

SPOUSES FERNANDO AND ANGELINA EDRALIN, PETITIONERS, VS. PHILIPPINE VETERANS BANK, RESPONDENT.

G.R. No. 168523. March 09, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

The right to possess a property follows the right of ownership; consequently, it would be illogical to hold that a person having ownership of a parcel of land is barred from seeking possession thereof.

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court,[1] assailing the Decision[2] dated June 10, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 89248. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. The assailed Orders dated November 8, 2004 and January 28, 2005 dismissing the ex-parte petition for issuance of writ of possession and denying petitioner's motion for reconsideration, respectively, are hereby ANNULLED and SET ASIDE. Respondent Judge is hereby DIRECTED to issue the writ of possession prayed for by the petitioner Philippine Veterans Bank over the subject property covered by TCT No. 78332 of the Registry of Deeds for Parañaque City, Metro Manila.

No pronouncement as to costs.

SO ORDERED.[3]

Factual Antecedents

Respondent Philippine Veterans Bank (Veterans Bank) is a commercial banking institution created under Republic Act (RA) No. 3518,[4] as amended by RA No. 7169.[5]

On February 5, 1976, Veterans Bank granted petitioner spouses Fernando and Angelina Edralin (Edralins) a loan in the amount of Two Hundred Seventy Thousand Pesos (P270,000.00). As security thereof, petitioners executed a Real Estate Mortgage (REM)[6] in favor of Veterans Bank over a real property situated in the Municipality of Parañaque and registered in the name of petitioner Fernando Edralin. The mortgaged property is more particularly described in Transfer Certificate of Title (TCT) No. 204889. The REM was registered with the Registry of Deeds of the Province of Rizal.[7] The REM and its subsequent amendments[8] were all duly annotated at the back of TCT No. 204889.[9]

The Edralins failed to pay their obligation to Veterans Bank. Thus, on June 28, 1983, Veterans Bank filed a Petition for Extrajudicial Foreclosure[10] of the REM with the Office of the Clerk of Court and Ex-Officio Sheriff of Rizal.

In due course, the foreclosure sale was held on September 8, 1983, in which the Ex-Officio Sheriff of Rizal sold the mortgaged property at public auction. Veterans Bank emerged as the highest bidder at the said foreclosure sale

and was issued the corresponding Certificate of Sale.[11] The said Certificate of Sale was registered with the Registry of Deeds of the Province of Rizal and annotated at the back of TCT No. 204889 under Entry No. 83-62953/T-No. 43153-A on October 25, 1983.[12]

Upon the Edralins' failure to redeem the property during the one-year period provided under Act No. 3135, Veterans Bank acquired absolute ownership of the subject property. Consequently, Veterans Bank caused the consolidation of ownership of the subject property in its name on January 19, 1994.[13] The Register of Deeds of Parañaque, Metro Manila cancelled TCT No. 204889 under the name of Fernando Edralin and replaced it with a new transfer certificate of title, TCT No. 78332,[14] in the name of Veterans Bank on February 3, 1994.

Despite the foregoing, the Edralins failed to vacate and surrender possession of the subject property to Veterans Bank. Thus, on May 24, 1996, Veterans Bank filed an Ex-Parte Petition for the Issuance of a Writ of Possession, docketed as Land Registration Case (LRC) No. 06-060 before Branch 274 of the Regional Trial Court (RTC) of Parañaque City. The same, however, was dismissed for Veterans Bank's failure to prosecute.[15]

On July 29, 2003, Veterans Bank again filed an Ex-Parte Petition for Issuance of Writ of Possession,[16] this time docketed as Land Registration Case No. 03-0121, before the RTC of Parañaque City. Veterans Bank divulged in its Certification against Forum-Shopping[17] that the earlier case, LRC No. 96-060, involving the same subject matter and parties, was dismissed.

The Edralins moved to dismiss[18] the petition on the ground that the dismissal of LRC No. 96-060 constituted *res judicata*.

