decision in CA-G.R. SP No. 75787 to support their contention in CA-G.R. CV No. 81607. It further contends that the writ of possession issued by the RTC was void.

For their part, respondents aver that the RTC committed grave abuse of its discretion in issuing the December 20, 2002 and February 18, 2003 Orders. Hence, the decision of the CA was in accord with the law and the Rules of Court. They assert that given the circumstances obtaining in this case, their petition for certiorari was proper. Although they had the right to appeal the orders of the RTC, the same was not a speedy and adequate remedy. They insist that they were not guilty of forum shopping because the only issue in CA-G.R. CV No. 81607 was the validity of the Order of the RTC dated November 10, 2003, which denied their motion to quash the writ of possession. On the other hand, challenged in CA-G.R. SP No. 75787 was the Order of the RTC granting the petition for a writ of possession. Since the Ex-Officio Sheriff declared in the Certificate of Redemption that

respondent Aquino redeemed the property within the one-year period, petitioner was estopped from relying on Section 47 of R.A. No. 8791. Respondents point out that in the RTC and the CA, petitioner had insisted that respondent Aquino had one (1) year from June 7, 2001 within which to redeem the property as provided in Act No. 3135, as amended; thus, petitioner was proscribed from changing the theory it pursued in the RTC and the CA. Moreover, under Section 71 of R.A. No. 8791, redemption by entities of property mortgaged is governed by R.A. No. 7353, under which the period of redemption is one year from the registration of the Certificate of Sale.

The Ruling of the Court

The petition is meritorious.

The CA erred in holding that the Order of the RTC granting the petition for a writ of possession was merely interlocutory. Interlocutory orders are those that determine incidental matters and which do not touch on the merits of the case or put an end to the proceedings. A petition for certiorari under Rule 65 of the Rules of Court is the proper remedy to question an improvident interlocutory order.[60] On the other hand, a final order is one that disposes of the whole matter or terminates the particular proceedings or action leaving nothing to be done but to enforce by execution what has been determined. It is one that finally disposes of the pending action so that nothing more can be done with it in the lower court.[61] The remedy to question a final order is appeal under Rule 41 of the Rules of Court.

We agree with petitioner's contention that the December 20, 2002 Order of the RTC granting the petition for a writ of possession is final. The remedy of respondents was to appeal to the CA by filing their notice of appeal within the period therefor.[62] Indeed, when the RTC denied on November 10, 2003 the motion of respondents to quash the writ the court had earlier issued, respondents appealed to the CA under Rule 41 of the Rules of Court. The appeal was docketed as CA-G.R. CV No. 81607. Respondents did not file a supplemental petition in CA-G.R. SP No. 75787.

The reliance of the CA in *City of Manila v. Serrano*[63] is misplaced. In that case, the trial court issued the writ of possession in connection with a complaint for expropriation under Rule 67 of the Rules of Court. Such a writ is interlocutory in nature.[64] On the other hand, an order granting a writ of possession under Act No. 3135, as amended, is of a different species. The latter order is final, hence, appealable.[65] Even if the trial court erred in granting a petition for a writ of possession, such an error is merely an error of judgment correctible by ordinary appeal and not by a petition for a writ of certiorari.[66] Such writ cannot be legally used for any other purpose.

Certiorari is a remedy narrow in its scope and inflexible in character. It is not a general utility tool in the legal workshop.[67] Certiorari will issue only to correct errors of jurisdiction and not to correct errors of judgment. An error of judgment is one which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal. Error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction and which error is correctible only by the extraordinary writ of certiorari. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal if the aggrieved party raised factual and legal issues; or a petition for review under Rule 45 of the Rules of Court if only questions of law are involved.[68]

A cert writ may be issued if the court or quasi-judicial body issues an order with grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in

contemplation of law.[69] Mere abuse of discretion is not enough. Moreover, a party is entitled to a writ of certiorari only if there is no appeal nor any plain, speedy or adequate relief in the ordinary course of law.

The *raison d'être* for the rule is that when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error was committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a situation, the administration of justice would not survive. Hence, where the issue or question involved affects the wisdom or legal soundness of the decision — not the jurisdiction of the court to render said decision — the same is beyond the province of a special civil action for certiorari.

Under Section 8, Act No. 3135, as amended, the debtor-mortgagor may file a motion to set aside a writ of execution:

Section 8. Setting aside of sale and writ of possession. — The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

The purchaser may appeal the order to the CA if his petition is denied by the RTC. However, during the pendency of the appeal, the purchaser must be placed in possession of the property, such possession being predicated on the right of ownership.[70]

The threshold issue between petitioner and respondents in the RTC was the correct amount of redemption money under Section 47 of R.A. No. 8791. Respondent Aquino had the right to file an action against petitioner in the RTC in the exercise of its general jurisdiction to enforce redemption within the redemption period to preserve its right to redeem the foreclosed property.[71] It bears stressing that the controversy between the parties relates to the precise amount of redemption: petitioner contended that, under the real estate mortgage executed by respondent PODC in its favor, the loan account of the spouses Garbes was secured by the property covered by said deed; on the other hand, respondents averred that only the loan account of respondent PODC was secured by the mortgage of its property. Indeed, the parties could have raised the issue of the redemption period under the second paragraph of Section 47 of R.A. No. 8791. The provision reads:

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration.

