

PLANTERS DEVELOPMENT BANK, PETITIONER, VS. JAMES NG AND ANTHONY NG, RESPONDENTS.

G.R. No. 187556. May 05, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Assailed in the present petition for review on certiorari is the January 19, 2009 Decision[1] of the Regional Trial Court of Quezon City (RTC-QC), Branch 77 in LRC Case No. Q-14305 (01) denying the motion of Planters Development Bank (petitioner) for the issuance of a writ of possession.

On various occasions in 1997, James Ng and his brother Anthony (respondents) obtained loans from petitioner amounting to Twenty Five Million Pesos (P25,000,000.00) to secure which they mortgaged two parcels of land situated in San Francisco del Monte, Quezon City and covered by Transfer Certificate of Title (TCT) Nos. 79865 and 79866 of the Registry of Deeds of Quezon City.

Respondents failed to settle their loan obligation, hence, petitioner instituted extrajudicial foreclosure of the mortgage before Notary Public Stephen Z. Taala.[2] The Notice of Auction Sale scheduled the sale of the properties covered by the mortgage on April 7, 1999 at the Main Entrance of the Hall of Justice Building in Quezon City.[3] The Notice was published in Metro Profile, a newspaper of general circulation, in its March 9, 16 and 23, 1999 issues.[4]

The highest bidder at the auction sale was petitioner to which was issued a Certificate of Sale that was registered with the Register of Deeds of Quezon City on May 19, 1999.[5]

As respondents failed to redeem the mortgage within one year, petitioner filed on June 26, 2001, an ex-parte petition for the issuance of a writ of possession, docketed as LRC Case No. Q-14305 (01) and lodged before RTC-QC, Branch 77.

In the meantime, respondents instituted an action for Annulment of Certificate of Sale, Promissory Note and Deed of Mortgage, raffled to RTC-QC, Branch 221 which, by Order of June 14, 2000,[6] issued a writ of preliminary injunction restraining petitioner from consolidating its title to the properties and committing any act of dispossession that would defeat respondents' right of ownership.

After numerous incidents arising from petitioner's petition for issuance of a writ of possession and respondents' complaint for annulment which incidents reached this Court, petitioner was finally allowed by Branch 77 of the RTC-QC, by Order of August 22, 2008, to present evidence ex parte on its petition for the issuance of a writ of possession.

By Decision of January 19, 2009, RTC-QC, Branch 77 denied the issuance of a writ of possession in this wise.

. . . [P]etitioner was unable to prove that it complied with Sections 3 and 4 of Act 3135, as amended. Particularly, there is no proof of notice of sale made for not less than twenty (20) days in at least three (3) public places. There is also no proof that Notary Public Atty. Stephen Z. Taala, who conducted the sale at

public action of the subject properties, collected filing fees and issued the corresponding official receipt, in addition to his expenses. The Petition for Extra-Judicial Foreclosure of Mortgage, dated February 25, 1999 (Exhibit "D") was filed directly with the Notary Public Atty. Stephen Z. Taala and not with the Executive Judge, through the Clerk of Court, who is also the Ex-Officio Sheriff. The Certificate of Sale, dated May 19, 1999 (Exhibit "F"), was not approved by the Executive Judge, or in his absence, the Vice-Executive Judge." [7] (underscoring supplied)

Petitioner's motion for reconsideration of the decision having been denied by Order of April 20, 2009, [8] it filed, before this Court, the present petition for review on certiorari on pure questions of law, in accordance with Rule 45 of the Rules of Court.

Petitioner, in the main, asseverates that Branch 77 of the RTC-QC cannot cite as ground for denial of the issuance of a writ of possession questions relating the validity of the mortgage or its foreclosure.

Respondents counter that there are no facts or the facts are insufficient to entitle petitioner to a writ of possession.

The petition is meritorious.