Ruling of the Regional Trial Court

The trial court denied the motion to dismiss explaining that the ground of failure to present evidence is not a determination of the merits of the case hence does not constitute *res judicata* on the petition for issuance of a writ of possession.[19]

Nevertheless, the trial court found no merit in the Veterans Bank's application and dismissed the same in its Order dated November 8, 2004.[20] The trial court explained that, under paragraph (d) of the REM, the Veterans Bank agreed to take possession of the Edralins' property without any judicial intervention. The court held that granting the writ of possession to the Veterans Bank will violate the contractual agreement of the parties. Paragraph (d) reads:

(d) Effective upon the breach of any condition of this mortgage and in addition to the remedies herein stipulated, the Mortgagee is hereby likewise appointed attorney-in-fact of the Mortgagor with full powers and authority, with the use of force, if necessary to take actual possession of the mortgaged property, without the necessity of any judicial order or any permission, or power, to collect rents, to eject tenants, to lease or sell the mortgaged property or any part thereof, at a private sale without previous notice or advertisement of any kind and execute the corresponding bills of sale, lease or other agreement that may be deemed convenient, to make repairs or improvements on the mortgaged property and pay for the same and perform any other act which the Mortgagee may deem convenient for the proper administration of the mortgaged property. The payment of any expenses advanced by the Mortgagee in connection with the purposes indicated herein is also guaranteed by this Mortgage and such amount advanced shall bear interest at the rate of 12% per annum. Any amount received from sale, disposal or administration above-mentioned may be applied to the payment of the repairs, improvements, taxes and any other incidental expenses and obligations and also the payment of the original indebtedness and interest thereof. The power herein granted shall not be revoked during the life of this mortgage, and all acts that may be executed by the Mortgagee by virtue of said power are hereby ratified. In addition to the foregoing, the Mortgagor also hereby agrees, that the Auditor General shall withhold any money due or which may become due the Mortgagor or debtor from the Government or from any of its

instrumentalities, except those exempted by law from attachment or execution, and apply the same in settlement of any and all amount due to the Mortgagee;[21]

The trial court held that, assuming the contract allowed for the issuance of a writ of possession, Veterans Bank's right to seek possession had already prescribed. Without citing authority and adequate explanation, the court held that Veterans Bank had only 10 years from February 24, 1983 to seek possession of the property.

Veterans Bank moved for the reconsideration[22] of the adverse decision. It directed the court's attention to paragraph (c) of the real estate mortgage, which expressly granted the mortgagee the right to avail itself of the remedy of extrajudicial foreclosure in case of the mortgagor's default. Paragraph (c) reads:

(c) If at any time the Mortgagor shall fail or refuse to pay the obligations herein secured, or any of the amortizations of such indebtedness when due, or to comply with any of the conditions and stipulations herein agreed, or shall, during the time this mortgage is in force, institute insolvency proceedings or be involuntarily declared insolvent, or shall use the proceeds of this loan for purposes other than those specified herein, or if this mortgage cannot be recorded in the corresponding Registry of Deeds, then all the obligations of the Mortgagor secured by this Mortgage and all the amortization thereof shall immediately become due, payable and defaulted, and the Mortgagee may immediately foreclose this mortgage judicially in accordance with the Rules of Court, or extra-judicially in accordance with Act No. 3135, as amended, and under Act 2612, as amended. For the purpose of extra-judicial foreclosure the Mortgagor hereby appoints the Mortgagee his attorney-in-fact to sell the property mortgaged under Act No. 3135, as amended, to sign all documents and perform any act requisite and necessary to accomplish said purpose and to appoint its substitutes as such attorney-in-fact with the same powers as above specified. x x x[23]

The motion for reconsideration was set for hearing on January 28, 2005. Due to a conflict of schedule, Veterans Bank's counsel moved[24] to reset the hearing on its motion. In apparent denial of the motion to reset, the trial court proceeded to deny Veterans Bank's motion for reconsideration in the Order dated January 28, 2005.[25] The trial court reiterated that paragraph (d) of the REM allowed Veterans Bank to take immediate possession of the property without need of a judicial order. It would be redundant for the court to issue a writ of possession in its favor.

This prompted Veterans Bank to file a Petition for Mandamus with Prayer for Issuance of a Preliminary Mandatory Injunction[26] before the CA.

First among its arguments, Veterans Bank maintained that it was the trial court's ministerial duty[27] to grant a writ of possession to the mortgagee who has consolidated and registered the property in its name.