The ministerial duty of the RTC to issue a writ of possession does not become discretionary simply because the Register of Deeds had elevated in consulta to the LRA the question of whether the Torrens title should be issued in favor of petitioner whose Affidavit of Consolidation was registered in the Office of the Register of Deeds, or in favor of respondent Aquino who claimed to have redeemed the property on June 7, 2002 as gleaned from the Certificate of Redemption of the Ex-Officio Sheriff but registered only on June 17, 2002. Respondent Aquino

claimed to have redeemed the property with the correct redemption price and within the one year period of redemption. The LRA himself admitted that the issue of whether respondent Aquino had remitted the correct redemption price is a matter that should be resolved by the regular courts.[72] The LRA was vested with jurisdiction to resolve only the registrability of the Affidavit of Consolidation executed by petitioner and the Certificate of Redemption executed by the Ex-Officio Sheriff.

We need not rule on the issue of whether respondent Aquino had lawfully redeemed the property as provided in Section 47 of R.A. No. 8791. This issue shall be passed upon by the RTC in Civil Case No. 12785 after the parties present their testimonial and documentary evidence.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decision of the Court of Appeals is SET ASIDE AND REVERSED.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

[1] Penned by Associate Justice Edgardo P. Cruz, with Presiding Justice Ruben T. Reyes and Associate Justice Noel Tijam, concurring; rollo, pp. 99-105.

[2] Rollo, pp. 115-116.

[3] Penned by Judge Patrocinio R. Corpuz; CA rollo, pp. 27-33.

[4] CA rollo, p. 41.

[5] Id. at 42.

[6] Id. at 36-40.

[7] Id. at 38-39.

[8] Id. at 44.

[9] Id. at 43.

[10] Id. at 45.

[11] Id. at 48.

[12]The deed is worded as follows: The PAMPANGA OMNIBUS DEVELOPMENT CORPORATION, a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office and place of business at San Fernando, Pampanga (now city), herein represented by its President, ELIZA M. GARBES, for value received, have CONVEYED, TRANSFERRED and ASSIGNED, as it hereby CONVEYS, TRANSFERS and ASSIGNS, in favor of DOMINIC G. AQUINO, of legal age, married, Filipino and resident of San Matias, Sto. Tomas, Pampanga, its LEGAL RIGHT OF REDEMPTION in and over that real property covered and described under Transfer Certificate of Title No. 275745-R, issued by the Register of Deeds of Pampanga.

The said property was mortgaged in favor of the San Fernando Rural Bank, Inc. and Masantol Rural Bank, Inc. which mortgage was extrajudicially foreclosed with the San Fernando Rural Bank, Inc. as its lone bidder for the amount of P1,245,982.00, the Certificate of Sale of which was registered on June 7, 2001 under Entry No. 7828 as annotated on the memorandum of encumbrances thereof, thereby legally affording the herein assignor to redeem

the said property within one (1) year from and after said date.

IN WITNESS WHEREOF, the ASSIGNOR, thru its above mentioned representative, hereby sets its hand this ____ day of May 11, 2002 in the City of San Fernando (Pampanga). (Id. at 46)

[13] Id. at 90.

[14] Id. at 50.

[15] Id. at 51.

[16] Id. at 53.

[17] Id. at 49.

[18] Id. at 57.

[19] Id. at 58-59.

[20] Id. at 59.

[21] Id. at 61-62.

[22] Id. at 63-64.

[23] Id. at 64.

[24] Id. at 61-62.

[25] Id. at 61-62.

[26] Id. at 65-66.

[27] Id. at 66.

[28] Id. at 70.

[29] Id. at 69-70.

[30] Id. at 75.

[31] Id. at 27.

[32] Id. at 88-97.

[33] Id. at 94.

[34] Id. at 98-111.

[35] United Coconut Planters Bank v. Reyes, G.R. No. 95095, February 7, 1991, 193 SCRA 756, 762.

[36] CA rollo, pp. 180-181.

[37] Id. at 181.

[38] Rollo, pp. 66-70.

[39] CA rollo, pp. 138-144.

[40] Id. at 32-33.

[41] Id. at 13-14.

[42] 71 Phil. 340 (1941).

[43] G.R. No. 79906, June 20, 1988, 162 SCRA 358.

[44] G.R. No. 119247, February 17, 1997, 268 SCRA 441.

[45] CA rollo, pp. 198-199.

[46] Rollo, pp. 194-200.

