

GREGORIO ESPINOZA, IN HIS OWN PERSONAL CAPACITY AND AS SURVIVING SPOUSE, AND JO ANNE G. ESPINOZA, HEREIN REPRESENTED BY THEIR ATTORNEY-IN-FACT, BEN SANGIL, PETITIONERS, VS. UNIT...

G.R. No. 175380. March 22, 2010

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review on certiorari[1] of the November 9, 2006 decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 62250.

On March 24, 1996, Firematic Philippines was granted a credit line by respondent United Overseas Bank (then known as Westmont Bank). As security, petitioners Gregorio Espinoza and the late Joji Gador Espinoza (spouses Espinoza) executed a third-party mortgage in favor of respondent over four parcels of land, one of which was covered by Transfer Certificate of Title (TCT) No. 197553 of the Registry of Deeds of Caloocan City. Through its credit line, Firematic obtained several loans from respondent, as evidenced by promissory notes and trust receipts.

Due to Firematic's failure to pay its loans, respondent filed a petition for extrajudicial foreclosure in July 1996 with notary public Eduardo S. Rodriguez in Caloocan City. After complying with the legal requirements, the property covered by TCT No. 197553 was sold at public auction. Respondent was awarded the property, being the only bidder in the amount of P200,000.[3]

The certificate of sale was registered with the Register of Deeds of Caloocan City on September 25, 1996. In July 1998, an affidavit of consolidation of ownership over the property was also registered with the same office. On July 24, 1998, ownership was consolidated in the name of respondent as evidenced by the issuance of TCT No. C-328807.

On March 10, 2000, respondent filed an ex parte petition for the issuance of a writ of possession which was docketed as LRC Case No. C-4233 in the Regional Trial Court (RTC) of Caloocan City, Branch 124. This action was opposed by petitioners who moved for the consolidation of the proceedings with Civil Case No. C-17913 pending before RTC Branch 120 of the same city. Civil Case No. C-17913 was an action for the nullification of the extra-judicial foreclosure proceedings and certificate of sale of the property subject of this case.

In an order dated April 18, 2000, RTC Branch 124 granted petitioners' motion for consolidation and ordered that LRC Case No. C-4233 be consolidated with Civil Case No. C-17913, provided that the presiding judge of RTC Branch 120 did not object. Respondent's motion for reconsideration was denied in an order dated September 7, 2000.

Respondent then filed a petition for certiorari and mandamus[4] in the CA, which was granted. The orders of RTC Branch 124 dated April 18, 2000 and September 7, 2000, respectively, were reversed and set aside. The CA adhered to the long-established doctrine that purchasers in a foreclosure sale are entitled, as a matter of right, to a

writ of possession and that any question regarding the regularity and validity of the sale is to be determined in a separate proceeding. The CA also held that such questions are not to be raised as a justification for opposing the issuance of the writ of possession, since such proceedings are *ex parte*. Hence, the CA directed the issuance of a writ of possession in favor of respondent.

Aggrieved, petitioners filed this petition.

The core issue for resolution is whether a case for the issuance of a writ of possession may be consolidated with the proceedings for the nullification of extra-judicial foreclosure.

Petitioners contend that peculiar circumstances in the instant case make it an exception from the general rule on the ministerial duty of courts to issue writs of possession. Given that the issuance of a writ of possession in this case must be litigated, consolidation with the pending case on the nullification of extra-judicial foreclosure is mandatory because both proceedings involve the same parties and subject matter.

Respondent, on the other hand, insists that the consolidation of the *ex parte* petition for the issuance of a writ of possession with the complaint for nullification of extra-judicial foreclosure of mortgage is highly improper and irregular because there are no common questions of fact and law between the two cases. Respondent also argues that any question regarding the validity of the mortgage or foreclosure cannot be a ground for refusing the issuance of the writ of possession and should, instead, be taken up in the proceedings for the nullification of the foreclosure.

We rule for respondent.

The order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond if the redemption period has not yet lapsed.[5] If the redemption period has expired, then the filing of the bond is no longer necessary. Any and all questions regarding the regularity and validity of the sale is left to be determined in a subsequent proceeding and such questions may not be raised as a justification for opposing the issuance of a writ of possession.[6]

In *Santiago v. Merchants Rural Bank of Talavera, Inc.*, [7] we defined the nature of a petition for a writ of possession:

The proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.

By its very nature, an *ex parte* petition for issuance of a writ of possession is a non-litigious proceeding.[8] It is 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 of a wrong or protection of a right, or the prevention or redress of a wrong.[9]

On the other hand, by its nature, a petition for nullification or annulment of foreclosure proceedings contests the presumed right of ownership of the buyer in a foreclosure sale and puts in issue such presumed right of ownership. Thus, a party scheming to defeat the right to a writ of possession of a buyer in a foreclosure sale who had already consolidated his ownership over the property subject of the foreclosure sale can simply resort to the subterfuge of filing a petition for nullification of foreclosure proceedings with motion for consolidation of the petition for issuance of a writ of possession. This we cannot allow as it will render nugatory the presumed right of ownership, as well as the right of possession, of a buyer in a foreclosure sale, rights which are supposed to be implemented in an *ex parte* petition for issuance of a writ of possession.