Veterans Bank then assailed the trial court's holding that its right to a writ of possession had already prescribed. Respondent maintained that the writ can be issued at any time after the mortgagor failed to redeem the foreclosed property.[28]

Lastly, Veterans Bank argued that, contrary to the trial court's finding, it did not contract away its right to an extrajudicial foreclosure under Act No. 3135, as amended, by the inclusion of paragraph (d) in the REM. Veterans Bank pointed out that, as evidenced by paragraph (c) of the REM, it expressly reserved the right to avail of the remedies under Act No. 3135.[29]

Ruling of the Court of Appeals[30]

The appellate court ruled in favor of Veterans Bank.

It held that the contractual provision in paragraph (d) to immediately take possession of the mortgaged property without need of judicial intervention is distinct from the right to avail of extrajudicial foreclosure under Section 7

of Act No. 3135, which was expressly reserved by Veterans Bank in paragraph (c) of the REM. The fact that the two paragraphs do not negate each other is evidenced by the qualifying phrase "in addition to the remedies herein stipulated" found in paragraph (c).

Having availed itself of the remedy of extrajudicial foreclosure, Veterans Bank, as the highest bidder, has the right to a writ of possession. This right may be availed of any time after the buyer consolidates ownership. In fact, the issuance of the writ of possession is a ministerial function, the right to which cannot be enjoined or stayed, even by an action for annulment of the mortgage or the foreclosure sale itself.

The trial court's ruling that Veterans Bank's right to possess has prescribed is likewise erroneous. As already stated, Veterans Bank's right to possess the property is not based on their contract but on Act No. 3135.

Since the issuance of a writ of possession is a ministerial act of the trial judge, mandamus lies to compel the performance of the said duty.

Petitioners immediately filed this petition for review.

Issues

Petitioners submit the following issues for our consideration:

- Whether mandamus was resorted to as a substitute for a lost appeal
- Whether mandamus is the proper remedy to seek a review of the final orders of the trial court
- Whether the consolidation of ownership of the extrajudicially foreclosed property through a Deed of Sale is in accordance with law
- Whether the issuance of a writ of possession under Act [No.] 3135 is subject to the statute of limitations[31]

Our Ruling

Propriety of the Remedy of Mandamus

Petitioners argue that Veterans Bank availed itself of the remedy of mandamus as a substitute for a lost appeal.[32] Petitioners narrate the relevant dates that allegedly show the belatedness and impropriety of the petition for mandamus. Veterans Bank received the Order dated November 8, 2004 on November 18, 2004, thus it had until December 3, 2004 to file a motion for reconsideration. Since December 3, 2004 was declared a non-working holiday, Veterans Bank filed its motion for reconsideration on the next working day, December 6, 2004. With the said dates, it had only one day left from receipt of the January 28, 2005 Order, or until February 10, 2005, to file an appeal (citing Section 2, Rule 22) of the Rules of Court. Since Veterans Bank did not file an appeal on the following day, it had lost its right to appeal and the assailed orders allegedly attained finality.

Respondent counters that the issuance of a writ of possession is not an ordinary action for which the rules on appeal apply. The writ being a mere motion or an order of execution, appeal is not the proper remedy to question the trial court's ruling. In fact, Section 1, Rule 41 of the Rules of Court provides that no appeal may be taken from an order of execution, but Rule 65 special civil actions are available.[33] Given that the issuance of the writ of possession is a ministerial act of the judge, respondent maintains that a petition for mandamus is the proper remedy.

Respondent adds that, even if appeal were available, the same is not the plain, speedy and adequate remedy to compel the performance of the ministerial act.[34] Respondent maintains that Section 3 of Rule 65 recognizes that the remedy of mandamus is available in conjunction with an appeal. The qualifying phrase "and there is no appeal

[available]," which appears in certiorari and prohibition petitions, is conspicuously missing for petitions for mandamus.

We rule that mandamus is a proper remedy to compel the issuance of a writ of possession. The purpose of mandamus is to compel the performance of a ministerial duty. A ministerial act is "one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done." [35]

The issuance of a writ of possession is outlined in Section 7 of Act No. 3135, as amended by Act No. 4118, which provides:

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 x x x 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.

