EMMANUEL C. VILLANUEVA, PETITIONER, VS. CHERDAN LENDING INVESTORS CORPORATION, RESPONDENT.

G.R. No. 177881. October 13, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (CA) Decision[1] dated October 31, 2006 and Resolution[2] dated May 10, 2007 in CA-G.R. SP No. 89910.

The facts of the case are as follows:

Spouses Fortunato and Rachel Peñaredondo (spouses Peñaredondo) obtained from respondent Cherdan Lending Investors Corporation a loan amounting to P2.2 million, secured by a real estate mortgage over a parcel of land covered by Transfer Certificate of Title (TCT) No. T-129690. Despite demand, spouses Peñaredondo failed to pay the obligation. Hence, respondent extrajudicially foreclosed the mortgage. At the auction sale, respondent was declared as the highest bidder. A Certificate of Sale was issued and was later registered. Upon the expiration of the redemption period, the title to the property was consolidated and a new title, TCT No. 143284, issued in respondent's name.[3]

On September 28, 2001, respondent filed before the Regional Trial Court (RTC) of Parañaque City, Branch 258, an Ex-Parte Petition for Issuance of Writ of Possession for Real Property Covered by Transfer Certificate of Title No. 143284 of the Registry of Deeds for Parañaque City.[4]

In an Order[5] dated January 7, 2002, the RTC granted the petition, the dispositive portion of which reads:

> WHEREFORE, viewed in the light of the foregoing, let Writ of Possession issue in favor of the petitioner and against Spouses Fortunato Peñaredondo and Rachel Peñaredondo and all occupant(s), tenant(s), and/or persons claiming rights under them to immediately vacate the premises formerly covered by Transfer Certificate of Title No. 129690 and now covered by Transfer Certificate of Title No. 143284 registered in the name of the petitioner, issued by the Registry of Deeds of Parañaque City and to serve the purpose, the Sheriff of this Court is hereby ordered to put the petitioner in possession thereof or thru its duly authorized representative, with the assistance of the barangay officials or local police, if need be.
>
> SO ORDERED.[6]

Accordingly, a writ of possession was issued. Upon service of a copy of the court order, petitioner Emmanuel C. Villanueva moved for the reconsideration of the order and the setting aside of the writ of possession on the ground that he is the owner and is in actual possession of the subject property. He notified the court that he had filed criminal and civil cases relative to the fraudulent transfer of ownership of the subject property from him to the spouses Peñaredondo.[7] For their part, spouses Peñaredondo also filed a separate Motion to Quash the Writ of Possession[8] on two grounds: 1) that there was a pending civil case for the declaration of nullity of mortgage;

and 2) that a third party is in adverse possession of the property.

On September 30, 2002, the RTC issued an Order[9] in favor of petitioner, disposing, as follows:

> WHEREFORE, premises considered, the Motion for Reconsideration as well as Motion to Set Aside Writ of Possession are GRANTED and the movant is allowed to be in possession of the subject property until after the pending case/s has/have been resolved with finality and the Writ of Possession dated February 11, 2002 is hereby recalled and set aside.
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> As to The Motion to Quash filed by the respondents/mortgagors, the same is hereby DENIED.
>
> SO ORDERED.[10]

On August 27, 2004, the RTC of Parañaque City, Branch 257, dismissed Civil Case No. 98-0378 for Declaration of Nullity of Real Estate Mortgage filed by Fortunato Peñaredondo against respondent.[11] Respondent thereafter filed a Motion for Alias Writ of Possession,[12] which was denied[13] on December 20, 2004. On March 8, 2005, respondent's motion for reconsideration was denied for lack of merit.[14]

Aggrieved, respondent instituted a special civil action for certiorari before the CA, praying that the RTC Order denying its motion for alias writ of possession be reversed and set aside, and that the RTC be directed to issue a writ of possession in favor of respondent against petitioner.[15]

In the assailed Decision dated October 31, 2006, the CA granted respondent's petition, the pertinent portion of which reads:

> WHEREFORE, the petition is GRANTED. The assailed Orders dated December 20, 2004 and March 8, 2005, both of the Regional Trial Court, Branch 258, Parañaque City are hereby ANNULLED and SET ASIDE. The trial court is hereby directed to issue an alias writ of possession against all those who claim adverse title and rights against petitioner, which should be placed in actual possession of the subject property but without prejudice to the eventual outcome of the cases anent the validity of title thereto.
>
> SO ORDERED.[16]

Citing PNB v. Sanao Marketing Corporation[17] and Ancheta v. Metropolitan Bank and Trust Company, Inc.,[18] the CA held that the pendency of the case for annulment of the foreclosure proceedings was not a bar to the issuance of the writ of possession. The CA refused to apply Section 33, Rule 39 of the Rules of Court, which authorizes the giving of possession of the property to the purchaser or last redemptioner unless a third party is actually holding the property adverse to the judgment obligor, ratiocinating that the provision applies only to execution sales and not to extrajudicial foreclosures of real estate mortgage under Act 3135.[19]