Besides, the mere fact that the "presumed right of ownership is contested and made the basis of another action" does not by itself mean that the proceedings for issuance of a writ of possession will become groundless. The presumed right of ownership and the right of possession should be respected until and unless another party successfully rebuts that presumption in an action for nullification of the foreclosure proceedings. As such, and in connection with the issuance of a writ of possession, the grant of a complaint for nullification of foreclosure proceedings is a resolutive condition, not a suspensive condition.

Given the foregoing discussion, it is clear that the proceedings for the issuance of a writ of possession should not be consolidated with the case for the declaration of nullity of a foreclosure sale. The glaring difference in the nature of the two militates against their consolidation.

The long-standing rule is that proceedings for the issuance of a writ of possession are ex parte and non-litigious in nature.[10] The only exemption from this rule is *Active Wood Products Co., Inc. v. Court of Appeals*[11] where the consolidation of the proceedings for the issuance of a writ of possession and nullification of foreclosure proceedings was allowed following the provisions on consolidation in the Rules of Court. However, the circumstances in this case are substantially distinct from that in *Active Wood*. Therefore, the exception granted in that case cannot be applied here.

In *Active Wood*, the petition for writ of possession was filed before the expiration of the one-year redemption period[12] while, in this case, the petition for writ of possession was filed after the one-year redemption period had lapsed. Moreover, in *Active Wood*, title to the litigated property had not been consolidated in the name of the mortgagee. Therefore, in that case, the mortgagee did not yet have an absolute right over the property. In *De Vera v. Agloro*,[13] we ruled:

The possession of land becomes an absolute right of the purchaser as confirmed owner. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right.[14]

In another case involving these two parties, *Fernandez and United Overseas Bank Phils. v. Espinoza*,[15] we held:

Upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute. The basis of this right to possession is the purchaser's ownership of the property.[16]

In this case, title to the litigated property had already been consolidated in the name of respondent, making the issuance of a writ of possession a matter of right. Consequently, the consolidation of the petition for the issuance of a writ of possession with the proceedings for nullification of foreclosure would be highly improper. Otherwise, not only will the very purpose of consolidation (which is to avoid unnecessary delay) be defeated but the procedural matter of consolidation will also adversely affect the substantive right of possession as an incident of ownership.

Finally, petitions for the issuance of writs of possession, a land registration proceeding, do not fall within the ambit of the Rules of Court.[17] Thus, the rules on consolidation should not be applied.

WHEREFORE, the petition is hereby DENIED.

Costs against petitioners.

SO ORDERED.

RENATO C. CORONA

Associate Justice

Chairperson

WE CONCUR:

PRESBITERO J. VELASCO, JR.

Associate Justice

ANTONIO EDUARDO B. NACHURA

Associate Justice

DIOSDADO M. PERALTA

Associate Justice

JOSE CATRAL MENDOZA

Associate Justice

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Rodrigo V. Cosico (retired) and Edgardo F. Sundiam (deceased) of the Sixth Division of the Court of Appeals. Rollo, pp. 47-15.

[3] Subsequently, the spouses Espinoza, their agents and representatives received notice to vacate the premises. Id., pp.49.

[4] Under Rule 65 of the Rules of Court.

[5] Maliwat v. Metropolitan Bank and Trust Company, G.R. No. 165971, 3 September 2007, 532 SCRA 124, 128.

[6] Id.

[7] G.R. No. 147820, 18 March 2005, 453 SCRA 756, 763-764.

[8] Penson v. Maranan, G.R. No. 148630, 20 June 2006, 491 SCRA 396, 407.

[9] De Vera v. Agloro, G.R. No. 155673, 14 January 2005, 448 SCRA 203, 213-314.

[10] De Gracia v. San Jose, 94 Phil. 623 (1954); Marcelo Steel Corporation, et al. v. Tarin, et al., 153 Phil 362 (1973); Songco v. The Presiding Judge, CFI of Rizal, et al., 212 Phil. 299; Mirasol v. Intermediate Appellate Court, G.R. No. 67588, 20 June 1988, 162 SCRA 306.

[11] G.R. No. 86603, 5 February 1990, 181 SCRA 774. The ruling in Active Wood was reiterated in Philippine Savings Bank v. Mañalac (G.R. No. 145441, 26 April 2005, 457 SCRA 203).

[12] The certificate of sale was registered on December 2, 1983. The petition for writ of possession was filed on February 14, 1984. Supra note 11 at 776.

[13] Supra note 9.

[14] Id. at 214.

[15] G.R. No. 156421, 14 April 2008.

[16] Id. at 149.

[17] Rules of Court, Rule 1, Sec. 4. In what cases not applicable. - These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient. (emphasis supplied)

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