During the period of redemption, the mortgagee is entitled to a writ of possession upon depositing the approved bond. When the redemption period expires without the mortgagor exercising his right of redemption, the mortgagor is deemed to have lost all interest over the foreclosed property, and the purchaser acquires absolute ownership of the property. The purchaser's right is aptly described thus:

Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title becomes merely a ministerial function. Effectively, the court cannot exercise its discretion.

Therefore, the issuance by the RTC of a writ of possession in favor of the respondent in this case is proper. We have consistently held that the duty of the trial court to grant a writ of possession in such instances is ministerial, and the court may not exercise discretion or judgment x x x [36]

With the consolidated title, the purchaser becomes entitled to a writ of possession and the trial court has the ministerial duty to issue such writ of possession. [37] Thus, "the remedy of mandamus lies to compel the performance of [this] ministerial duty." [38]

Does the charter of Veterans Bank prohibit extrajudicial foreclosures?

Petitioners then assail Veterans Bank's power to extrajudicially foreclose on mortgages. They maintain that the legislature intended to limit Veterans Bank to judicial foreclosures only, [39] citing Section 18 of the Veterans Bank's charter, RA No. 3518, which provides:

Section 18. Right of redemption of property foreclosed. - The mortgagor shall have the right, within one year after the sale of the real estate as a result of the foreclosure of a mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the Bank by reason of the execution and sale, and for

the custody of said property.

Respondent counters that the inclusion of the phrase "fixed by the Court" in Section 18 of RA No. 3518 does not necessarily mean that only judicial foreclosures are available to Veterans Bank. Moreover, resort to an extrajudicial foreclosure was voluntarily entered into by the contracting parties in their REM.[40]

There is no merit in petitioners' contention.

The aforequoted Section 18 grants to mortgagors of Veterans Bank the right to redeem their judicially foreclosed properties. This provision had to be included because in judicial foreclosures, mortgagors generally do not have the right of redemption unless there is an express grant by law.[41]

But, contrary to petitioners' averments, there is nothing in Section 18 which can be interpreted to mean that Veterans Bank is limited to judicial foreclosures only, or that it cannot avail itself of the benefits provided under Act No. 3135,[42] as amended, allowing extrajudicial foreclosures.

Moreover, the availability of extra-judicial foreclosure to a mortgagee depends upon the agreement of the contracting parties. Section 1 of Act No. 3135 provides:

Section 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following sections shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power. (Emphasis supplied.)

In the case at bar, paragraph (c) of the parties' REM granted Veterans Bank the special power as attorney-in-fact of the petitioners to perform all acts necessary for the purpose of extrajudicial foreclosure under Act No. 3135. Thus, there is no obstacle preventing Veterans Bank from availing itself of the remedy of extrajudicial foreclosure.

Was the consolidation of title
done in accordance with law?

Petitioners argue that Veterans Bank is not entitled to a writ of possession because it failed to properly consolidate its title over the subject property.[43] They maintain that the Deed of Sale executed by the Veterans Bank in the bank's own favor during the consolidation of title constitutes a pactum commissorium, which is prohibited under Article 2088 of the Civil Code.[44]

Respondent contends that petitioners never questioned the validity of the foreclosure proceedings or the auction sale. The failure to do so resulted in the ripening of the consolidation of ownership.[45]

There is no merit in petitioners' argument.

Pactum commissorium is "a stipulation empowering the creditor to appropriate the thing given as guaranty for the fulfillment of the obligation in the event the obligor fails to live up to his undertakings, without further formality, such as foreclosure proceedings, and a public sale." [46] "The elements of pactum commissorium, which enable the mortgagee to acquire ownership of the mortgaged property without the need of any foreclosure proceedings, are: (1) there should be a property mortgaged by way of security for the payment of the principal obligation, and (2) there should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period." [47]

The second element is missing to characterize the Deed of Sale as a form of pactum commissorium. Veterans Bank did not, upon the petitioners' default, automatically acquire or appropriate the mortgaged property for itself.

On the contrary, the Veterans Bank resorted to extrajudicial foreclosure and was issued a Certificate of Sale by the sheriff as proof of its purchase of the subject property during the foreclosure sale. That Veterans Bank went through all the stages of extrajudicial foreclosure indicates that there was no pactum commissorium.