Hence, the present petition raising the following issues:

> (1) Can the Honorable Court of Appeals require Villanueva to comment on a petition for certiorari wherein he is not even pleaded as a party?
>
> (2) Is the petition of Cherdan barred by Court order dated 30 September 2002?
>
> (3) Is Cherdan's petition for certiorari filed in the Court of Appeals proper?
>
> (4) Is there a legal obstacle/impediment to place Cherdan in possession of the property? And
>
> (5) Is the decision (Annex "A") and resolution (Annex "B") of the Honorable Court of Appeals in accord with the decisions of the Supreme Court in Capital Credit Dimension, Inc. v. Chua, 428 SCRA 259, 263 (Apr. 28, 2004); Penson v. Maranan, 491 SCRA 396, 405-406 (June 20, 2006); and Dayot v. Shell Chemical Co. (Phils.), Inc., 525 SCRA 535, 548 (June 26, 2007)?[20]

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The petition is meritorious.

The core issue for resolution is the propriety of the issuance of the writ of possession over the property subject of the foreclosure of the real estate mortgage.

A writ of possession is an order of the court commanding the sheriff to place a person in possession of a real or personal property.[21] It may be issued in an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118, either 1) within the one-year redemption period, upon the filing of a bond, or 2) after the lapse of the redemption period, without need of a bond or of a separate and independent action.[22]

It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed within one year after the registration of the sale. As such, he is entitled to the possession of the property and can demand that he be placed in possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT.[23] Time and again, we have held that it is ministerial upon the court to issue a writ of possession after the foreclosure sale and during the period of redemption. Upon the filing of an ex parte motion and the approval of the corresponding bond, the court issues the order for a writ of possession. The writ of possession issues as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new TCT in the name of the purchaser.[24]

This rule, however, is not without exception. Under Section 33, Rule 39 of the Rules of Court, which is made to apply suppletorily to the extrajudicial foreclosure of real estate mortgages by Section 6, Act 3135, as amended, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure unless a third party is actually holding the property adversely to the judgment debtor.[25] Section 33 provides:

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

The same issue had been raised in Bank of the Philippine Islands v. Icot,[26] Development Bank of the Philippines v. Prime Neighborhood Association,[27] Dayot v. Shell Chemical Company (Phils.), Inc.,[28] and Philippine National Bank v. Court of Appeals,[29] and we uniformly held that the obligation of the court to issue an ex parte writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor.

The purchaser's right of possession is recognized only as against the judgment debtor and his successor-in-interest but not against persons whose right of possession is adverse to the latter.[30] In this case, petitioner opposed the issuance of the writ of possession on the ground that he is in actual possession of the mortgaged property under a claim of ownership. He explained that his title to the property was cancelled by virtue of a falsified deed of

donation executed in favor of spouses Peñaredondo. Because of this falsification, he filed civil and criminal cases against spouses Peñaredondo to nullify the deed of donation and to punish the party responsible for the falsified document. Petitioner's claim that he is in actual possession of the property is not challenged, and he has come to court asserting an ownership right adverse to that of the mortgagors, the spouses Peñaredondo.

The third party's possession of the property is legally presumed to be based on a just title, a presumption which may be overcome by the purchaser in a judicial proceeding for recovery of the property. Through such a judicial proceeding, the nature of the adverse possession by the third party may be determined, after such third party is accorded due process and the opportunity to be heard. The third party may be ejected from the property only after he has been given an opportunity to be heard, conformably with the time-honored principle of due process.[31] The Civil Code protects the actual possessor of a property, as Article 433 thereof provides:

> Art. 433. Actual possession under claim of ownership raises disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

One who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The "judicial process" could mean no less than an ejectment suit or a reivindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated.[32]

The ex parte petition for the issuance of a writ of possession filed by respondent, strictly speaking, is not the kind of judicial process contemplated in Article 433 of the Civil Code. Even if the same may be considered a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale, it is not an ordinary suit filed in court, by which one party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.[33]

Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court where an action for foreclosure is filed before the RTC where the mortgaged property or any part thereof is situated, any property brought within the ambit of Act 3135 is foreclosed by the filing of a petition, not with any court of justice, but with the office of the sheriff of the province where the sale is to be made. As such, a third person in possession of an extrajudicially foreclosed property, who claims a right superior to that of the original mortgagor, is given no opportunity to be heard on his claim. It stands to reason, therefore, that such third person may not be dispossessed on the strength of a mere ex parte possessory writ, since to do so would be tantamount to his summary ejectment, in violation of the basic tenets of due process.[34]