It is settled that questions regarding the validity of a mortgage or its foreclosure as well as the sale of the property covered by the mortgage cannot be raised as ground to deny the issuance of a writ of possession. Any such questions must be determined in a subsequent proceeding [9] as in fact, herein respondents commenced an action for Annulment of Certificate of Sale, Promissory Note and Deed of Mortgage.

Parenthetically, the court a quo denied the issuance of the writ as it credited respondents' opposition to petitioner's petition for the issuance of a writ of possession, which opposition it synthesized as follows:

On the other hand, the mortgagors[-respondents herein] contend that the extrajudicial foreclosure proceedings conducted by the Notary Public over the mortgaged properties of the mortgagors suffered jurisdictional infirmities; that the jurisdictional infirmities consisted of the fact that the requirement of posting the notices of the sale for not less than twenty (20) days in at least three (3) public places in the city where the property is situated was not complied with; that the notice of auction sale did not mention with preciseness and particularity the kind of improvement on the mortgaged property, which consist of a three-storey building; that the bank (petitioner herein) and the Notary Public colluded to deprive the prospective bidders interested in the properties from participating in the public auction sale since they were deprived of knowing the real status of the subject properties; that the mortgaged properties were auctioned for a price grossly disproportionate and morally shocking as compared to the real value of the same properties; that the petitioner also violated the provisions of Supreme Court Administrative Order No. 3, governing the procedure of extrajudicial foreclosure, x x x. [10] (underscoring supplied)

By crediting respondents' opposition, Branch 77 of the court a quo pre-empted its co-equal branch, Branch 221, to which jurisdiction over respondents' annulment petition was laid, from determining the merits of respondents' claim-basis of said petition.

Section 33 of Rule 39 of the Rules of Court 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; x x x

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. (underscoring supplied)

Since respondents failed to redeem the mortgage within the reglementary period, entitlement to the writ of possession becomes a matter of right and the issuance thereof is merely a ministerial function.[11]

The judge to whom an application for a writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure. Until the foreclosure sale is annulled, the issuance of the writ of possession is ministerial.[12]

In fact, even during the period of redemption, the purchaser is entitled as of right to a writ of possession provided a bond is posted to indemnify the debtor in case the foreclosure sale is shown to have been conducted without complying with the requirements of the law. More so when, as in the present case, the redemption period has expired and ownership is vested in the purchaser.[13]

The defaulting mortgagor is not without any expedient remedy, however. For under Section 8 of Act 3135, as amended by Act 4118,[14] it can file with the court which issues the writ of possession a petition for cancellation of the writ within 30 days after the purchaser-mortgagee was given possession. So Section 8 of Rule 39 provides:

SECTION 8. 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. (underscoring supplied)

IN FINE, it was grievous error for QC-RTC, Branch 77 to deny petitioner's motion for the issuance of a writ of possession.

WHEREFORE, the Decision of January 19, 2009 of the Regional Trial Court of Quezon City, Branch 77 is hereby REVERSED and SET ASIDE. Said court is DIRECTED to immediately act on petitioner's petition in LRC Case No. Q-14305 (01) in accordance with the foregoing disquisitions.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama Jr., JJ., concur.

[1] Penned by Judge Vivencio S. Baclig; rollo, pp. 27-30.

[2] Petition for Extra-Judicial Foreclosure of Mortgage, Records, Vol. 1, pp. 33-35.

[3] Id. at 36-37.

[4] Affidavit of Publication, id. at 38

[5] Id. at 39-40.

[6] Id. at 110-112

[7] Id. at 30.

[8] Id. at 31.

[9] Philippine National Bank v. Sanao Marketing Corporation, G.R. No. 153951, July 29, 2005, 465 SCRA 287.

[10] Rollo, p. 28.

[11] F. David Enterprises v. Insular Bank of Asia and America, G.R. No. 78714, November 21 1990, 191 SCRA 516, 523.

[12] Vide note 9.

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

[14] Otherwise known as "An Act to Amend Act Numbered Thirty One-Hundred and Thirty Five," entitled "An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed to Real Estate Mortgages."

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