Does the right to a writ of possession prescribe?

Petitioners assail the CA's ruling that the issuance of a writ of possession does not prescribe.[48] They maintain that Articles 1139,[49] 1149,[50] and 1150[51] of the Civil Code regarding prescriptive periods cover all kinds of action, which necessarily include the issuance of a writ of possession. Petitioners posit that, for purposes of the latter, it is the five-year prescriptive period provided in Article 1149 of the Civil Code which applies because Act No. 3135 itself did not provide for its prescriptive period. Thus, Veterans Bank had only five years from September 12, 1983, the date when the Certificate of Sale was issued in its favor, to move for the issuance of a writ of possession.[52]

Respondent argues that jurisprudence has consistently held that a registered owner of the land, such as the buyer in an auction sale, is entitled to a writ of possession at any time after the consolidation of ownership.[53]

We cannot accept petitioners' contention. We have held before that the purchaser's right "to request for the issuance of the writ of possession of the land never prescribes." [54] "The right to possess a property merely follows the right of ownership," [55] and it would be illogical to hold that a person having ownership of a parcel of land is barred from seeking possession thereof. In *Calacala v. Republic of the Philippines*, [56] the Republic was the highest bidder in the public auction but failed for a long period of time to execute an Affidavit of Consolidation and to seek a writ of possession. Calacala insisted that, by such inaction, the Republic's right over the land had prescribed, been abandoned or waived. The Court's language in rejecting Calacala's theory is illuminating:

[T]he Republic's failure to execute the acts referred to by the petitioners within ten (10) years from the registration of the Certificate of Sale cannot, in any way, operate to restore whatever rights petitioners' predecessors-in-interest had over the same. For sure, petitioners have yet to cite any provision of law or rule of jurisprudence, and we are not aware of any, to the effect that the failure of a buyer in a foreclosure sale to secure a Certificate of Final Sale, execute an Affidavit of Consolidation of Ownership and obtain a writ of possession over the property thus acquired, within ten (10) years from the registration of the Certificate of Sale will operate to bring ownership back to him whose property has been previously foreclosed and sold. x x x

x x x x

Moreover, with the rule that the expiration of the 1-year redemption period forecloses the obligors' right to redeem and that the sale thereby becomes absolute, the issuance thereafter of a final deed of sale is at best a mere formality and mere confirmation of the title that is already vested in the purchaser. x x x [57]

Moreover, the provisions cited by petitioners refer to prescription of actions. An action is "defined as an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong." [58] On the other hand "[a] petition for the issuance of the writ, under Section 7 of Act No. 3135, as amended, is not an ordinary action filed in court, by which one party `sues another for the enforcement or protection of a right, or prevention or redress of a wrong.' It is in the nature of an *ex parte* motion [in] which the court hears only one side. It is taken or granted at the instance and for the benefit of one party, and without notice to or consent by any party adversely affected. Accordingly, upon the filing of a proper motion by the purchaser in a foreclosure sale, and the approval of the corresponding bond, the writ of possession issues as a matter of course and the trial court has no discretion on this matter." [59]

WHEREFORE, premises considered, the Petition is DENIED for lack of merit. The CA Decision dated June 10, 2005 in CA-G.R. SP No. 89248 is AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

- [1] Rollo, pp. 8-28.
- [2] CA rollo, pp. 195-207.
- [3] CA Decision, p. 12; id. at 206.
- [4] An Act Creating the Philippine Veterans Bank, and For Other Purposes.
- [5] An Act to Rehabilitate the Philippine Veterans Bank Created Under Republic Act No. 3518, Providing the Mechanisms Therefor, and For Other Purposes.
- [6] CA rollo, pp. 70-71.
- [7] Id. at 68-69.
- [8] Id. at 72-73.
- [9] Entry Nos. 24991/S-19595, 39423/S-19595, 52016/S-19595 (id. at 69).
- [10] Id. at 76. Notice of Extrajudicial Sale appears on page 77 of the CA rollo.
- [11] Id. at 79.
- [12] Entry No. 83-62953 (id. at 69).
- [13] Entry No. 3139 Affidavit of Consolidation (id., back of p. 69); id. at 80-81.
- [14] Id. at 82.
- [15] Respondent's Memorandum, p. 7; rollo, p. 300.
- [16] CA rollo, pp. 83-91.
- [17] Id. at 88.
- [18] Id. at 41-42.
- [19] Order dated July 13, 2004 (id. at 123).
- [20] Id. at 43-46; penned by Judge Brigido Artemon M. Luna.
- [21] Id., dorsal portion, p. 70.
- [22] Id. at 49-58.
- [23] Id., dorsal portion of p. 70.
- [24] Rollo, pp. 155-160.
- [25] CA rollo, pp. 47-48.