[47] Id. at 200. Plaintiff alleged, inter alia, that:

- The Deed of Assignment (Annex "D") was a fictitious and fraudulent one done and executed in fraud of creditor, the herein plaintiff because:

x x x x

b) Defendant PODC made it appear that it assigned its legal right of redemption to defendant AQUINO so that they could perpetrate the fraudulent scheme of having defendant PODC inquire as to the correct amount of redemption price from the plaintiff at a time when it should have been undertaken by its assignee, and after knowing the correct redemption price, to have defendant AQUINO offer a much lesser redemption price under the guise of not knowing the real redemption price under the mortgage contract.

c) Defendants PODC and AQUINO are using the Deed of Assignment to defraud and prevent the plaintiff from filing an attachment suit of the legal right of redemption against PODC since the legal right of redemption is one of real right susceptible of being attached by a creditor like the herein plaintiff.

d) The passiveness and non-participation of defendant AQUINO with respect to the affairs and transactions involving the mortgaged property subsequent to the execution of the alleged Deed of Assignment.

e) The financial capacity of the assignee to redeem the mortgage property is questionable.

f) Defendant PODC continue to negotiate with plaintiff subsequent to the execution of the Deed of Assignment and when plaintiff filed a petition for Writ of Possession pending actual redemption under Act 3135, also after the said alleged Deed of Assignment, defendant PODC alone which vigorously opposed the said petition and defendant Assignee did nothing despite knowledge thereof. Incidentally, the said petition was granted by the Regional Trial Court of San Fernando, Pampanga. Copies of the said petition for Writ of Possession, PODC's opposition and the Order granting the said petition are hereto attached as Annexes "G," "H" and "I," respectively.

- The Deed of Assignment should, therefore, be declared null and void from the very beginning and therefore it follows and as a consequence thereof, the Certificate of Redemption issued in favor of the defendant AQUINO, as assignee, should also be declared null and void ab initio since it has no legal leg to stand emanating from an illegal and fraudulent act.

- However, the Certificate of Redemption (Annex "G") is in itself null and void ab initio because:

a) It was issued although the assignee did not pay the correct redemption price under the mortgage contract.

b) It was issued although the payment was made on the last day of redemption through check.

c) No actual and prior payment to the plaintiff made by the assignee.

d) Although the Certificate of Redemption purportedly shows that it was redeemed on the last day of the redemption period the said certificate of redemption is a dubious one because it was only registered with the

Registry of Deeds of Pampanga on June 17, 2002.

e) On top of these, the Certificate of Redemption was issued in violation of existing law specifically the General Banking Act of 2000 and, therefore, the same has no force and effect, in fact and in law.

Under the General Banking Act of 2000 which took effect on June 13, 2000, the right of redemption of a mortgagor who is a juridical person terminates upon the registration of the certificate of foreclosure sale with the Register of Deeds. Section 47 of said Act states:

SEC. 47. Foreclosure of Real Estate Mortgage. — In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment to his obligation shall properly has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extrajudicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

Notwithstanding Act 3135, juridical persons, whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration.

The Deed of Assignment allegedly executed by PODC in favor of Dominic Aquino on May 11, 2002 did not vest in him any right to redeem the subject property because, as already stated, PODC has no more right to assign after June 7, 2001. Hence, the Certificate of Redemption has no legal leg to stand.

- Therefore, the Deed of Assignment and the Certificate of Redemption should be declared as a nullity altogether for being illegal and fraudulent. (Rollo, pp. 270-273)

[48] Rollo, pp. 409-410.

[49] Id. at 411-412.

[50] CA rollo, pp. 208-210.

[51] Id. at 208.

[52] Id. at 105.

[53] 411 Phil. 754 (2001).

[54] 391 Phil. 428 (2000).

[55] Rollo, pp. 115-116.

[56] Id. at 319-320.

[57] Supra note 52.

[58] G.R. No. L-44111, August 10, 1989, 176 SCRA 169.

[59] G.R. No. L-38685, March 31, 1977, 76 SCRA 197.

[60] Diesel Construction Company, Inc. v. Jollibee Foods Corporation, 380 Phil. 813, 824 (2000).

[61] De Ocampo v. Republic of the Philippines, 118 Phil. 1276, 1280 (1963).

[62] Government Service Insurance System v. Court of Appeals, G.R. No. 42278, January 28, 1989, 170 SCRA 533.

[63] Supra note 52.

[64] Id. at 236.

[65] See note 64.

[66] Samson v. Rivera, G.R. No. 154355, May 20, 2004, 428 SCRA 759.

[67] San Miguel Foods, Inc. v. Laguesma, 331 Phil. 356, 376 (1996).

[68] Lee v. People, G.R. No. 159288, October 19, 2004, 440 SCRA 662, 678-679.

[69] Id.

[70] De Vera v. Agloro, G.R. No. 155673, January 14, 2005, 448 SCRA 203; Ong v. Court of Appeals, 388 Phil. 857, 865 (2000).

[71] Banco Filipino Savings and Mortgage Bank v. Court of Appeals, G.R. No. 143896, July 8, 2005, 463 SCRA 64; Hi-Yield Realty, Inc. v. Court of Appeals, 437 Phil. 483, 493 (2002).

[72] CA rollo, pp. 181 and 257.

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