The Court cannot sanction a procedural shortcut. To enforce the writ against petitioner, an unwitting third party possessor who took no part in the foreclosure proceedings, would amount to the taking of real property without the benefit of proper judicial intervention.[35] Hence, it was not a ministerial duty of the trial court under Act 3135 to issue a writ of possession for the ouster of petitioner from the lot subject of this instant case, particularly in light of the latter's opposition, claim of ownership and rightful possession of the disputed properties.[36]

In granting respondent's petition, the appellate court cited Ancheta v. Metropolitan Bank and Trust Company, Inc.[37] and PNB v. Sanao Marketing Corporation.[38]

The invocation of these cases is misplaced.

These cases involved the propriety of the issuance of a writ of possession pending the determination of the validity of the mortgage or foreclosure proceedings filed by the mortgagor or by at least one of the mortgagors who was a party to the foreclosure proceedings. We held then that the pendency of such determination is not a bar to the issuance of the possessory writ as no discretion is left to the issuing judge.

The above-cited cases have different factual milieu which makes them inapplicable to the present case. In

Ancheta and PNB, the oppositors were parties to the mortgage and the foreclosure proceedings; in the present case, the oppositor was a third party who was a stranger to the mortgage and who did not participate in the foreclosure proceedings. Moreover, in Ancheta and PNB, the oppositors objected to the issuance of the writ because of the pendency of a case for the annulment of the real estate mortgage and the foreclosure proceedings; while petitioner herein objected because he is in actual possession of the foreclosed property and he is claiming the right of ownership adverse to that of the mortgagor, the spouses Peñaredondo.

These factual circumstances in the instant case call for the application not of Ancheta and PNB but of the other set of cases thoroughly discussed above declaring that the issuance of the possessory writ is not a ministerial duty of the RTC judge.

WHEREFORE, premises considered, the petition is hereby GRANTED. The Court of Appeals Decision dated October 31, 2006 and Resolution dated May 10, 2007 in CA-G.R. SP No. 89910 are REVERSED and SET ASIDE. The Orders dated December 20, 2004 and March 8, 2005 of the Regional Trial Court, Parañaque City, Branch 258 in LRC Case No. 01-0123, are REINSTATED.

SO ORDERED.

Velasco, Jr.,[*] Leonardo-De Castro,[***] Brion,[****] and Mendoza, JJ., concur.

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[*] Additional member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 897 dated September 28, 2010.

[**] In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

[***] Additional member in lieu of Associate Justice Roberto T. Abad per Special Order No. 905 dated October 5, 2010.

[****] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 904 dated October 5, 2010.

[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Rebecca de Guia-Salvador and Ramon R. Garcia, concurring; rollo, pp. 28-37.

[2] Id. at 39-40.

[3] CA rollo, p. 24.

[4] Id. at 21-23.

[5] Id. at 24.

[6] Id.

[7] Id. at 25-28.

[8] Id. at 29-33.

[9] Id. at 47-49.

[10] Id. at 49.

[11] Id. at 50-63.

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[12] Id. at 64-67.

[13] Id. at 18.

[14] Id. at 19-20.

[15] Id. at 6-17.

[16] Rollo, pp. 36-37.

[17] 503 Phil. 260 (2005).

[18] 507 Phil. 161 (2005).

[19] Entitled "An Act To Regulate the Sale of Property Under Special Powers Inserted In or Annexed To Real-Estate Mortgages," approved on March 6, 1924, and amended by Act 4118.

[20] Rollo, pp. 132-133.

[21] Bank of the Philippine Islands v. Icot, G.R. No. 168061, October 12, 2009, 603 SCRA 322, 329.

[22] Id. at 329-331.

[23] China Banking Corporation v. Lozada, G.R. No. 164919, July 4, 2008, 557 SCRA 177, 196.

[24] Development Bank of the Philippines v. Prime Neighborhood Association, G.R. Nos. 175728 & 178914, May 8, 2009, 587 SCRA 582, 594.

[25] Id. at 594-595.

[26] Supra note 21.

[27] Supra note 24.

[28] G.R. No. 156542, January 26, 2007, 525 SCRA 535.

[29] 424 Phil. 757 (2002).

[30] Bank of the Philippine Islands v. Icot, supra note 21, at 333; Development Bank of the Philippines v. Prime Neighborhood Association, supra note 24, at 597.

[31] Development Bank of the Philippines v. Prime Neighborhood Association, supra, at 597.

[32] Dayot v. Shell Chemical Company (Phils.), Inc., supra note 28, at 547.

[33] Id.

[34] Id. at 548-549.

[35] Id. at 549.

[36] Id. at 550.

[37] Supra note 18.

[38] Supra note 17.

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