[26] Id. at 2-38.

[27] Petition in CA-G.R. SP No. 89248, pp. 14-17; id. at 15-18.

[28] Id. at 27-31; id. at 28-32.

[29] Id. at 20-25; id. at 21-26.

[30] Id. at 195-207; penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Lucas P. Bersamin and Lucenito N. Tagle.

[31] Petitioners' Memorandum, p. 10; rollo, p. 334.

[32] Id. at 11-12; id. at 335-336.

[33] Respondent's Memorandum, pp. 18-21; id. at 311-314.

[34] Id. at 22-23; id. at 315-316.

[35] Feria and Noche, Civil Procedure Annotated, Vol. II (2001 ed.), p. 487.

[36] Saguan v. Philippine Bank of Communications, G.R. No. 159882, November 23, 2007, 538 SCRA 390, 396-397. Emphasis supplied.

[37] Bank of the Philippine Islands v. Tarampi, G.R. No. 174988, December 10, 2008, 573 SCRA 537, 543; Fernandez v. Espinoza, G.R. No. 156421, April 14, 2008, 551 SCRA 136, 150-151; Spouses Carpo v. Chua, 508 Phil. 462, 477-478 (2005); Philippine National Bank v. Sanao Marketing Corporation, 503 Phil. 260, 274-275 (2005).

[38] Spouses Carpo v. Chua, 508 Phil. 462, 477 (2005).

[39] Petitioners' Memorandum, pp. 13-14; rollo, pp. 337-338.

[40] Respondent's Memorandum, p. 28; id. at 321.

[41] Rule 68 (Foreclosure of Real Estate Mortgage), "Sec. 3. Sale of mortgaged property; effect. -- x x x Such sale shall not affect the rights of persons holding prior encumbrances upon the property or a part thereof, and when confirmed by an order of the court, also upon motion, it shall operate to divest the rights in the property of all the parties to the action and to vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law." See *Limpin v. Intermediate Appellate Court*, 248 Phil. 318, 325-326 (1988).

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

[43] Petitioners' Memorandum, p. 14; rollo, p. 338.

[44] Id.

[45] Respondent's Memorandum, pp. 26-27; rollo, pp. 319-320.

[46] Pena, Registration of Land Titles and Deeds (2008 ed.), p. 351.

[47] *Ong v. Roban Lending Corporation*, G.R. No. 172592, July 9, 2008, 557 SCRA 516, 524. Emphasis supplied.

[48] Petitioners' Memorandum, pp. 24-25; rollo, pp. 339-340.

[49] Civil Code, Article 1139. Actions prescribe by the mere lapse of time fixed by law.

[50] Civil Code, Article 1149. All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues.

[51] Civil Code, Article 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

[52] Petitioners' Memorandum, pp. 25-26; rollo, pp. 349-350.

[53] Respondent's Memorandum, pp. 24-25; id. at 317-318.

[54] Spouses Paderes v. Court of Appeals, 502 Phil. 76, 97 (2005), citing Rodil v. Judge Benedicto, 184 Phil. 108 (1980).

[55] Metropolitan Bank and Trust Co. v. Santos, G.R. No. 157867, December 15, 2009, 608 SCRA 222, 234.

[56] 502 Phil. 680 (2005).

[57] Id. at 689-691.

[58] Metropolitan Bank and Trust Co. v. Santos, supra note 55 at 236, citing Ancheta v. Metropolitan Bank and Trust Company, Inc., 507 Phil. 161 (2005).

[59] Metropolitan Bank and Trust Co. v. Bance, G.R. No. 167280, April 30, 2008, 553 SCRA 507, 515-516. Emphasis supplied.

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